

The Legislation

Section 49 Offences involving alcohol or other drugs

(1) A person is guilty of an offence if he or she—

(a) drives a motor vehicle or is in charge of a motor vehicle while under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the motor vehicle; or

(b) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or breath; or

(ba) drives a motor vehicle or is in charge of a motor vehicle while impaired by a drug; or

← Please note, (ba) is an alternative to (a)

(bb) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid; or

(bc) drives a motor vehicle or is in charge of a motor vehicle while both—

(i) the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or breath; and

(ii) the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid; or

(c) refuses to undergo a preliminary breath test in accordance with section 53 when required under that section to do so; or

(ca) refuses to undergo an assessment of drug impairment in accordance with section 55A when required under that section to do so or refuses to comply with any other requirement made under section 55A(1); or

(d) refuses or fails to comply with a request or signal to stop a motor vehicle, and remain stopped, given under section 54(3); or

(e) refuses to comply with a requirement made under section 55(1), (2), (2AA), (2A) or (9A); or

(ea) refuses to comply with a requirement made under section 55B(1) or 55BA(2); or

(eb) refuses to provide a sample of oral fluid in accordance with section 55D or 55E when required under that section to do so or refuses to comply with any other requirement made under that section; or

(f) within 3 hours after driving or being in charge of a motor vehicle furnishes a sample of breath for analysis by a breath analysing instrument under section 55 and—

(i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her breath; and

(ii) the concentration of alcohol indicated by the analysis to be present in his or her breath was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle; or

(g) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55BA, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and—

(i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis the prescribed concentration of alcohol or more than the prescribed concentration of alcohol was present in that sample; and

(ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle; or

(h) within 3 hours after driving or being in charge of a motor vehicle provides a sample of oral fluid in accordance with section 55E and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57B and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle; or

(i) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55BA, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle; or

(j) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55BA, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and—

(i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis both—

(A) the prescribed concentration of alcohol or more than the prescribed concentration of alcohol was present in that sample; and

(B) a prescribed illicit drug was present in that sample in any concentration; and

(ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle; and

(iii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle.

(1A) A person may be convicted or found guilty of an offence under paragraph (c), (ca), (e), (ea) or (eb) of subsection (1) even if—

(a) in the case of an offence under paragraph (c), a prescribed device was not presented to the person at the time of the making of the requirement; and

(b) in the case of an offence under paragraph (ca)—

(i) a requirement to undergo an assessment of drug impairment was not made at a place where such an assessment could have been carried out; and

(ii) a police officer authorised to carry out an assessment of drug impairment was not present at the place where the requirement was made at the time it was made; and

(c) in the case of an offence under paragraph (e)—

(i) a breath analysing instrument was not available at the place or vehicle where the requirement was made at the time it was made; and

(ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made; and

(iii) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(iv) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made; and

(d) in the case of an offence under paragraph (ea)—

(i) the police officer requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(ii) the police officer requiring a sample of urine had not nominated a registered medical practitioner or approved health professional to whom the sample was to be furnished for analysis; and

(iii) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made; and

(e) in the case of an offence under paragraph (eb)—

(i) a prescribed device was not presented to the person at the time of the making of the requirement; and

(ii) a prescribed device was not available at the place or vehicle where the requirement was made at the time it was made; and

(iii) a person authorised to carry out the prescribed procedure for the provision of a sample of oral fluid was not present at the place where the requirement was made at the time it was made; and

(iv) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(v) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made.

(1B) To avoid doubt, in proceedings for an offence under paragraph (e) of subsection (1) a state of affairs or circumstance referred to in subsection (1A)(c)(i) or (ii) is not a reason of a substantial character for a refusal for the purposes of section 55(9).

(1C) To avoid doubt, in proceedings for an offence under paragraph (eb) of subsection (1) a state of affairs or circumstance referred to in subsection (1A)(e)(i), (ii) or (iii) is not a reason of a substantial character for a refusal for the purposes of section 55E(12).

(2) A person who is guilty of an offence under paragraph (a) of subsection (1), other than a supervising driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 25 penalty units or to imprisonment for a term of not more than 3 months; and

(b) in the case of a second offence, to a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months; and

(c) in the case of any other subsequent offence, to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months.

(2A) A person who is guilty of an offence under paragraph (b), (f) or (g) of subsection (1), other than a supervising driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 20 penalty units; and

(b) in the case of a second offence—

(i) to a fine of not more than 60 penalty units or to imprisonment for a term of not more than 6 months if the concentration of alcohol—

(A) in the person's blood was less than 0·15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0·15 grams per 210 litres of exhaled air—

as the case requires; or

(ii) to a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was 0·15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0·15 grams or more per 210 litres of exhaled air—
as the case requires; and

(c) in the case of any other subsequent offence—

(i) to a fine of not more than 120 penalty units or imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was less than 0·15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0·15 grams per 210 litres of exhaled air—
as the case requires; or

(ii) to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months if the concentration of alcohol—

(A) in the person's blood was 0·15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0·15 grams or more per 210 litres of exhaled air—
as the case requires.

