

Drug Offences Definitive Guideline

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 27 February 2012, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3) – (4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified three *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. **Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases.** Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out in the annex at page 33.

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug

Misuse of Drugs Act 1971 (section 3)

Customs and Excise Management Act 1979
(section 170(2))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: 3 years 6 months' – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody and/or unlimited fine

Offence range: 12 weeks' – 10 years' custody

Class C

Maximum: 14 years' custody and/or unlimited fine

Offence range: Community order – 8 years' custody

STEP ONE**Determining the offence category**

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

Culpability demonstrated by offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

LEADING role:

- directing or organising buying and selling on a commercial scale;
- substantial links to, and influence on, others in a chain;
- close links to original source;
- expectation of substantial financial gain;
- uses business as cover;
- abuses a position of trust or responsibility.

SIGNIFICANT role:

- operational or management function within a chain;
- involves others in the operation whether by pressure, influence, intimidation or reward;
- motivated by financial or other advantage, whether or not operating alone;
- some awareness and understanding of scale of operation.

LESSER role:

- performs a limited function under direction;
- engaged by pressure, coercion, intimidation;
- involvement through naivety/exploitation;
- no influence on those above in a chain;
- very little, if any, awareness or understanding of the scale of operation;
- if own operation, solely for own use (considering reasonableness of account in all the circumstances).

Category of harm

Indicative quantity of drug concerned (upon which the starting point is based):

Category 1

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 squares;
- amphetamine – 20kg;
- cannabis – 200kg;
- ketamine – 5kg.

Category 2

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – 40kg;
- ketamine – 1kg.

Category 3

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 6kg;
- ketamine – 150g.

Category 4

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 100g;
- ketamine – 5g.

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

| CLASS A | Leading role | Significant role | Lesser role |
|-------------------|--|--|---|
| Category 1 | Starting point 14 years' custody | Starting point 10 years' custody | Starting point 8 years' custody |
| | Category range 12 – 16 years' custody | Category range 9 – 12 years' custody | Category range 6 – 9 years' custody |
| Category 2 | Starting point 11 years' custody | Starting point 8 years' custody | Starting point 6 years' custody |
| | Category range 9 – 13 years' custody | Category range 6 years 6 months' – 10 years' custody | Category range 5 – 7 years' custody |
| Category 3 | Starting point 8 years 6 months' custody | Starting point 6 years' custody | Starting point 4 years 6 months' custody |
| | Category range 6 years 6 months' – 10 years' custody | Category range 5 – 7 years' custody | Category range 3 years 6 months' – 5 years' custody |
| Category 4 | Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent. | | |
| | Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above. | | |

| CLASS B | | Leading role | Significant role | Lesser role |
|------------|--|---|---|-------------|
| Category 1 | Starting point 8 years' custody | Starting point 5 years 6 months' custody | Starting point 4 years' custody | |
| | Category range 7 – 10 years' custody | Category range 5 – 7 years' custody | Category range 2 years 6 months' – 5 years' custody | |
| Category 2 | Starting point 6 years' custody | Starting point 4 years' custody | Starting point 2 years' custody | |
| | Category range 4 years 6 months' – 8 years' custody | Category range 2 years 6 months' – 5 years' custody | Category range 18 months' – 3 years' custody | |
| Category 3 | Starting point 4 years' custody | Starting point 2 years' custody | Starting point 1 year's custody | |
| | Category range 2 years 6 months' – 5 years' custody | Category range 18 months' – 3 years' custody | Category range 12 weeks' – 18 months' custody | |
| Category 4 | <p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p> | | | |
| CLASS C | | Leading role | Significant role | Lesser role |
| Category 1 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody | |
| | Category range 4 – 8 years' custody | Category range 2 – 5 years' custody | Category range 1 – 3 years' custody | |
| Category 2 | Starting point 3 years 6 months' custody | Starting point 18 months' custody | Starting point 26 weeks' custody | |
| | Category range 2 – 5 years' custody | Category range 1 – 3 years' custody | Category range 12 weeks' – 18 months' custody | |
| Category 3 | Starting point 18 months' custody | Starting point 26 weeks' custody | Starting point High level community order | |
| | Category range 1 – 3 years' custody | Category range 12 weeks' – 18 months' custody | Category range Medium level community order – 12 weeks' custody | |
| Category 4 | <p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p> | | | |

