

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

14 June 2019
SC(19)JUN06 – Drug Offences
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1 ISSUE

1.1 This is the final discussion of the substance of the revised Drug Offences guideline prior to consultation in October, and the full range of guidelines are presented to Council for sign-off.

2 RECOMMENDATION

2.1 That the Council:

- agrees the changes proposed to the draft guidelines since the May meeting; and
- agrees to consult on these draft guidelines in late October 2019.

3 CONSIDERATION

3.1 At your last meeting, you discussed several outstanding aspects of the revised Drug Offences guideline and agreed to some changes, and some further work. This paper covers the changes discussed at the May meeting, including those on which members have made comments out of committee, sets out some further, small, changes made for consistency, and presents the last of these nine guidelines, for the offence of Possession of a Psychoactive Substance in a Custodial Institution, for the first time.

Misuse of Drugs Act 1971 – Importation offence

3.2 At your last meeting, you asked me to redraft the sentence tables for category 4 harm for this offence. The current guideline does not suggest sentence levels here, but refers sentencers to two other guidelines (Possession or Supply) depending on the seriousness of the offence, specifically, the intent. We agreed at the last meeting that instead of this somewhat confusing wording, the table should contain the actual sentence levels, imported from the Possession or Supply guidelines. The amended sentence tables are set out at pages three and four of Annex A. In order to retain the reasoning behind the current guideline, particularly as this was an area in which the Council had sought to change

sentencing practice in 2012, I have used the sentence levels for Possession as the basis of the “Lesser Role” levels (increasing slightly to account for the fact that it is Importation rather than mere Possession, as per aggravating factors in the current Possession guideline). I have then used slightly adjusted levels from the Supply guideline being used for the “Significant” and “Leading” roles. There is a risk of changing sentencing practice from current levels, of course, and the resource assessment on this part of the guideline will take place over the summer.

Question 1: Is the Council content with the sentence levels proposed for the Category 4 Importation offences?

3.3 I propose one further change to culpability factors for the Importation offence. When discussing these factors in relation to all three main offences (Importation, Supply and Cultivation) you agreed to a new factor in “Leading Role” to cover cases of cuckooing, “Exercising control over the home of another for drug-related activity”. Although it is possible that this could be relevant in an importation case (particularly in a conspiracy to import case) it is not likely to be important in many cases and I therefore propose to remove it from the Importation guideline.

3.4 A similar argument also holds for removal of the aggravating factor “Established evidence of community impact” from the importation guideline. While this may be very relevant in cases of supply/PWITS or production/cultivation, it is not a factor which we have seen in importation cases, so I propose to remove it.

Question 2: Is the Council content to remove these factors from the Importation guideline?

Misuse of Drugs Act 1971 - quantities

3.5 At the May meeting, we discussed the approach to quantities for several drugs and agreed some changes to how MDMA/Ecstasy quantities were presented. We agreed changes to the quantities of ecstasy tablets and, supported by new evidence from the police, to changes to numbers of cannabis plants in the cultivation guideline. You also asked me to make a further attempt to set out suitable quantities for synthetic cannabinoid receptor agonists (SCRAs). I sent these to members for your views out of committee. Members who responded agreed to the revised quantities for ecstasy tablets and cannabis plants, so those new quantities have been included in the draft guidelines in the Annexes A to C.

Question 3: Does the Council confirm that it agrees to consult on the basis of the revised quantities for ecstasy tablets and cannabis plants?

3.6 However, on SCRAs, the picture continues to be more complicated. NCA experts felt that giving specific quantities is problematic, given the range of ways in which the drugs can

be prepared, and most of the members who responded to my proposed quantities shared this concern. Given this, I propose (as discussed at the last meeting) to consult on using words rather than specific indicative quantities for these drugs, and to ask consultation respondents for any evidence they have as to what might be suitable indicative quantities. Suggested wording for these, based on the wording you agreed for Psychoactive Substances Act offences (in which there is a similar problem with range of substances/harm) and wording used in the cultivation of cannabis guideline, is as follows:

