

ANTHONY JONES
INSURANCE BROKERS

RESILIENCE

Strengthen | Support | Protect

THE ROAD TO A SAFER FLEET
AND HEALTHIER BOTTOM LINE
DRIVING LEGISLATION

Driving Legislation & Penalties
Road Safety Facts & Tips

dac
DAC BEACHCROFT





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INTRODUCTION

Anthony Jones Insurance Brokers are delighted to support the focus on effective Health and Safety management in conjunction with our chosen legal partner's DAC Beachcroft. This easy to understand handout will explain all the basics you need to know about driving legislation and penalties as a driver and employer, along with some helpful facts and tips.

The Health and Safety of your employees should be an integral part of your strategy and decision making. It's important to recognise that managing drivers and a fleet of vehicles is an extremely complex task. It is definitely not a one-person job. Driving for work is widely accepted, and has been proven to be, one of the most dangerous tasks any employer can ask an employee to do.

A significant feature of the work Anthony Jones and DAC Beachcroft have in place is a Motor Prosecutions 24 Hour Response provision. With the increasing focus on legislation and prosecutions following serious or fatal road traffic collisions, there has been a significant increase in the number of drivers being interviewed under caution and therefore requiring immediate assistance. This is a stressful time for drivers, who more than likely will have had no previous involvement with the police at such a level. By offering driver representation, you are acting with your drivers' best interests in mind.

DAC Beachcroft's national, dedicated Motor Prosecutions team operate a 24 hour service that ensures drivers receive early advice from a specialist lawyer, as well as police station representation throughout England, Wales, and Scotland. Representation with specialist lawyers from the moment of the police attending the scene, through to all stages of the police investigation, and criminal proceedings/inquest proceedings, will ensure an efficient and seamless service.

'**RESILIENCE**' is DAC Beachcroft's driver and fleet safety solution and will help shift time and resources away from reactively managing collisions and incidents, to implementing pro-active measures to improve collision prevention and improve driver and fleet safety. This does not have to be an ordeal and '**RESILIENCE**' will make it as easy as 1 - 2 - 3.

- 1. STRENGTHEN** policies, processes and procedures to enable you to protect your drivers and operate a safer fleet.
- 2. SUPPORT** to analyse and identify areas of vulnerability and implement changes to reduce your exposure to risk.
- 3. PROTECT** you if the worst happens, safe in the knowledge that you have done as much as possible to mitigate your risk.

The team at Anthony Jones would like to thank DAC Beachcroft for allowing us to share their insight and expertise with our customers.

Your choice of insurance broker is an important one. The value of what you've bought goes beyond cover and the premium you pay. It's only when you make a claim or need to access specialist support and advice that you can really appreciate what you have in place.



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AUTHORITY TO DRIVE

Legislation

An employer needs to provide authorisation to employees before they are allowed to drive for work purposes, regardless of the type of vehicles being driven.

Employers have a legal responsibility to ensure all employees authorised to drive for work meet the minimum criteria as follows and that they:

- have a valid and current driving licence;
- are insured to drive and have the correct insurance cover;
- have a roadworthy vehicle that is safe and properly maintained, as per the manufacturer's recommendations;
- have a valid MOT where required;
- have the correct licence for the vehicle to be driven;
- have the correct qualifications for the vehicle to be driven.

VALIDITY OF LORRY, MINIBUS AND BUS LICENCES

- A licence to drive lorries, minibuses or buses is usually valid until aged 45. After 45, the driver must renew their licence every 5 years until they're 65.
- After 65, the driver must renew their licence every year.
- All licences issued after 19 January 2013 are valid for 5 years, up to age 65.

QUALIFICATIONS FOR LORRY, BUS AND COACH DRIVERS

Professional lorry, bus and coach drivers also need to hold a Driver Certificate of Professional Competence (CPC) as well as a valid licence.

Drivers must do 35 hours of periodic training every 5 years to keep their Driver CPC. You need to ensure you know how many hours of training a driver has done in the last 5 years.

TACHOGRAPHS

Some drivers may need to record their journeys on tachographs to make sure they are following the rules on drivers' hours.

It is an offence to cause or permit someone to drive on the road without a valid driving licence and/or motor insurance.



Penalties

If you do not have a valid driving licence, you can be fined £1000.

If you are caught driving a vehicle you're not insured to drive, the police will hand out a minimum:

- fixed penalty fine of £300;
- 6 penalty points.

The police will decide whether more serious cases are to be handled in court. These may include cases where a driver has never passed a driving test, has given false details or was driving a higher risk vehicle, like a HGV.

A court can issue:

- an unlimited fine;
- disqualification from driving.

The police also have the power to:

- seize the vehicle – even if it doesn't belong to you;
- destroy the vehicle.

Other costs you may be liable for include:

- a higher car insurance premium in the future;
- costs associated with a collision.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter sections.*

Facts

Grey fleet drivers represent the most unregulated driving in the UK.

79,000 drivers caught with no insurance in 2018.

2.3m driving licence photo-cards are out of date according to DVLA.

2.6m drivers have points on their licence in 2019.

Tips

Have a separate 'Authority to Drive Policy';

Check licences at least once a year;

Take a risk based approach to determine whether checks should be done more regularly;

Make the policy easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually and update when necessary; Use independent experts and products such as 'RESILIENCE' by DAC BEACHCROFT.



