

Motoring Offences

It all begins with a Notice of Intended Prosecution

If a road traffic offence has been committed, then the police will issue a Notice of Intended Prosecution (NIP).

An individual must be informed by way of a NIP before they can be charged for certain driving offences. In some cases the driver can be warned at the road side of the possibility of a prosecution otherwise, the police will use the registration number of the car to find the keeper's address.

The police will then send a NIP. If the NIP is not issued to the keeper/driver within 14 days of the offence, then it may be possible to challenge it.

This rule applies to:

- dangerous driving
- careless and inconsiderate driving
- speeding
- driving whilst using mobile phone
- leaving a vehicle in a dangerous place
- failing to comply with a traffic sign or red light

What does the NIP contain?

The NIP issued by post must contain details of the time, date, place and description of the offence. It would normally also include a requirement to provide details of the driver within 28 days. If this requirement is not complied with then a summons may be issued against the registered keeper for failure to identify the driver contrary to section 172 of the Road Traffic Act 1988.

What if I cannot identify the driver?

It is important to cooperate with the NIP and you should

do everything you can to identify the driver and provide all the information to the police that you have. This can include names and addresses of the potential drivers. They will usually then be issued with a NIP.

What happens next

Once the NIP has been returned identifying the driver, the police then have 6 months to progress the case further. In the event of speeding, the driver may be offered the chance to attend a speed awareness course. You may also be offered a fixed penalty notice depending on the speed. If the police decide that such a course or fixed penalty is inappropriate, for example the speed alleged is too high, then you may be summoned to the court for the offence.

Speeding: An Update

The Highway Code, describes a built up area as a settled area in which the speed limit of a road is automatically 30 mph. These roads are known as 'restricted roads' and are identified by the presence of street lights.

Although a lack of signage can be misleading, and it does often catch motorists out, there is no legal requirement for a restricted road to have speed signs or repeater signs.

When driving on built-up roads, assume the limit is 30 mph until you see a sign saying otherwise. But, be vigilant and remember the limit could be lower – 20 mph.

Caught speeding - what penalty will I face?

For the most serious speeding offences, which are not dealt with by a fixed penalty notice, the fines have now increased. Since April 2017, Magistrates in England and Wales have been directed to apply a Band C speeding fine for the most serious offenders.



Speeding Fines Explained:

If you are summoned to attend court for speeding and you are travelling in excess of the relevant limit, you may now face significant penalties as outlined below:

A 31-40 mph above the limit

Up to 50% of your weekly income, and 3 penalty points on your driving licence.

B 41 – 50 mph above the limit

Up to 100% of your weekly income, and 4 penalty points on your driving licence, or a disqualification from driving up to 28 days.

C 51 mph above the speed limit

Up to 150% of your weekly income, and 6 penalty points on your driving licence, or disqualification from driving for up to 56 days.

Disqualification from driving vs penalty points

If you get caught driving at a speed that will fall within a Band B or C speeding fine, the magistrates may believe your speeding is too serious for penalty points. In this case, you may be disqualified from driving for a period of time instead of being given penalty points.

Some may think they are better off being disqualified from driving for a short time, rather than taking the 6 penalty points on their licence. However, the Magistrates are aware of this potential 'loophole', so they may be reluctant to ban for a short time in lieu of penalty points.

New Drivers

Your licence will be revoked if you obtain 6 or more points within 2 years of passing your test. If your licence

is cancelled within 2 years, then you will have to apply and pay for a new provisional licence and pass both theory and practical tests again in order to get a full licence.

Totting Up Offences

If you accumulate 12 or more points within a three year period, then you will be liable for disqualification for a minimum period of six months in accordance with the totting up provisions contained within the Road Traffic Offenders Act 1988.

This three year period is calculated from the date the offence is committed rather than the date of conviction. It is possible to avoid a totting up disqualification where a motorist can persuade the court that they would suffer exceptional hardship as a result.

Exceptional Hardship and Court Considerations

The court will take into account the particular facts of an individual's circumstances. They also recognise that there will be hardship on an individual who will lose their licence. Therefore, it is important when raising the exceptional hardship defence that it's not just the driver that will be caused the hardship, that others around them, such as employees, family members and others that rely on them will be affected too.

The Court are looking at the particular circumstances surrounding the offender who is before the court and whether those circumstances will have such an impact on them that they should be entitled to keep their driving licence.

Serious Motoring Offences

Offences of Drink Driving

What's the drink drive limit in England and Wales?