Category 1	<u>Very large quantity indicative of an industrial scale operation</u>
Category 2	<u>Large quantity indicative of a commercial operation</u>
Category 3	<u>Smaller quantity between categories 2 and 4</u>
Category 4	<u>Very small quantity</u>

3.7 The drafts at Annexes A to C use these descriptions for the categories for SCRAs. However, if we are not to include actual indicative quantities for these drugs, it may be that instead of including a separate line for SCRAs, with the above wording, the table should include “All other drugs”, with the above wording, which would of course include SCRAs, but may be of assistance to sentencers in cases involving other drugs. The wording at the top of the table relating to expert evidence and purity could remain, amended as follows:

Indicative quantities of the most common drugs, (upon which the starting point is to be based) are given in the table below. Where a drug is not listed in the table below, sentencers may be assisted by the factors set out under “All other drugs”. Sentencers should also 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. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Question 4: Does the Council agree to using the descriptive factors above for SCRAs or does the Council wish to give these factors for “All other drugs”, and amend the wording on sentencing cases involving other drugs?

3.8 One of the reasons for revising this guideline was because of the changing nature of drug offending, including changes to quantities and purity which have led to our changing the quantities for some drugs as set out above. In addition to asking consultation questions on the proposed quantities, we should also consult on how to ensure that the guideline remains current in the future. I propose therefore that we consult on committing to seek

evidence from experts on drug quantities every three years, and revising the quantities in the guideline (rather than the guideline as a whole) if expert evidence suggests that this is necessary. Seeking evidence on quantities any more frequently would probably not provide sufficiently robust information to allow us to be confident in the need for changes to the guideline. If, on the evidence, we did feel revisions of the quantities were necessary, we would carry out a shorter, targeted consultation on any revised quantities.

Question 5: Does the Council agree to consulting on a commitment to seek evidence on quantities and reviewing where necessary every three years?

Misuse of Drugs Act – Permitting premises and Possession offences

3.9 At the last meeting, you suggested some changes to the culpability factors in the permitting premises guideline, to include both frequency and length of time over which the drug-related activity took place. You also asked for changes to the harm tables, so that there could be specific quantities given as examples, rather than references to other guidelines. Those changes are set out in Annex D.

3.10 The final Misuse of Drugs Act guideline, for Possession offences, was agreed in January, and any small changes proposed then have been included in the version for sign-off at Annex E.

Question 6: Is the Council content with the changes made to these two guidelines?

Psychoactive Substances Act – importation, production and supply offences

3.11 When we discussed sentence levels for these offences at the last meeting, you were concerned that they may be lower than current sentencing practice. Given the potentially extremely harmful nature of these substances and a desire for the Council to be leading the way in this area, the Council agreed that sentence levels should be increased to bring them closer to the comparable Class B drug offences. I have therefore made some changes, set out in the tables at Annexes F to H, to increase the sentences to be broadly in line with Class B drug offences. If you agree to these revised levels, the resource assessment for these offences will be undertaken over the summer.

Question 7: Does the Council agree to these revised sentence levels for the main Psychoactive Substances Act offences?

3.12 I have also made some changes to the descriptive harm factors for importation and production offences. The factors which you agreed in April were designed for Supply/PWITS offences, and I have made small changes to the factors to fit with the other two offences, particularly to Category 2, in which the factors relating to supply directly to others can only apply to Supply/PWITS.

Question 8: Does the Council agree with the changes to the harm factors for PSA importation and production offences?

Possession of a Psychoactive Substance in a Custodial Institution (Annex I)

3.13 The one guideline which you have not yet discussed at all is that for the offence of Possession of a Psychoactive Substance in a Custodial Institution. Under the PSA 2016, this is the only possession offence. Drafting a guideline for such a narrow offence, which has a low statutory maximum penalty but is generally committed by offenders who are already serving a custodial sentence, has been challenging. There were 30 offenders sentenced in 2017; 73% (22 offenders) were sentenced to immediate custody, 17% (five offenders) were given a suspended sentence, and 7% (two offenders) had a conditional discharge. The average (mean) custodial sentence length for those sentenced to immediate custody in 2017 was four months (after any reduction for guilty plea), and the median was three months.