NEW DRIVERS

Legislation

A new driver is classed as someone who has passed their driving test within the last two years.

If a new driver has been banned from driving within the first two years of passing their driving test (see penalties section below), they will have to obtain a full driving licence again.

In order to do this, they will need to:

- Buy a new provisional licence;
- Only drive when supervised;
- Put 'L' plates on their car;
- Pass both theory and practical parts of the driving or riding test again to get a full licence.

Passing the test again does not remove the penalty points which remain on their new licence until their three-year period expires.

Facts

300 collisions occur each year during a driving test.

1 in 5 new drivers have a collision in the first 12 months of driving.

33 new drivers (aged 17 to 24) a day had their licences revoked in 2018.

13,000+ new drivers have their licence revoked each year.

85% of all serious injury collisions involve a driver under the age of 25.

25% of insurance policies for new drivers are fronted.

Tips

Have a separate 'New Drivers Policy';

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Provide additional driver training before they are allowed to drive for work purposes;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

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SPEEDING & DRIVING

Legislation

Do not think you will only be charged with speeding if travelling in excess of the specified speed limit for the road you are travelling on.

A driver can be charged with a speeding offence as follows: The basic speed law theory states that you can be charged with speeding by violating the “basic” speed law, even if you were driving below the posted speed limit.

A police officer must simply decide that you were going faster than you should have been, considering the driving conditions at the time.

If you are stopped by the police for an alleged speeding offence, they can either:

- send you the details of the penalty.
- send the case straight to court.

If you were not stopped by the police for the alleged speeding offence (eg it was caught by speed camera), the registered keeper of the vehicle must be sent a notice of intended prosecution within 14 days.

You may have to go to court if you ignore the notice.





Penalties

The minimum penalty for speeding are:

- a £100 fine; and
- 3 penalty points added to your licence.
- if you build up 12 or more penalty points within a period of 3 years, you could be disqualified from driving.

DETERMINING THE OFFENCE SERIOUSNESS

The starting point applies to all offenders irrespective of plea or previous convictions.

Speed limit (mph)	Recorded speed (mph)		
20	21-30	31-40	41 and above
30	31-40	41-50	51 and above
40	41-55	56-65	66 and above
50	51-65	66-75	76 and above
60	61-80	81-90	91 and above
70	71-90	91-100	101 and above
Sentencing range	Band A	Band B	Band C
Fine (gross weekly wage)	50%	100%	150%
Points/ disqualification	3 points	Disqualify 7-28 days or 4-6 points	Disqualify 7-56 days or 6 points

Must endorse and may disqualify. If no disqualification 3 – 6 points imposed.

Where an offender is driving grossly in excess of the speed limit the court should consider a disqualification in excess of 56 days.

BAND RANGES

The court should consider further adjustment for any aggravating or mitigating factors.

The following is a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

FACTORS INCREASING SERIOUSNESS

Statutory aggravating factors

Previous convictions, having regard to the:

- a. nature of the offence to which the conviction relates and its relevance to the current offence; and
- b. time that has elapsed since the conviction.
- c. Offence committed whilst on bail.

Other aggravating factors

- Offence committed on licence or post sentence supervision.
- Poor road or weather conditions.
- Driving LGV, HGV, PSV etc.
- Towing caravan/trailer.
- Carrying passengers or heavy load.
- Driving for hire or reward.
- Evidence of unacceptable standard of driving over and above speed.
- Location e.g. near school.
- High level of traffic.
- Pedestrians in the vicinity.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections.

Facts

1% increase in speed equals 4% increase in chance of a fatality.

Speeding offences accounted for 85% of all motoring offences committed in 2018.

43% of drivers are unable to identify the National Speed Limit sign.

76% of drivers admit to driving more than 35mph in a 30mph zone.

10 million drivers have attended a 'Speed Awareness Course' since it started in 2006.

1.4 million drivers attended 'Speed Awareness Course' in 2018, an increase of 170% on 2017.

Tips

Have a separate 'Speeding Policy';

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

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MOBILE PHONE USE & DRIVING

Legislation

It is illegal to hold a mobile phone while driving or riding a motorcycle. You must have hands-free access, such as:

- a Bluetooth headset;
- voice command;
- a dashboard holder or mat;
- a windscreen mount.

The device must not block your view of the road and traffic ahead. You must stay in full control of your vehicle at all times. The police can stop you if they think you're not in control because you're distracted and you can be prosecuted.

The law still applies to you if you are:

- stopped at traffic lights;
- queuing in traffic;
- supervising a learner driver.

When you can use a hand-held phone

You can use a hand-held phone if either of these apply:

- you are safely parked;
- you need to call 999 or 112 in an emergency and it's unsafe or impractical to stop.

Penalties

You can get 6 penalty points and a £200 fine if you use a hand-held phone when driving. You'll also lose your licence if you passed your driving test in the last 2 years. You can get 3 penalty points if you don't have a full view of the road and traffic ahead or proper control of the vehicle.

You can also be taken to court where you can:

- be banned from driving or riding;
- get a maximum fine of £1,000 (£2,500 if you're driving a lorry or bus).

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections.

Facts

It is **4 times** more difficult to drive while using a mobile phone (even when on hands free/Bluetooth) than driving twice the legal drink drive limit.

Drivers using a mobile phone become fixated on the road ahead and fail to see what is going on around them.

