



## ROAD TRANSPORT FORUM

### New offences of: Causing death by driving while disqualified and Causing serious injury by driving while disqualified

Recent legislation has brought in two new driving offences:

1. Causing death by driving while disqualified;
2. Causing serious injury by driving while disqualified.

The first offence is punishable by 10 years in prison and the latter by 4 years in prison. The aim of these offences is to ensure the courts have sufficient powers to impose sentences which more appropriately reflect the offender's level of culpability.

#### Causation

Both new offences are committed when a driver 'causes death/serious injury... by driving while disqualified'. This means that for a person to be convicted of these offences a causative link between the driving and the death must be proved.

The Supreme Court has held that causation can be proved if there is something open to proper criticism in the way the offender was driving which contributed more than minimally to the death. This need not amount to an error which was grave enough to constitute 'careless' or 'dangerous' driving and it need not be the principal cause of death. It could include relatively minor indiscretions such as driving with a tyre that has fallen below the prescribed tread limit if this caused the driver not to stop in time and therefore contributed more than minimally to the death (see *R v Hughes* [2013] UKSC 5) 11.

If causation cannot be proved (e.g. where a disqualified driver (D) was driving without other fault when another dangerous driver (S) crashed into D and S died), D should not be prosecuted or convicted for causing death by driving while disqualified (or indeed, for any other 'causing death by driving' offence).



D could of course still be prosecuted for other offences such as driving while disqualified.

While there might be some cases where it is difficult to prove causation, the new offences should provide prosecutors with additional charging options, particularly where carelessness can be proved. Currently the maximum penalty for causing death by careless driving is five years' imprisonment, but if in such a case it turns out that D was banned from driving, D could be prosecuted for causing death by disqualified driving under the new offence at 3ZC and become liable to a maximum penalty of 10 years' imprisonment.

For advice on transport law, contact **Jared Dunbar at Dyne Solicitors on 01829 773 100.**

Content is believed to be correct at 07.05.15.

## Loophole means UK no longer allowed to recognise Irish bans on UK drivers

Arrangements for mutual recognition of driving disqualifications did exist between the UK (Great Britain and Northern Ireland) and Ireland. A driver resident in the UK but disqualified in Ireland was also disqualified in the UK. Likewise, a driver resident in Ireland but disqualified in the UK was also disqualified in Ireland.

This was carried out under the framework of the European Convention on Driving Disqualifications 1998 (EU Convention) which was incorporated into UK primary legislation by the Crime (International Co-operation) Act 2003.

After 28 January 2010 and until recently, the UK and Ireland have been mutually able to recognise driving disqualifications imposed on their residents in the other jurisdiction.



### What has changed

The UK opted out of the EU Convention which means that the mutual recognition of driving disqualifications between the UK and Ireland no longer applies. This affects any ban after 1 December 2014.

In order to permit mutual recognition of driving disqualifications, a new international agreement must be put in place. The UK and Ireland are currently negotiating a new bilateral treaty and it is expected that these arrangements will come into place towards the end of 2015.

During this gap, it will not be possible for the UK to notify Ireland about Irish residents who have been disqualified in the UK or for the UK to recognise disqualifications which have been imposed on UK residents in Ireland.

Any disqualifications for which notifications have been issued before the 1 December 2014 will remain in force for the duration of the disqualification, and the appeals mechanism for these disqualifications will remain in force.

## New Criminal Court Charges

Since 13 April 2015, a criminal court levy has been imposed on most cases where a defendant has either pleaded guilty or been found guilty after trial.

These costs are in addition to your fine, the prosecution costs and the victim surcharge levy. The charges are not means tested and will be imposed regardless of the circumstances of your case.

The main charges are as follows:

<b>Magistrates' Court</b>		<b>Crown Court</b>	
Summary only guilty plea	£150	Guilty plea	£900
Either-way guilty plea	£180	Trial	£1200
Summary trial	£520		
Either way trial	£1000		

### What will this mean?

Well it seems the whole system is designed to stop people defending themselves. In addition to this levy, companies are not entitled to recover their costs when they are found innocent and more fixed penalties are issued now so people pay these rather than going to Court.

However, operators and drivers should consider carefully what to do regarding offences. It is all too tempting to plead guilty to keep your costs down, even when you are innocent of the alleged offence.

However, both operators and drivers need to consider the regulatory action which could result from the conviction. In other words, for an operator it could lead to a Public Inquiry and for a driver it could lead to Driver Disciplinary Hearing. Both could result in disciplinary action being taken on the respective licences of the company or driver, which could include either suspension or loss of the licence.

### What should operators do?

Operators should ensure they have legal expenses insurance in place so that their solicitor's costs can be covered whether they win or not.

On being issued with a summons, the first step an operator should do is check to see whether they have legal expenses in place.

For advice on transport law, contact **Jared Dunbar at Dyne Solicitors on 01829 773 100.**

Commercial Editor and Contributor: Jared Dunbar (jid@dynesolicitors.co.uk)

### Dyne Solicitors Limited

**Chester Office:** The White House, High Street, Tattenhall, Chester, Cheshire CH3 9PX  
Tel: 01829 773100, Fax: 0845 384 9328, Email: advice@dynesolicitors.co.uk

**Bangor Office:** InTec, Ffordd Y Parc, Parc Menai, Bangor LL57 4FG  
Tel: 01248 672610, Fax: 0845 384 9328, Email: info@dynesolicitors.co.uk

[www.dynesolicitors.co.uk](http://www.dynesolicitors.co.uk)