

Sentencing of drug offences involving newer and less common drugs

The Drug Offences Guideline came into force in 2012 and covers the main possession, supply, importation and production offences in the Misuse of Drugs Act 1971. By virtue of s125 (1) (b) of the Coroners and Justice Act 2009, sentencers may also refer to this guideline when sentencing other relevant offences, for example, offences under the Psychoactive Substances Act 2016.

Drug offences – assessing harm

For most offences, the Drug Offences guideline uses class and quantity of the drug as the key element of assessing the harm caused by the offence, with higher quantities indicating higher harm. The current guideline covers all drugs included in the Misuse of Drugs Act 1971. However, as indicators of the level of harm, the guideline gives the indicative quantities of only the most common drugs: heroin, cocaine, ecstasy, LSD, amphetamine, cannabis and ketamine.

Example – supplying or offering to supply a controlled drug

To put the offence of supplying or offering to supply a controlled drug in the most serious category, the quantity of drug required would be:

- for amphetamine, 20kg
- for heroin or cocaine, only 5kg

The Council intended, and case law has clearly shown, that where the drug in question is not listed in the guideline, the assessment of harm will be based on the equivalent level of harm caused by the relevant quantity of that drug.

Newer drugs – assessing harm

Since publication of the Drug Offences guideline, there has been an increase in the number of cases before the courts involving newer drugs, such as synthetic opioids, which may have much higher potency and potential to cause harm than more common drugs.

Where these newer drugs are covered by the guideline but not specifically listed in the section on assessment of harm, the approach to assessing harm in these cases should be as with all cases of controlled drugs not explicitly mentioned in the guidelines. **Sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused.**

Example – supplying or offering to supply a controlled drug

If the quantity of the drug would cause as much harm as 5kg of heroin, the offence would be in the most serious category.

Where the offence is not covered by the guideline (such as offences under the Psychoactive Substances Act 2016) the approach should be the same, but the court must also take into account any difference in the statutory maximum penalty.

Expert evidence

In line with [CPS guidance](#), prosecutors will be providing courts with this information and expert evidence to ensure that the court can make a correct assessment of harm in cases involving drugs not explicitly listed in the guidelines. This is likely to include evidence on the potency of the drug in question, and the value of sales, along with evidence on the wider harm caused to the community as well as to the drug users and others immediately affected in the case.

The Council published an [evaluation of the Drug Offences guideline](#) on 1 June, and has now started work to revise the guideline. We will consult on a revised draft guideline in due course, and consultation documents will be available on [our website](#).

It is important to note that this guidance does not carry the same authority as a sentencing guideline, and sentencers are not obliged to follow it. However, it is hoped that the majority of sentencers will find it useful in assisting them to deal with these cases.