31% of drivers admit to texting while driving.

83% of drivers admit to using a mobile phone while their vehicle is stationary with the engine running, which is illegal.

91% of drivers do not actually understand or misinterpret the legislation.

565 fatal/serious collisions in 2018 due to mobile phone use.

Tips

Have a separate 'Mobile Phone Policy';

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

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DRIVING WHILE DISTRACTED

Legislation

There are general laws that require drivers to be attentive and not engage in distracting activities.

The following (in addition to mobile phones covered in previous section) are examples of things that can cause distractions while driving:

- Eating and drinking;
- Smoking;
- Using a Sat Nav or infotainment system;
- Restricted vision;
- Shaving;
- Putting on make up;
- Putting clothes on/off;
- Cooking;
- Watching TV;
- Unrestrained pets/animals;
- Using any type of computer device;
- Typing;
- Reading;
- Arguing with a passenger;
- Having the music on too loud;
- Singing;
- 'Rubbernecking';
- Being distracted by things outside the car, such as people, objects or noises.

NB: The above list is not exhaustive.

Penalties

The most common penalties for driving while distracted are:

- You will get 3 penalty points on your licence;
- A fine If the case goes to court, you could even be subject to a maximum fine of £1,000;
- as well as potentially losing your licence altogether.

Distracted drivers could be charged with a range of offences depending on how badly the distraction affected their driving, including:

- Dangerous Driving;
- Careless and Inconsiderate Driving;
- Failure to Be in Proper Control of the Vehicle;
- or Driving without Due Care and Attention.

See Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter sections.



Facts

3 types of distraction: Visual - eyes off the road; Cognitive - mind off driving; Manual - hands off the wheel.

17% of drivers admit to driving while engaged in a physical distraction ie: eating, drinking, smoking, using in-vehicle technology.

Up to **30%** of all road traffic collisions involve driver distraction.

87% of drivers use the 'touch screen' infotainment system while driving.

12 to 16 seconds, the amount of time a driver takes their eye off the road while using the 'touch screen' infotainment system.

608 fatal/serious collisions in 2018 due to 'infotainment' use.

Tips

Have a separate 'Driving while Distracted Policy';

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

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IN-VEHICLE TECHNOLOGY & DATA MANAGEMENT

Legislation

Liable to prosecution under S2 & S3 HSWA if data gathered is not monitored, reviewed and used to create action points by the company.

In accordance with S2 & S3 HSWA, companies need to ensure that they have done everything 'reasonably'.

If a company does not assess the data, and it can be shown that assessment of any data gathered from in vehicle technology would have highlighted an issue, then the company may not be able to argue that they had done all that is reasonably practicable to prevent an incident.

THREE KEY PILLARS OF H&S – POLICIES, TRAINING & SUPERVISION

Implications of failing to Review Data:

- Reduce prospects of successful defence;
- Higher fines;
- Aggravating factor in sentencing guideline – previous warning;
- Reputational damage;
- Impact on those involved;
- Business impact.

The key message is that in vehicle technology such as;

- Engine control units (ECUs);
- Sat navs;
- Mobile phones;
- Infotainment systems;
- Forward facing cameras;
- In-cab cameras;
- 360 degree camera systems;
- Telematics;

(and many more) can tell you (and the police) a great deal about the way that a vehicle is being driven. However, the above can be more of a curse if any data recorded is not reviewed and any issues acted upon.

Penalties

The sentencing guideline for health and safety cases has been in place since 2016 and has significantly changed the landscape for health and safety fines. There are a number of factors that will have a significant impact on the level of fine that you should look out for when you receive details of a case. The first thing to think about is the turnover of the corporate entity that would be investigated. The higher the turnover the higher the fine.

A key factor is culpability i.e. if the company has fallen far short of the required standard or if there is a flagrant disregard of health of safety then this will have a significant impact on the fine.

- The sentencing guidelines look first at the likelihood of harm therefore the organisation is sentenced in accordance with the risk of harm as opposed to the actual harm and this has produced a significant number of cases where the injuries sustained are relatively minor but the fine levels are extremely significant.
- The Court will then look at the seriousness of risk, the number of people potentially involved who were hurt/could have been hurt.
- If there is any evidence of costs cutting at the expense of safety which is different to the previous aggravating factor or putting profit before safety which was quite infrequently used. Essentially the Courts wish to ensure the removal of any gain which can simply be in relation to not having certain reviews and risk assessments completed for example.
- They will also look at any poor health and safety record of the company.
- Sentencing guidelines apply to HSWA cases and corporate manslaughter offences.

See Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter sections.

Facts

The in-vehicle technology fitted to the majority of modern vehicles (all vehicle types), records everything about the way the vehicle is driven.

Traffic Commissions and insurance companies retrospectively use data from in-vehicle technology.

85% of fleet operators do not get the full benefits from their in-vehicle technology.

Vehicle data can leave you open to prosecution as well as defend you.

In-vehicle technology is used more to discipline drivers than improve driver/fleet safety.

In-vehicle technology can identify driver health issues such as: fatigue, sleep issues, drugs and alcohol use.