The table below contains 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate **class C** ranges, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see box at page 5 if third drug trafficking conviction)

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offence committed on bail

Other aggravating factors include:

Sophisticated nature of concealment and/or attempts to avoid detection

Attempts to conceal or dispose of evidence, where not charged separately

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Presence of weapon, where not charged separately

High purity

Failure to comply with current court orders

Offence committed on licence

Factors reducing seriousness or reflecting personal mitigation

Lack of sophistication as to nature of concealment

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances

Isolated incident

Low purity

No previous convictions **or** no relevant or recent convictions

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

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STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Supplying or offering to supply a controlled drug

Misuse of Drugs Act 1971 (section 4(3))

Possession of a controlled drug with intent to supply it to another

Misuse of Drugs Act 1971 (section 5(3))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody and/or unlimited fine

Offence range: Fine – 10 years' custody

Class C

Maximum: 14 years' custody and/or unlimited fine

Offence range: Fine – 8 years' custody

STEP ONE

Determining the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity/type of offender) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2. Where the offence is **street dealing** or **supply of drugs in prison by a prison employee**, the quantity of the product is less indicative of the harm caused and therefore the **starting point is not based on quantity**.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

See page 11.

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Culpability demonstrated by offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

LEADING role:

- directing or organising buying and selling on a commercial scale;
- substantial links to, and influence on, others in a chain;
- close links to original source;
- expectation of substantial financial gain;
- uses business as cover;
- abuses a position of trust or responsibility, for example prison employee, medical professional.

SIGNIFICANT role:

- operational or management function within a chain;
- involves others in the operation whether by pressure, influence, intimidation or reward;
- motivated by financial or other advantage, whether or not operating alone;
- some awareness and understanding of scale of operation;
- supply, other than by a person in a position of responsibility, to a prisoner for gain without coercion.

LESSER role:

- performs a limited function under direction;
- engaged by pressure, coercion, intimidation;
- involvement through naivety/exploitation;
- no influence on those above in a chain;
- very little, if any, awareness or understanding of the scale of operation;
- if own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis.

Category of harm

Indicative quantity of drug concerned (upon which the starting point is based):

Category 1

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 squares;
- amphetamine – 20kg;
- cannabis – 200kg;
- ketamine – 5kg.

Category 2

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – 40kg;
- ketamine – 1kg.

Category 3

Where the offence is selling directly to users* ('street dealing'), the starting point is not based on a quantity, OR where the offence is supply of drugs in prison by a prison employee, the starting point is not based on a quantity – see shaded box on page 10, OR

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 6kg;
- ketamine – 150g.

Category 4

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 100g;
- ketamine – 5g;

OR

where the offence is selling directly to users* ('street dealing') the starting point is not based on quantity – go to category 3.

* Including test purchase officers

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out on page 14. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

| CLASS A | Leading role | Significant role | Lesser role |
|-------------------|---|---|---|
| Category 1 | Starting point 14 years' custody | Starting point 10 years' custody | Starting point 7 years' custody |
| | Category range 12 – 16 years' custody | Category range 9 – 12 years' custody | Category range 6 – 9 years' custody |
| Category 2 | Starting point 11 years' custody | Starting point 8 years' custody | Starting point 5 years' custody |
| | Category range 9 – 13 years' custody | Category range 6 years 6 months' – 10 years' custody | Category range 3 years 6 months' – 7 years' custody |
| Category 3 | Starting point 8 years 6 months' custody | Starting point 4 years 6 months' custody | Starting point 3 years' custody |
| | Category range 6 years 6 months' – 10 years' custody | Category range 3 years 6 months' – 7 years' custody | Category range 2 – 4 years 6 months' custody |
| Category 4 | Starting point 5 years 6 months' custody | Starting point 3 years 6 months' custody | Starting point 18 months' custody |
| | Category range 4 years 6 months' – 7 years 6 months' custody | Category range 2 – 5 years' custody | Category range High level community order – 3 years' custody |