(3) A person who is guilty of an offence under paragraph (ba), (c), (ca), (d), (e) or (ea) of subsection (1), other than a supervising driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 12 penalty units;
and

(b) in the case of a second offence, to a fine of not more than 120 penalty units
or to imprisonment for a term of not more than 12 months; and

(c) in the case of any other subsequent offence, to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months.

(3AAA) A person who is guilty of an offence under paragraph (bb), (eb), (h) or (i) of subsection (1), other than a supervising driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 12 penalty units; and

(b) in the case of a second offence, to a fine of not more than 60 penalty units; and

(c) in the case of any other subsequent offence, to a fine of not more than 120 penalty units.

(3AAB) A person who is guilty of an offence under paragraph (bc) or (j) of subsection (1), other than a supervising driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 30 penalty units; and

(b) in the case of a second offence—

(i) to a fine of not more than 90 penalty units or to imprisonment for a term of not more than 6 months if the concentration of alcohol—

(A) in the person's blood was less than 0·15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0·15 grams per 210 litres of exhaled air—
as the case requires; or

(ii) to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was 0·15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0·15 grams or more per 210 litres of exhaled air—
as the case requires; and

(c) in the case of any other subsequent offence—

(i) to a fine of not more than 180 penalty units or imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was less than 0·15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0·15 grams per 210 litres of exhaled air—
as the case requires; or

(ii) to a fine of not more than 270 penalty units or to imprisonment for a term of not more than 18 months if the concentration of alcohol—

(A) in the person's blood was 0·15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0.15 grams or more per 210 litres of exhaled air—
as the case requires.

(3AA) A person who is guilty of a supervising driver offence is liable to a fine of not more than 5 penalty units.

(3A) In proceedings for an offence under paragraph (ba) of subsection (1), proof that—

(a) the person drove or was in charge of a motor vehicle; and

(b) one or more drugs were present in the person's body at the time at which he or she drove or was in charge of the motor vehicle; and

(c) the behaviour of the person on an assessment of drug impairment carried out under section 55A was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and

(d) the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable to drive properly—

is, in the absence of evidence to the contrary but subject to subsections (3B) and (3C), proof that the accused drove or was in charge of a motor vehicle while impaired by a drug.

(3B) If on an analysis carried out in accordance with this Part, no drug other than a permissible non-prescription drug or a prescription drug was found present in the person's body, it is a defence to a charge under paragraph (ba) of subsection (1) for the person charged to prove that—

(a) he or she did not know and could not reasonably have known that the permissible non-prescription drug or the prescription drug, or the combination of those drugs, so found would impair driving if consumed or used in accordance with advice given to him or her by a registered medical practitioner, a dentist or a pharmacist in relation to the drug or combination of drugs; and

(b) he or she consumed or used that drug or combination of drugs in accordance with that advice.

(3C) In subsection (3B), "advice" means written or oral advice and includes anything written on a label accompanying the drug.

(4) It is a defence to a charge under paragraph (f) of subsection (1) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.

(5) It is a defence to a charge under paragraph (g), (h), (i) or (j) of subsection (1) for the person charged to prove that the result of the analysis was not a correct result.

(6) In any proceedings for an offence under paragraph (f), (g) or (j) of subsection (1) evidence as to the effect of the consumption of alcohol on the accused is admissible for the purpose of rebutting the presumption created by section 48(1A) but is otherwise inadmissible.

(6A) In any proceedings for an offence under paragraph (h), (i) or (j) of subsection (1) evidence as to the effect of the consumption or use of a drug on the accused is admissible for the purpose of rebutting the presumption created by section 48(1B) but is otherwise inadmissible.

(7) On convicting a person, or finding a person guilty, of an offence under subsection (1) the court must cause to be entered in the records of the court—

(a) in the case of an offence under paragraph (b) of subsection (1), the level of concentration of alcohol found to be present in that person's blood or breath; and

(b) in the case of an offence under paragraph (f) of subsection (1), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and

(c) in the case of an offence under paragraph (g) or (j) of subsection (1), the level of concentration of alcohol found to be present in the sample of blood.

(8) If on a prosecution for an offence under paragraph (a) of subsection (1), the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under paragraph (ba) of that subsection, the court may find the accused guilty of an offence under paragraph (ba) and punish the accused accordingly.

(9) If on a prosecution for an offence under paragraph (ba) of subsection (1), the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under paragraph (bb) of that subsection, the court may find the accused guilty of an offence under paragraph (bb) and punish the accused accordingly.