Tips

Have a separate 'In-vehicle technology and Data Management Policy';

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

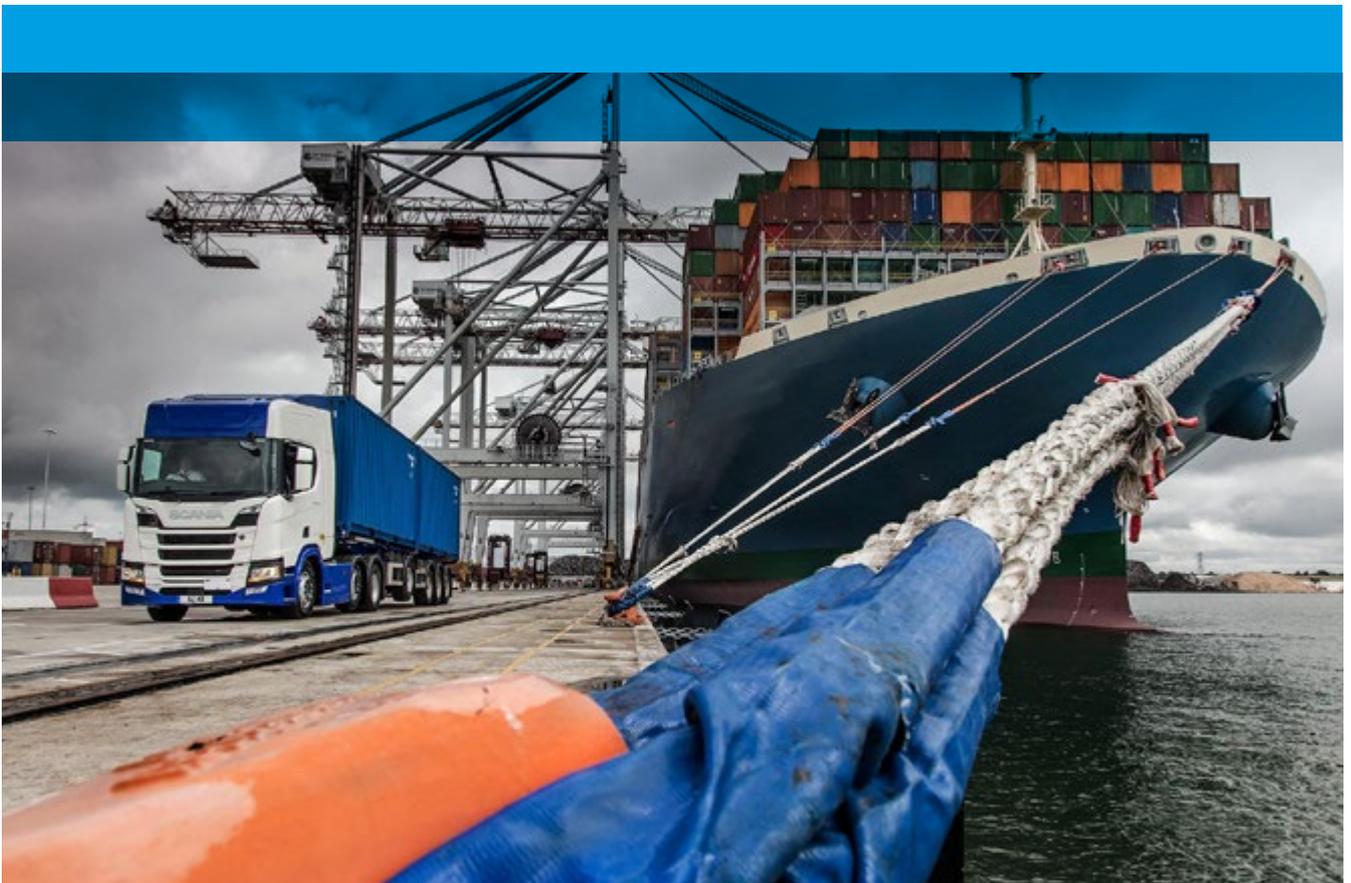
Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually and update when necessary;

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SPEEDING & DRIVING

Legislation

There are strict alcohol limits for drivers, but it's impossible to say exactly how many drinks this equals - it's different for each person. The limits in Scotland are different to the rest of the UK.

Level of alcohol	England, Wales & Northern Ireland	Scotland
Micrograms per 100 millilitres of breath	35	22
Milligrammes per 100 millilitres of blood	80	50
Milligrammes per 100 millilitres of urine	107	67

You cannot drive anywhere in the UK if you've been banned by any UK court because of drink driving.

The way alcohol affects you depends on:

- your weight, age, sex and metabolism (the rate your body uses energy);
- the type and amount of alcohol you're drinking;
- what you've eaten recently;
- your stress levels at the time.

Penalties

There are strict drink driving penalties if you are caught over the limit.

You could be imprisoned, banned from driving and face a fine if you are found guilty of drink-driving.

The actual penalty you get is up to the magistrates who hear your case, and depends on your offence.

You may be able to reduce your ban by taking a drinkdrive rehabilitation scheme (DDRS) course if you're banned from driving for 12 months or more. It's up to the court to offer this.

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

You may get:

- 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

You may get:

- 6 months' imprisonment;
- an unlimited fine;
- will get 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

You may get:

- 6 months' imprisonment;
- an unlimited fine;
- will get a driving ban for at least 1 year.

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.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections

Facts

The drink drive limit has been the same since **1967**.

You can be over the limit but not impaired and under the limit but impaired. Both illegal.

