

Revision of Drug Offences Guideline – proposed sections for new guideline October 2018

Changes from current guideline indicated by struck through/underlined text

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))

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 both by the weight of the product and by the additional factors listed. Purity is not taken into account at step one but is dealt with at step two.

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 the 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

Harm is initially assessed by the quantity of drug concerned. Indicative quantities of the most common drugs, upon which the starting point is to be based) are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- Specific targeting of vulnerable people to assist in drug dealing, whether as couriers or otherwise

Step two – starting point and category range

[Sentence level tables and accompanying text to be considered at future meeting]

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 condition relates and relevance to current offence; and b) time elapsed since 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
- ~~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 weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Offender chose particular method of offending to avoid detection

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 one.
- 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
- 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
- Offender's vulnerability was exploited

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 4(3))

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 both by the weight of the product and by the additional factors listed. Purity is not taken into account at step one but is dealt with at step two.

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 the 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
- Takes control (whether by pressure, influence, intimidation or reward) of the home of another person for drug-related activity

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

Harm is initially assessed by the quantity of drug concerned. Indicative quantities of the most common drugs, upon which the starting point is to be based) are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- Selling directly to users
- Supply of drugs in prison by a prison employee
- Specific targeting of vulnerable people to assist in drug dealing, whether as couriers or otherwise

Step two – starting point and category range

[Sentence level tables and accompanying text to be considered at future meeting]

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 condition relates and relevance to current offence; and b) time elapsed since 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 weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Offender chose particular method of offending to avoid detection
- Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of drug offending should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that drug offending is prevalent in their area, and is causing particular harm in that community; and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

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 one.
- 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
- 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
- Offender's vulnerability was exploited

Production of a controlled drug

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

Cultivation of cannabis plant

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

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 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 are~~ is determined both by the ~~output or the potential output~~ (the weight of the product or number of plants/scale of operation) and by the additional factors listed. For production offences purity is not taken into account at step one but is dealt with at step two.

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 the 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
- Takes control (whether by pressure, influence, intimidation or reward) of the home of another person for drug-related activity

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

Harm is initially assessed by the output or potential output. Indicative ~~output or potential output~~ quantities, upon which the starting point is to be based are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- Specific targeting of vulnerable people to assist in production/cultivation, whether as couriers or otherwise

Step two – starting point and category range

[Sentence level tables and accompanying text to be considered at future meeting]

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

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail

Other aggravating factors include:

- Nature of any likely supply
- Level of any profit element
- Use of premises accompanied by unlawful access to electricity/other utility supply of others

- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- ~~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 weapons, where not charged separately
- High purity or high potential yield
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Offender chose particular method of offending to avoid detection

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 one.
- 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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