| CLASS B | | | |
|------------|--|---|--|
| | Leading role | Significant role | Lesser role |
| Category 1 | Starting point 8 years' custody | Starting point 5 years 6 months' custody | Starting point 3 years' custody |
| | Category range 7 – 10 years' custody | Category range 5 – 7 years' custody | Category range 2 years 6 months' – 5 years' custody |
| Category 2 | Starting point 6 years' custody | Starting point 4 years' custody | Starting point 1 year's custody |
| | Category range 4 years 6 months' – 8 years' custody | Category range 2 years 6 months' – 5 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 3 | Starting point 4 years' custody | Starting point 1 year's custody | Starting point High level community order |
| | Category range 2 years 6 months' – 5 years' custody | Category range 26 weeks' – 3 years' custody | Category range Low level community order – 26 weeks' custody |
| Category 4 | Starting point 18 months' custody | Starting point High level community order | Starting point Low level community order |
| | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 26 weeks' custody | Category range Band B fine – medium level community order |
| CLASS C | | | |
| | Leading role | Significant role | Lesser role |
| Category 1 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody |
| | Category range 4 – 8 years' custody | Category range 2 – 5 years' custody | Category range 1 – 3 years' custody |
| Category 2 | Starting point 3 years 6 months' custody | Starting point 18 months' custody | Starting point 26 weeks' custody |
| | Category range 2 – 5 years' custody | Category range 1 – 3 years' custody | Category range 12 weeks' – 18 months' custody |
| Category 3 | Starting point 18 months' custody | Starting point 26 weeks' custody | Starting point High level community order |
| | Category range 1 – 3 years' custody | Category range 12 weeks' – 18 months' custody | Category range Low level community order – 12 weeks' custody |
| Category 4 | Starting point 26 weeks' custody | Starting point High level community order | Starting point Low level community order |
| | Category range High level community order – 18 months' custody | Category range Low level community order – 12 weeks' custody | Category range Band A fine – medium level community order |

The table below contains 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate **class B** and **C** ranges, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

For appropriate **class B** and **C** ranges, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 12 if third drug trafficking conviction)

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used

Offence committed on bail

Other aggravating factors include:

Targeting of any premises intended to locate vulnerable individuals or supply to such individuals and/or supply to those under 18

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Attempts to conceal or dispose of evidence, where not charged separately

Presence of others, especially children and/or non-users

Presence of weapon, where not charged separately

Charged as importation of a very small amount

High purity

Failure to comply with current court orders

Offence committed on licence

Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

Supply only of drug to which offender addicted

Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances

Isolated incident

Low purity

No previous convictions **or** no relevant or recent convictions

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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Production of a controlled drug

Misuse of Drugs Act 1971 (section 4(2)(a) or (b))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody

Offence range: Discharge – 10 years' custody

Class C

Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

Cultivation of cannabis plant

Misuse of Drugs Act 1971 (section 6(2))

Maximum: 14 years' custody

Offence range: Discharge – 10 years' custody

STEP ONE**Determining the offence category**

The court should determine the offender's culpability (role) and the harm caused (output or potential output) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all of the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

In assessing harm, output or potential output is determined by the weight of the product or number of plants/scale of operation. For production offences, purity is not taken into account at step 1 but is dealt with at step 2.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

Culpability demonstrated by offender's role
One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

LEADING role:

- directing or organising production on a commercial scale;
- substantial links to, and influence on, others in a chain;
- expectation of substantial financial gain;
- uses business as cover;
- abuses a position of trust or responsibility.

SIGNIFICANT role:

- operational or management function within a chain;
- involves others in the operation whether by pressure, influence, intimidation or reward;
- motivated by financial or other advantage, whether or not operating alone;
- some awareness and understanding of scale of operation.

LESSER role:

- performs a limited function under direction;
- engaged by pressure, coercion, intimidation;
- involvement through naivety/exploitation;
- no influence on those above in a chain;
- very little, if any, awareness or understanding of the scale of operation;
- if own operation, solely for own use (considering reasonableness of account in all the circumstances).

