

# Additional chapter:

## Other driving-related homicide offences

### Overview

This chapter considers the other driving-related homicide offences mentioned, but not dealt with, in Chapter 7 of the text:

- Causing death by careless, or inconsiderate, driving when under the influence of drink or drugs,
- Causing death by driving whilst without a license or insurance, and
- Causing death by driving whilst disqualified.

Each of these offence has three common elements: driving; mechanically propelled vehicle or motor vehicle; road or other public place. The common elements are considered in Chapter 7 at para 7.150 of the text, and will not therefore be considered in this chapter.

### Causing death by careless, or inconsiderate, driving when under the influence of drink or drugs

1 The relevant provision is the Road Traffic Act 1988 (RTA 1988), s 3A which was inserted by the RTA 1991, s 3 and has subsequently been amended. Section 3A(1) provides that:

- ‘If a person causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and:
- (a) he is, at the time when he is driving, unfit to drive through drink or drugs; or
  - (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit; or
  - (ba) he has in his body a specified controlled drug and the proportion in his blood or urine at that time exceeds the specified limit for that drug; or
  - (c) he is, within 18 hours after that time, required to provide a specimen for analysis in pursuance of s 7 of this Act, but without reasonable excuse fails to provide it, or
  - (d) he is required by a constable to give his permission for a laboratory test of a specimen of blood taken from him under s 7A of this Act, but without reasonable excuse fails to do so,
- he is guilty of an offence.’

An offence under s 3A is triable only on indictment and is punishable with a maximum of 14 years’ imprisonment.<sup>1</sup> Unless there are special reasons, disqualification for a minimum of two years is obligatory.<sup>2</sup>

2 The elements of an offence under s 3A are largely explained in Chapter 7 of the text. As with the offence under s 2B, the prosecution must prove that D drove a mechanically propelled vehicle on a road or other public place and that he did so carelessly (as defined by the RTA 1988, s 3ZA),<sup>3</sup> or without reasonable consideration for other users of the road or other public place, depending on which offence is charged. The prosecution must also prove that the careless, or inconsiderate, driving caused the death of another (see paras 7.159 and 7.163 of the text) and that D falls within

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<sup>1</sup> Road Traffic Offenders Act 1988 (RTOA 1988), Sch2.

<sup>2</sup> *Ibid*, s 34(4)(iii).

<sup>3</sup> Applied to the RTA 1988, s 3A, by the RTA 1988, s 3ZA(1).

one of five categories of case.

The first is that, at the time that D was driving, D was unfit to drive through drink or drugs. 'Drink' means alcoholic drink and 'drug' means any intoxicant other than alcohol,<sup>4</sup> and includes medicines<sup>5</sup> and glue.<sup>6</sup> 'Unfitness to drive' means impairment of the ability to drive properly.<sup>7</sup>

The second, third, fourth and fifth categories only operate in relation to a person driving a motor vehicle,<sup>8</sup> as opposed to any other type of mechanically propelled vehicle. The second category of case is where D had consumed so much alcohol that the proportion of it in his blood, breath or urine, at the time when he was driving, exceeded the prescribed limit. The provisions relating to preliminary tests and the taking of specimens for analysis are contained in the RTA 1988, ss 6 to 9.

The third category of case is where D had in his body so much of a controlled drug specified by the Secretary of State that the proportion of it in his blood or urine, at the time when he was driving, exceeded the prescribed limit specified by the Secretary of State. The provisions relating to preliminary tests and the taking of specimens for analysis are contained in the RTA 1988, ss 6 to 9.

The fourth category of case is where D, within 18 hours of the time of his careless driving, was required to provide a specimen for analysis in pursuance of the RTA 1988, s 7 but without reasonable excuse failed to do so.

The fifth category of case is where it appeared to a constable that D had been involved in an accident and that he might be incapable for medical reasons of giving a valid consent to the taking of a specimen of blood for analysis under the RTA 1988, and a medical practitioner was requested to take a blood specimen which D subsequently refused without reasonable excuse to permit to be subjected to a laboratory test.

In the fourth and fifth categories it is irrelevant that D had not taken any drink (or drugs) or was not 'over the limit' (or did not have impaired driving ability).<sup>9</sup>

### **Causing death by driving: unlicensed, uninsured or disqualified drivers**

**3** The RTA 1988, s 3ZB provides that a person will be guilty of an offence if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence of:

- driving otherwise than in accordance with a licence;<sup>10</sup>
- using a motor vehicle while uninsured or unsecured against third party risks.<sup>11</sup>

Such an offence is triable either way and punishable with a maximum of two years' imprisonment on conviction on indictment.<sup>12</sup> Unless there are special reasons, disqualification from driving for not

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<sup>4</sup> RTA 1988, s 11(2).

<sup>5</sup> *Armstrong v Clark* [1957] 2 QB 391, DC.

<sup>6</sup> *Bradford v Wilson* (1983) 147 JP 573, DC.

<sup>7</sup> RTA 1988, s 3A(2).

<sup>8</sup> *Ibid*, s 3A(3).

<sup>9</sup> This rather obvious point was confirmed in *Coe* [2009] EWCA Crim 1452.

<sup>10</sup> Contrary to the RTA 1988, s 87(1).

<sup>11</sup> Contrary to *ibid*, s 143.

<sup>12</sup> Road Traffic Offenders Act 1988, Sch 2.

less than 12 months is obligatory.<sup>13</sup>

**4** The RTA 1988, s 3ZC provides that a person will be guilty of an offence if he:

- (a) causes the death of another person by driving a motor vehicle on a road; and
- (b) at that time, is committing an offence under the RTA, s 103(1)(b) of driving while disqualified.

Such an offence is triable only on indictment and punishable with a maximum of 10 years' imprisonment on conviction.<sup>14</sup> Unless there are special reasons, disqualification from driving for a minimum of two years is obligatory.<sup>15</sup> In addition, like causing death by dangerous driving (discussed at 7.152 of the text), the driver must also be ordered to take an extended driving test and he will remain disqualified after the period of disqualification until he has passed the test.

**5** For offences under ss 3ZB and 3ZC D must be proved to have done something more than simply drive his vehicle on the road so that it is there to be involved in a fatal accident. It must be proved that there was something which D did or omitted to do by way of driving which contributed in a more than minimal way to the death and that thing must involve some element of fault (whether it amounts to careless or inconsiderate driving or is otherwise open to proper criticism).<sup>16</sup> Thus, D is not guilty under ss 3ZB or 3ZC if a car erratically driven by V crashes into D's carefully driven car and V is killed, or if V jumps onto D's car as it passes under a motorway bridge and is killed, or if V, a passenger, is killed when V interferes with D's driving. Sections 3ZB and 3ZC clearly add little to the offences under s 2B of causing death by careless or inconsiderate driving.

The objections<sup>17</sup> to the offences of causing death by careless, or inconsiderate, driving are equally applicable to ss 3ZB and 3ZC.

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<sup>13</sup> *Ibid*, s 34(1).

<sup>14</sup> *Ibid*, Sch 2.

<sup>15</sup> *Ibid*, s 34(4)(iib).

<sup>16</sup> *Hughes* [2013] UKSC 56.

<sup>17</sup> Para 7.162 of the text.