8,600 collisions involving drink driving in 2017.

85,000< drink driving convictions in 2018: of which **85%** are male.

61% of employers do not test employees who drive for work.

28% of drink driving arrests in 2018 were the 'morning after'.

The majority of drivers have no idea what the current limits are.

Tips

Have a separate 'Alcohol and Driving Policy';

Undertake pre-employment and random alcohol testing;

Promote self-reporting by employees and provide support services if necessary;

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually, update when necessary and reinforce twice a year;

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DRUGS & DRIVING

The law takes:

- a zero tolerance approach to 8 drugs most associated with illegal use, with limits set at a level where any claims of accidental exposure can be ruled out;
- a road safety risk based approach to 8 drugs most associated with medical uses;
- a separate approach to amphetamine that balances its legitimate use for medical purposes against its abuse.

It's illegal to drive if either:

- you are unfit to do so because you're on legal or illegal drugs;
- you have certain levels of illegal drugs in your blood (even if they have not affected your driving).

Legal drugs are prescription or over-the-counter medicines.

If you are taking them and not sure if you should drive, do not drive until you have spoken to your doctor, a pharmacist or a healthcare professional.

The police can stop you and make you do a 'field impairment assessment' if they think you are on drugs.

This is a series of tests, eg asking you to walk in a straight line. They can also use a roadside drug kit to screen for cannabis and cocaine.

If they think you are unfit to drive because of taking drugs, you will be arrested and will have to take a blood or urine test at a police station.

You could be charged with a crime if the test shows you have taken drugs.

PRESCRIPTION MEDICINES

You should continue taking medicine(s) as advised by your doctor or healthcare professional, or according to the patient information leaflet that comes with the medicine.

The new law gives the police powers to test and arrest drivers suspected of driving after taking certain controlled drugs in excess of specified levels. It also provides a medical defence if you're taking medicine in accordance with instructions from a healthcare professional or an accompanying leaflet, provided you're not impaired.

If you drive and take prescription medicine, it would be helpful to keep evidence of this by having a copy of your prescription with you, in case you are stopped by the police.

However, it is illegal in England and Wales to drive with legal drugs in your body if it impairs your driving. It is an offence to drive if you have over the specified limits of certain drugs in your blood and you have not been prescribed them.

Drugs and their limits

Talk to your doctor about whether you should drive if you have been prescribed any of the following drugs:

- amphetamine, eg dexamphetamine or selegiline;
- clonazepam;
- diazepam;
- flunitrazepam;
- lorazepam;
- methadone;
- morphine or opiate and opioid-based drugs, eg codeine, tramadol or fentanyl;
- oxazepam;
- temazepam.

You can drive after taking these drugs if:

- you have been prescribed them and followed advice on how to take them by a healthcare professional.
- they are not causing you to be unfit to drive even if you're above the specified limits.

You could be prosecuted if you drive with certain levels of these drugs in your body and you have not been prescribed them.

The law does not cover Northern Ireland and Scotland but you could still be arrested if you are unfit to drive.

'Medical' drugs (risk based approach)	Threshold limits microgrammes per litre of blood (µg/L)
Clonazepam	50µg/L
Diazepam	550µg/L
Flunitrazepam	300µg/L
Lorazepam	100µg/L
Methadone	500µg/L
Morphine	80µg/L
Oxazepam	300µg/L
Temazepam	1,000µg/L

'Illegal' drugs (‘accidental exposure’ zero tolerance approach)	Threshold limits microgrammes per litre of blood (µg/L)
Benzoylcegonine	50µg/L
Cocaine	10µg/L
Delta-9-tetrahydrocannabinol (cannabis)	2µg/L
Ketamine	20µg/L
Lysergic acid diethylamide	1µg/L
Methylamphetamine	10µg/L
Methylenedioxyamphetamine (MDMA)	10µg/L
6-monoacetylmorphine (heroin)	5µg/L

Separate approach (to balance its risk)	Threshold limits microgrammes per litre of blood ($\mu\text{g/L}$)
Amphetamine	250 $\mu\text{g/L}$

Penalties

If you are convicted of drug driving, you will get:

- a minimum 1 year driving ban;
- an unlimited fine;
- up to 6 months in prison;
- a criminal record.

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

OTHER PROBLEMS YOU COULD FACE

A conviction for drug 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.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections.

Tips

Have a separate 'Drugs and Driving Policy';

Undertake pre-employment and random drug testing;

Promote self-reporting by employees and provide support services if necessary;

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually, update when necessary and reinforce twice a year;

Use independent experts and products such as '**RESILIENCE**' by DAC BEACHCROFT.

Facts

18% of drug test failures involve drivers taking 'legal' prescribed drugs.

30% of police road side drug tests result in a failure.

95% of drivers/employers do not know you should carry a copy of your prescription if taking prescribed drugs.

Only 32% of employers undertake pre-employment testing.

65% of employers never reinforce their Drugs and Driving Policy after an induction.

MEDICAL CONDITIONS & DRIVING

Legislation

You must give up your licence if either:

- your doctor tells you to stop driving for 3 months or more;
- you do not meet the required standards for driving because of your medical condition.

In addition, you need to tell the DVLA about any medical condition that affects your ability to drive.

There are numerous medical conditions that you need to report mandatory to the DVLA, even if they do not affect your ability to drive.