In England & Wales, the alcohol limit for drivers is 80 milligrams of alcohol per 100 millilitres of blood, 35 micrograms per 100 millilitres of breath or 107 milligrams per 100 millilitres of urine. In Scotland the limit is different; it is 50 milligrams of alcohol in every 100 millilitres of blood, 22 micrograms of alcohol per 100 millilitres of breath.

Penalties

Penalties for an offence of drink driving could be imprisonment, a driving ban and/or a fine if you are found guilty. The actual penalty will be up to the Magistrates who hear the case, and it depends on the offence.

You may be able to reduce the ban by taking a [drink-drive rehabilitation scheme \(DDRS\) course](#) if you're banned from driving for 12 months or more. It's up to the court to offer such a course.

Being in charge of a vehicle while above the legal limit or unfit through drink.

Being in charge of a vehicle refers to motorists who are sleeping or sitting in their vehicle under the influence of alcohol. If convicted the penalties could be:

- 3 months' imprisonment
- up to £2,500 fine
- a possible driving ban

Driving or attempting to drive while above the legal limit or unfit through drink

The penalty could be:

- 6 months' imprisonment
- an unlimited fine
- a driving ban for at least 1 year (3 years if convicted twice in 10 years)

Refusing to provide a specimen of breath, blood or urine for analysis

It's an offence and you risk automatic disqualification if you:

- Fail to provide a specimen of breath for a preliminary breath test, or

- Fail to provide a specimen of breath, blood or urine at the police station when requested unless you have a reasonable excuse (a physical or mental inability to provide the sample), or
- Refuse to provide a specimen.

Imposing conditions such as delaying giving a sample until a solicitor arrives will amount to a refusal. Unless there is a relevant medical reason, the driver should never refuse to give a specimen, regardless of whether they feel their refusal would be justified or not.

If a court subsequently doesn't accept the reasons for refusal, it will be too late to avoid the offence of refusal.

The penalty could be:

- 6 months' imprisonment
- an unlimited fine
- a ban from driving for at least 1 year

Causing death by careless driving when under the influence of drink

The penalty could be:

- 14 years' imprisonment
- an unlimited fine
- a ban from driving for at least 2 years
- an extended driving test before your licence is returned

You won't automatically get your licence back if you're a [high risk offender](#).

Other problems you could face

A conviction for drink-driving also means:

- your car insurance costs will increase significantly
- if you drive for work, your employer will see your conviction on your licence
- you may have trouble travelling to countries like the USA

Offence of Drug Driving

It is an offence to drive under the influence of drugs and the police have the power to prosecute those who have an unacceptable amount of drugs in their system.

What are illegal recreation drugs?

The limits for illegal drugs will be extremely low, therefore even the smallest amount in someone's system could lead to prosecution. Drugs which fall into this category include: Cannabis, Cocaine, Ecstasy, Heroin, Ketamine, Methylamphetamine and Lysergic Acid Diethylamide (LSD).

What are legal, licensed drugs?

The limits are higher for drugs which are legal and licensed. The presence of these drugs in a driver's system can be for medical purposes. Drugs in this category can include: Methadone, Morphine, Clonazepam, Temazepam, Lorazepam, Oxazepam and Diazepam. If you are stopped and are over the limit for using drugs in this category you may have a medical defence.

What is a medical defence?

Driving whilst impaired is an offence and you can be prosecuted under existing road traffic law. If you feel affected by any medication that you are taking then you are advised not to drive for your own safety and for the safety of other road users.

What happens if you get pulled over?

The police have the power to carry out a drug screening test if they suspect that you are driving whilst under the influence of drugs.

Drug screening will be done initially using a [Drugalyser oral swab tests](#) called the 'Drugwipe', which test for chemical compounds in the saliva. The equipment provides a fully automated oral fluid on-site analyser providing printed out test results in 10 minutes. A positive saliva sample could lead to a blood sample test then being taken. The police will use the new offence to prosecute drivers whose evidential blood samples contain more than the specified limits of those drugs provided for in regulations. Failure to provide a sample without reasonable excuse may lead to prosecution.

What are the penalties for drug driving?

Prosecution for drug driving carries heavy penalties which include:

- Minimum 12 month driving ban;
- A criminal record;
- Up to £5000 fine and / or 6 month prison sentence.

There can be other effects to your life such as loss of your job, if you drive for work, your employer will see the conviction on your licence

Your driving licence will also show that you have been convicted for drug driving. This will last for 11 years.

Motor Legal Defence

If a driver is likely to face prosecution and risk losing their licence, then they should enquire as to whether they have any motor legal defence cover on their car insurance. This cover may provide them with legal representation in the Magistrates court.

NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.