Category of harm

Indicative output or potential output (upon which the starting point is based):

Category 1

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 tablets;
- amphetamine – 20kg;
- cannabis – operation capable of producing industrial quantities for commercial use;
- ketamine – 5kg.

Category 2

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – operation capable of producing significant quantities for commercial use;
- ketamine – 1kg.

Category 3

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 28 plants;*;
- ketamine – 150g.

Category 4

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 9 plants (domestic operation);*
- ketamine – 5g.

* With assumed yield of 40g per plant

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out on page 21. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

| CLASS A | Leading role | Significant role | Lesser role |
|-------------------|--|--|--|
| Category 1 | Starting point 14 years' custody | Starting point 10 years' custody | Starting point 7 years' custody |
| | Category range 12 – 16 years' custody | Category range 9 – 12 years' custody | Category range 6 – 9 years' custody |
| Category 2 | Starting point 11 years' custody | Starting point 8 years' custody | Starting point 5 years' custody |
| | Category range 9 – 13 years' custody | Category range 6 years 6 months' – 10 years' custody | Category range 3 years 6 months' – 7 years' custody |
| Category 3 | Starting point 8 years 6 months' custody | Starting point 5 years' custody | Starting point 3 years 6 months' custody |
| | Category range 6 years 6 months' – 10 years' custody | Category range 3 years 6 months' – 7 years' custody | Category range 2 – 5 years' custody |
| Category 4 | Starting point 5 years 6 months' custody | Starting point 3 years 6 months' custody | Starting point 18 months' custody |
| | Category range 4 years 6 months' – 7 years 6 months' custody | Category range 2 – 5 years' custody | Category range High level community order – 3 years' custody |

| CLASS B | | | |
|------------|--|---|--|
| | Leading role | Significant role | Lesser role |
| Category 1 | Starting point 8 years' custody | Starting point 5 years 6 months' custody | Starting point 3 years' custody |
| | Category range 7 – 10 years' custody | Category range 5 – 7 years' custody | Category range 2 years 6 months' – 5 years' custody |
| Category 2 | Starting point 6 years' custody | Starting point 4 years' custody | Starting point 1 year's custody |
| | Category range 4 years 6 months' – 8 years' custody | Category range 2 years 6 months' – 5 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 3 | Starting point 4 years' custody | Starting point 1 year's custody | Starting point High level community order |
| | Category range 2 years 6 months' – 5 years' custody | Category range 26 weeks' – 3 years' custody | Category range Low level community order – 26 weeks' custody |
| Category 4 | Starting point 1 year's custody | Starting point High level community order | Starting point Band C fine |
| | Category range High level community order – 3 years' custody | Category range Medium level community order – 26 weeks' custody | Category range Discharge – medium level community order |
| CLASS C | | | |
| | Leading role | Significant role | Lesser role |
| Category 1 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody |
| | Category range 4 – 8 years' custody | Category range 2 – 5 years' custody | Category range 1 – 3 years' custody |
| Category 2 | Starting point 3 years 6 months' custody | Starting point 18 months' custody | Starting point 26 weeks' custody |
| | Category range 2 – 5 years' custody | Category range 1 – 3 years' custody | Category range High level community order – 18 months' custody |
| Category 3 | Starting point 18 months' custody | Starting point 26 weeks' custody | Starting point High level community order |
| | Category range 1 – 3 years' custody | Category range High level community order – 18 months' custody | Category range Low level community order – 12 weeks' custody |
| Category 4 | Starting point 26 weeks' custody | Starting point High level community order | Starting point Band C fine |
| | Category range High level community order – 18 months' custody | Category range Low level community order – 12 weeks' custody | Category range Discharge – medium level community order |