A list of all medical conditions that are reportable to the DVLA and their associated restrictions can be found at the following link: <https://www.gov.uk/health-condition-sand-driving>.

You can report a medical condition to the DVLA at the following link: <https://www.gov.uk/report-driving-medical-condition>.

HGV, bus and coach drivers need to undertake a D4 Medical once they are 45 years old. This has to be taken every 5 years until the age of 65 when they are renewed annually without an upper age limit.

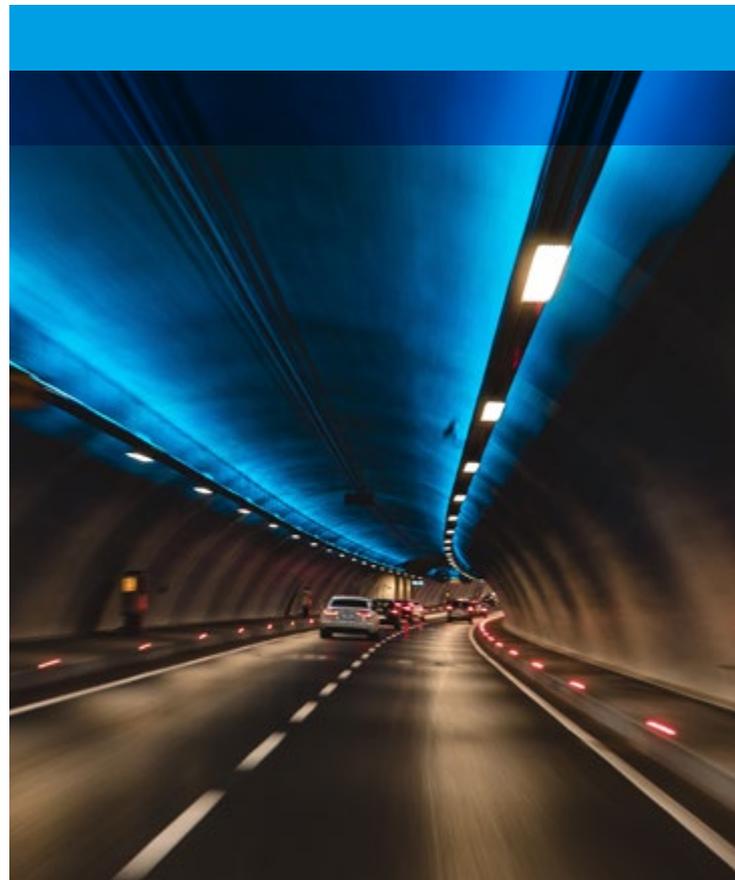
D4 Medical may have to be renewed at specified intervals, other than those stated above, when deemed necessary by certain medical conditions, as advised by the DVLA.

Penalties

You can be fined up to £1,000 if you do not tell the DVLA about a medical condition that affects your driving. You may be prosecuted if you are involved in a collision and a medical condition was the cause of the collision.

You must tell your insurer if you have a reportable medical condition, as failing to do so may result in any motor insurance policy (private or business) being invalid.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections.



Facts

Over 175 medical conditions are reportable to the DVLA.

Over 116 medical conditions are mandatory reportable to the DVLA even if they do not affect driving ability.

25% of drivers have a medical condition.

10% of drivers have a reportable medical condition.

4,534 drivers had their licence revoked in 2019 following a collision as their eyesight did not meet the minimum legal standard.

83% of drivers admit to driving while feeling fatigued.

£55m is the annual cost to the logistics industry due to sleep dis-ordered breathing conditions.

Tips

Have a separate 'Fitness to Drive Policy';

Promote self-reporting by employees and provide support services if necessary;

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually and update when necessary;

Use independent experts and products such as **'RESILIENCE'** by DAC BEACHCROFT.

LOAD SECURITY & DANGEROUS VEHICLES

Legislation

A person is to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

Therefore, a person is guilty of an offence if they use, cause or permit another person to use a motor vehicle or trailer on a road when:

- the motor vehicle or trailer or accessories or equipment, are in a dangerous condition, or
- the purpose for which it is used, or the number of passengers carried by it, or the manner in which they are carried, or the weight, position or distribution of its load, or the manner in which it is secured, is such that the use of the motor vehicle or trailer involves a danger of injury to any person.

A 'person' can be defined as follows:

- The driver is not always solely liable for the load they are carrying or the safety of the vehicle.
- The loader * will be liable for the load on the vehicle when on the road.
- The maintenance engineer * will be liable for the roadworthiness of the vehicle when on the road.
- The company owner * will be liable for a non-limited company.
- The Company Secretary * will be liable for a limited company.

* see penalties section regarding goods vehicle.

USE

There is no statutory definition for 'use' however, the question that needs to be answered is: Who is getting some use out of the motor vehicle?

- The driver always uses the vehicle.
- The company (Limited Company or Business owner) will use when in or on the vehicle. In this instance the issue of the driver at the time is irrelevant.

If the offence is committed when a company vehicle is used in private use the owner is not liable.

If the offence is committed when a company vehicle used in a joint enterprise, the owner is liable.

JOINT ENTERPRISE

Where the owner lends the vehicle to another person to do something for the owner's benefit. A charge of permitting may also apply.

CAUSE

A person in charge or position of authority over someone else and orders that person to use the vehicle is liable. This is an offence usually committed by supervisors and managers.

To prove the offence, it is necessary to show the person knew the vehicle was being used on a road or they knew or should have been aware of any defect.

PERMIT

Permission to use a vehicle may be given in writing or verbally and will include where permission may be inferred.

Penalties

The Vehicle Defect Rectification Scheme (VDRS), is used to deal with relatively minor defects and covers a wide range of vehicles including motor vehicles or trailers and caravans being towed. A VDRS is a voluntary act by the officer who stopped you. If this is the case, get the defects fixed straight away to avoid prosecution.

If a VDRS is issued, you will be given 14 days to rectify the defects and provide evidence you have done so (typically from an MOT centre). Failure to do this will result in prosecution; a fine and points on your licence.

The maximum penalty for loading and dangerous vehicle offences if committed in respect of a goods vehicle are:

- an unlimited fine;
- plus 3 penalty points; *
- and possible disqualification. *

* Applies to anyone who has a driving licence even if not driving the vehicle.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections.

Facts

33% of vehicles failed the new MOT test in 2018.

85% of VDRS road check failures could be avoided with proper first use checks.

95% of loads found to be unsafe, unsecure or not secured at all by HSE in 2017.

4,000 successful prosecutions each year for unsafe loads.

Activities in/on or around a vehicle become the centre for a collision investigation than the function of driving.

100% increase in bridge strikes in the first week when the hour goes back in October.

Tips

Have a separate 'Load Security Policy and 'Vehicle Safety and Maintenance Policy';

Provide and use the correct equipment at all times;

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually and update when necessary;

Use independent experts and products such as '**RESILIENCE**' by DAC BEACHCROFT.

ENVIRONMENTAL OFFENCES

Legislation

If a load or part of a load (containing material which is defined as a pollutant for the purposes of the regulations) falls into water and there is no permit in place authorising discharge of the load in this way, this amounts to an offence under the Environmental Permitting (England and Wales) Regulations 2016/1154.

Please note that under the regulations the directors of the company may also be liable of having committed an offence if the act was committed either with their consent or contrivance or as a result of their negligence.

Penalties

If there is a successful prosecution, the offence attracts the following:

- a maximum penalty of 5 years' imprisonment, or unlimited fine, together
- with the cost of cleaning up the affected water/ area;
- Publicity order.

See *Dangerous Driving, Corporate Manslaughter and Gross Negligence Manslaughter* sections.

Facts

Milk is a highly polluting substance.

Only 30% of companies have adequate spill control and prevention measures in place.

3 in 5 fleet operators do not have spill kits fitted to their vehicles.

£500K average cost for a 4-hour delay following diesel spill.

£16m in fines, health and safety charges, and environmental costs as a result of a petrol spill for UK supermarket in 2017.

Tips

Have a separate 'Environmental Incident Policy';
Have spill kits in commercial vehicles;

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

Review annually and update when necessary;

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THE MOST SERIOUS OFFENCES

As a result of anything going wrong as above, one of the below offences are likely to be considered if someone is injured or killed as a result of a collision.

You'll see that whilst an individual driver will always be investigated and potentially charged if they do not have the correct procedures and policies in place and if they do not have a system to ensure that they are adhered to.

The offences below simply give a short flavour of each offence, but in reality, they are large topics in their own right.

This is essentially the 'consequences' section of any of the above not being followed.

Causing death by dangerous driving

A person is to be regarded as driving dangerously if:

- the way he or she drives falls far below what would be expected of a competent and careful driver, and
- it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- The driving was a cause of the death (note it only need be a minimal cause and not the sole or main cause)





A person is also to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

Above, "dangerous" refers to danger either:

- of injury to any person, or
- of serious damage to property.

In determining for the purposes of above, what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be given not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

In determining for the purposes of above, the state of a vehicle, regard may be given to anything attached to or carried on or in it and to the manner in which it is attached or carried.

Penalties

- 14 years' imprisonment;
- disqualification 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.

The disqualification is extended to cover any time spent in prison.

Increasing minimum driving bans for those convicted of causing death - date to be confirmed.

There will be a disqualification and extended retesting before the offender's licence is returned.

See Corporate Manslaughter and Gross Negligence Manslaughter sections.

DANGEROUS DRIVING

Legislation as above but sentencing lower to reflect no death.

Penalties

The maximum penalties for dangerous driving are:

- **Dangerous driving:** 2 years' imprisonment.
- **Disqualification:** Must endorse and disqualify for at least 12 months. Must order extended re-test OR disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years.

Factors indicating higher culpability;

- Disregarding warnings of others.
- Evidence of alcohol or drugs.
- Carrying out other tasks while driving.
- Carrying passengers or heavy load.
- Tiredness.
- Aggressive driving, such as driving much too close to vehicle in front, racing, inappropriate attempts to overtake, or cutting in after overtaking.
- Driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills.
- Driving a poorly maintained or dangerously loaded vehicle, especially where motivated by commercial concerns.

Factors indicating greater degree of harm;

- Injury to others.
- Damage to other vehicles or property

Facts

Most common causes of dangerous driving involve: speeding, mobile phone use, alcohol, drugs and fatigue.

2000 serious/fatal collisions a year involve a commercial vehicle.

579 'causing death or serious injury by dangerous driving' offences in 2019.