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The table below contains 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

| Factors increasing seriousness | Factors reducing seriousness or reflecting personal mitigation |
|---|--|
| <i>Statutory aggravating factors:</i> | |
| Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 19 if third drug trafficking conviction) | Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1 |
| Offence committed on bail | Isolated incident |
| <i>Other aggravating factors include:</i> | Low purity |
| Nature of any likely supply | No previous convictions or no relevant or recent convictions |
| Level of any profit element | Offender's vulnerability was exploited |
| Use of premises accompanied by unlawful access to electricity/other utility supply of others | Remorse |
| Ongoing/large scale operation as evidenced by presence and nature of specialist equipment | Good character and/or exemplary conduct |
| Exposure of others to more than usual danger, for example drugs cut with harmful substances | Determination and/or demonstration of steps having been taken to address addiction or offending behaviour |
| Attempts to conceal or dispose of evidence, where not charged separately | Serious medical conditions requiring urgent, intensive or long-term treatment |
| Presence of others, especially children and/or non-users | Age and/or lack of maturity where it affects the responsibility of the offender |
| Presence of weapon, where not charged separately | Mental disorder or learning disability |
| High purity or high potential yield | Sole or primary carer for dependent relatives |
| Failure to comply with current court orders | |
| Offence committed on licence | |
| Established evidence of community impact | |

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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Permitting premises to be used

Misuse of Drugs Act 1971 (section 8)

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: 14 years' custody

Offence range: Community order – 4 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody

Offence range: Fine – 18 months' custody

Class C

Maximum: 14 years' custody

Offence range: Discharge – 26 weeks' custody

STEP ONE

Determining the offence category

The court should determine the offender’s culpability and the harm caused (extent of the activity and/or the quantity of drugs) with reference to the table below.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2.

| | |
|-------------------|--|
| Category 1 | Higher culpability and greater harm |
| Category 2 | Lower culpability and greater harm; or higher culpability and lesser harm |
| Category 3 | Lower culpability and lesser harm |

Factors indicating culpability (non-exhaustive)

Higher culpability:

Permits premises to be used primarily for drug activity, for example crack house

Permits use in expectation of substantial financial gain

Uses legitimate business premises to aid and/or conceal illegal activity, for example public house or club

Lower culpability:

Permits use for limited or no financial gain

No active role in any supply taking place

Involvement through naivety

Factors indicating harm (non-exhaustive)

Greater harm:

Regular drug-related activity

Higher quantity of drugs, for example:

- heroin, cocaine – more than 5g;
- cannabis – more than 50g.

Lesser harm:

Infrequent drug-related activity

Lower quantity of drugs, for example:

- heroin, cocaine – up to 5g;
- cannabis – up to 50g.

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STEP TWO**Starting point and category range**

Having determined the category, the court should use the table below to identify the corresponding starting point to reach a sentence within the category range. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

Class A

| Offence category | Starting point (applicable to all offenders) | Category range (applicable to all offenders) |
|------------------|---|--|
| Category 1 | 2 years 6 months' custody | 18 months' – 4 years' custody |
| Category 2 | 36 weeks' custody | High level community order – 18 months' custody |
| Category 3 | Medium level community order | Low level community order – high level community order |

Class B

| Offence category | Starting point (applicable to all offenders) | Category range (applicable to all offenders) |
|------------------|---|---|
| Category 1 | 1 year's custody | 26 weeks' – 18 months' custody |
| Category 2 | High level community order | Low level community order – 26 weeks' custody |
| Category 3 | Band C fine | Band A fine – low level community order |

Class C

| Offence category | Starting point (applicable to all offenders) | Category range (applicable to all offenders) |
|------------------|---|---|
| Category 1 | 12 weeks' custody | High level community order – 26 weeks' custody* |
| Category 2 | Low level community order | Band C fine – high level community order |
| Category 3 | Band A fine | Discharge – band C fine |

* When tried summarily, the maximum penalty is 12 weeks' custody.

The table below contains 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

| Factors increasing seriousness | Factors reducing seriousness or reflecting personal mitigation |
|---|---|
| <i>Statutory aggravating factors:</i> | Involvement due to pressure, intimidation or coercion falling short of duress |
| Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 25 if third drug trafficking conviction) | Isolated incident |
| Offence committed on bail | Low purity |
| <i>Other aggravating factors include:</i> | No previous convictions or no relevant or recent convictions |
| Length of time over which premises used for drug activity | Offender's vulnerability was exploited |
| Volume of drug activity permitted | Remorse |
| Premises adapted to facilitate drug activity | Good character and/or exemplary conduct |
| Location of premises, for example proximity to school | Determination and/or demonstration of steps having been taken to address addiction or offending behaviour |
| Attempts to conceal or dispose of evidence, where not charged separately | Serious medical conditions requiring urgent, intensive or long-term treatment |
| Presence of others, especially children and/or non-users | Age and/or lack of maturity where it affects the responsibility of the offender |
| High purity | Mental disorder or learning disability |
| Presence of weapons, where not charged separately | Sole or primary carer for dependent relatives |
| Failure to comply with current court orders | |
| Offence committed on licence | |
| Established evidence of community impact | |