Tips

Have a separate 'Driving Training Policy';

Make it easy to understand, clear and unambiguous and clearly define areas of responsibility;

Train all drivers and managers to ensure they know and understand the policy, the legislation and penalties;

Train managers to ensure they are competent to undertake their duties;

Keep records to show how you implement and manage it;

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CORPORATE MANSLAUGHTER

Legislation

An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised -

- (a) causes a person's death, and
- (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

The organisations to which this section applies are -

- (a) a corporation;
- (b) a department or other body;
- (c) a police force;
- (d) a partnership, or a trade union or employers' association, that is an employer.



FACTORS FOR JURY

This section applies where -

- (a) it is established that an organisation owed a relevant duty of care to a person, and
- (b) it falls to the jury to decide whether there was a gross breach of that duty.

The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so -

- (a) how serious that failure was;
- (b) how much of a risk of death it posed.

The jury may also -

- (a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;
- (b) have regard to any health and safety guidance that relates to the alleged breach.

Penalties

Penalties will include:

VERY LARGE ORGANISATION

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

LARGE ORGANISATION

Turnover more than £50 million

Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 – £20,000,000
B	£5,000,000	£3,000,000 – £12,500,000

MEDIUM ORGANISATION

Turnover £10 million to £50 million

Offence category	Starting point	Category range
A	£3,000,000	£1,800,000 – £7,500,000
B	£2,000,000	£1,200,000 – £5,000,000

SMALL ORGANISATION

Turnover £2 million to £10 million

Offence category	Starting point	Category range
A	£800,000	£540,000 – £2,800,000
B	£540,000	£350,000 – £2,000,000

MICRO ORGANISATION

Turnover up to £2 million

Offence category	Starting point	Category range
A	£450,000	£270,000 – £800,000
B	£300,000	£180,000 – £540,000

A remedial order will require a company or organisation to take steps to remedy any management failure that led to a death. The court can also impose an order requiring the company or organisation to publicise that it has been convicted of the offence, giving the details, the amounts of any fine imposed and the terms of any remedial order made.

The court may now make ancillary publicity orders against companies or organisations convicted of corporate manslaughter.

GROSS NEGLIGENCE MANSLAUGHTER

Legislation

This is an involved topic and the below simply outlines the main principles and sentencing.

The offence of gross negligence manslaughter (GNM) is committed where the death is a result of a grossly negligent (though otherwise lawful) act or omission on the part of the defendant – the main case where the principles are set out being *R v Adomako* [1994] UKHL 6.

In order to prove the offence, the prosecution must therefore establish the following elements:

- a) The defendant owed a duty of care to the deceased;
- b) By a negligent act or omission the defendant was in breach of the duty which he owed to the deceased;
- c) The negligent act or omission was a cause of the death; and
- d) The negligence, which was a cause of the death, amounts to gross negligence and is therefore a crime.

Penalties

Culpability			
A	B	C	D
Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
Starting point 10 – 18 years' custody	Starting point 6 – 12 years' custody	Starting point 3 – 7 years' custody	Starting point 1 – 4 years' custody

CRIMINAL MOTOR DEFENCE

24 HOUR RESPONSE

With the increasing focus on legislation and prosecutions following serious or fatal road traffic collisions, there has been a significant increase in the number of drivers being interviewed under caution and therefore requiring immediate assistance. We understand that this is a stressful time for your driver, who has often had no previous involvement with the police.

By offering driver representation, not only are you acting in the driver's best interests, but also ensuring that you are keeping a firm grip on the criminal proceedings thereby protecting your interests in any civil claim which may follow.

WE CAN HELP YOU AND YOUR DRIVERS

Our national, dedicated Criminal Motor Defence team operates a 24 hour service that ensures your drivers receive early advice from a specialist lawyer as well as police station representation throughout England, Wales, and Scotland. Our expertise in this area means we have established contacts within the investigating authorities.

OUR INITIAL RESPONSE INCLUDES:

Immediate contact with the investigating police officer to obtain details regarding the collision circumstances, physical evidence at the scene, early indicators from police collision investigators in relation to the mechanics of the collision, accounts of any witnesses, details of injured parties/deceased and dependants, vehicle defect issues. Details from the police at the scene enable us to quickly consider the risk of any potential conflict before making contact with your driver. In the event of a potential conflict, the matter is referred to our Health and Safety team who will protect your organisation's interests.

Where there is no conflict:

- Advise your driver at the scene in relation to providing the police with an initial account at the scene.
- Attendance at police station interviews and regular dialogue with the police as the investigation continues.

- Pragmatic advice as to the charges faced, ramifications of those charges, and advice in the event of being charged.

WE MAKE THINGS BETTER

Reassurance – our early involvement will not only provide reassurance for your driver but will give you peace of mind over any potential conflict which may arise between your organisation's interests and that of your driver.

- Protection – immediate advice to your driver protecting their interests as well as any liability considerations in the event of a civil claim.
- Reserving – our expert and timely advice will allow you to set an early and meaningful reserve.
- Representation – our ability, across England, Wales, and Scotland, to represent your drivers with specialist lawyers from the moment of the police attending the scene, through to all stages of the police investigation, and criminal proceedings/inquest proceedings, will ensure an efficient and seamless service.
- Reputation – representation of your driver, and early management of any PR issues following a collision can reduce the reputational impact on your organisation and get you on the front foot.

Should you be interested in further information about this product please contact:



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