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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Possession of a controlled drug

Misuse of Drugs Act 1971 (section 5(2))

Triable either way

Class A

Maximum: 7 years' custody

Offence range: Fine – 51 weeks' custody

Class B

Maximum: 5 years' custody

Offence range: Discharge – 26 weeks' custody

Class C

Maximum: 2 years' custody

Offence range: Discharge – Community order

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STEP ONE**Determining the offence category**

The court should identify the offence category based on the class of drug involved.

| | |
|-------------------|--------------|
| Category 1 | Class A drug |
| Category 2 | Class B drug |
| Category 3 | Class C drug |

STEP TWO**Starting point and category range**

The court should use the table below to identify the corresponding starting point. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out on the opposite page.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

| Offence category | Starting point (applicable to all offenders) | Category range (applicable to all offenders) |
|-----------------------------|---|---|
| Category 1 (class A) | Band C fine | Band A fine – 51 weeks' custody |
| Category 2 (class B) | Band B fine | Discharge – 26 weeks' custody |
| Category 3 (class C) | Band A fine | Discharge – medium level community order |

The table below contains 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 starting point. **In particular, possession of drugs in prison is likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

| Factors increasing seriousness | Factors reducing seriousness or reflecting personal mitigation |
|--|---|
| <i>Statutory aggravating factors:</i> | No previous convictions or no relevant or recent convictions |
| Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction | Remorse |
| Offence committed on bail | Good character and/or exemplary conduct |
| <i>Other aggravating factors include:</i> | Offender is using cannabis to help with a diagnosed medical condition |
| Possession of drug in prison | Determination and/or demonstration of steps having been taken to address addiction or offending behaviour |
| Presence of others, especially children and/or non-users | Serious medical conditions requiring urgent, intensive or long-term treatment |
| Possession of drug in a school or licensed premises | Isolated incident |
| Failure to comply with current court orders | Age and/or lack of maturity where it affects the responsibility of the offender |
| Offence committed on licence | Mental disorder or learning disability |
| Attempts to conceal or dispose of evidence, where not charged separately | Sole or primary carer for dependent relatives |
| Charged as importation of a very small amount | |
| Established evidence of community impact | |

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Ancillary orders**

In all cases, the court should consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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Annex:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

| Fine Band | Starting point (<i>applicable to all offenders</i>) | Category range (<i>applicable to all offenders</i>) |
|------------------|--|--|
| Band A | 50% of relevant weekly income | 25–75% of relevant weekly income |
| Band B | 100% of relevant weekly income | 75–125% of relevant weekly income |
| Band C | 150% of relevant weekly income | 125–175% of relevant weekly income |

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

| LOW | MEDIUM | HIGH |
|---|--|---|
| In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary | | More intensive sentences which combine two or more requirements may be appropriate |
| Suitable requirements might include: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work; • curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks); • exclusion requirement, without electronic monitoring, for a few months; • prohibited activity requirement; • attendance centre requirement (where available). | Suitable requirements might include: <ul style="list-style-type: none"> • greater number of hours of unpaid work (for example, 80 – 150 hours); • an activity requirement in the middle range (20 to 30 days); • curfew requirement within the middle range (for example, up to 12 hours for two to three months); • exclusion requirement, lasting in the region of six months; • prohibited activity requirement. | Suitable requirements might include: <ul style="list-style-type: none"> • 150 – 300 hours unpaid work; • activity requirement up to the maximum of 60 days; • curfew requirement up to 12 hours per day for four to six months; • exclusion order lasting in the region of 12 months. |

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

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