3.14 I have reviewed a sample of 11 transcripts, and it has been very difficult to separate cases in terms of culpability and, particularly, harm. Judges have in many cases simply referred to the seriousness of possessing the substance in a custodial institution, and the harm it can potentially cause, without giving reasons as to why the particular offence before them was more or less serious. Considering those factors raised, and informed by initial conversations with those in HMPPS responsible for tackling drug offences in prisons, I propose a model based on culpability alone, with two levels of culpability and no differentiation in terms of harm. The culpability factors relevant to this offence at Step 1 are:

Category 1	Offender was in a position of trust/responsibility in the custodial institution Deliberate attempts to evade detection/conceal evidence
Category 2	Cases falling between Categories 1 and 3 because: <ul style="list-style-type: none"> • factors in both categories 1 and 3 are present which balance each other out; and/or • the offender’s culpability falls between the factors as described in Categories 1 and 3.
Category 3	Evidence that offence was committed under pressure falling short of duress

3.15 The factor relating to position of trust or responsibility is primarily aimed at prison employees or others who are carrying out work in a prison, but could also apply to an offender who holds some sort of position of responsibility, such as a role on a prison council. The second high culpability factor was cited in several cases where a prisoner had made deliberate attempts to conceal the substance in his/her possession, and as it is one of the few factors cited I have moved it from Step 2 to Step 1. The lower culpability factor is aimed at circumstances where the offender was asked to “look after” a substance for someone else; it is drafted in this way, requiring “evidence” because including a specific factor on

offenders “looking after” the substance may lead offenders to claim falsely that the substance was not theirs.

Question 9: Does the Council agree to the proposed model using culpability alone at Step 1?

3.16 The sentence levels proposed are based on current sentencing practice. Sentences for this offence are in general more severe than sentences for “simple” possession of a controlled drug, in part because of the seriousness of the offence of possession in a custodial institution, but also because most of the offenders are serving prisoners, so a community sentence is not appropriate. I have included text on this above the sentencing table, based on text used in the General guideline and including reference to totality.

Question 10: Does the Council agree with the proposed sentence levels and accompanying text?

3.17 The aggravating and mitigating factors are similar to those for the possession of a controlled drug offence, but there are some differences. I have included an aggravating factor “Established evidence of impact in the custodial institution concerned” as a specific version of the normal “Established evidence of community impact”. This is because, whilst in nearly every transcript the judge referred in general terms to the impact of psychoactive substances in prisons, in some cases there was specific evidence from, for example, the governor of the prison where the offence was committed, explaining that there was a particular problem with that substance in that prison at the time.

Question 11: Is the Council content with the inclusion and drafting of the aggravating and mitigating factors? Are there any additional factors which should be included?

Next steps

3.18 Following decisions taken today, I will revise and tidy up the draft guidelines and circulate them, together with the consultation document out of committee for you to review over the summer. We will also circulate further sections of the resource assessment and, as will be covered in a separate paper, the report of the findings of our race/gender research and next steps, which will be discussed at your September meeting

Question 12: Is the Council content to sign off these draft revised Drug Offences guidelines for consultation?

4 IMPACT /RISKS

4.1 Analysis undertaken to date to assess the potential resource impact of these guidelines is covered within a separate Council paper. Further analysis will be carried out in due course based on decisions made at the June Council meeting, and a full resource assessment will be circulated to Council members during the summer.

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.

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 or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility
- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- ~~Exercising control over the home of another person for drug-related activity~~

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage, (save where this advantage is limited to meeting the offender's own habit) 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)
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

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

Category of harm

Indicative quantities of some common drugs, upon which the starting point is to be based, are as follows given in the table below. Where a drug is not listed in the table below, 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. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – <u>7,000</u> tablets* • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • <u>Synthetic cannabinoid receptor agonists –very large quantity indicative of an industrial scale operation</u>
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – <u>1,300</u> tablets* • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • <u>Synthetic cannabinoid receptor agonists – large quantity indicative of a commercial operation</u>
Category 3	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – <u>200</u> tablets* • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • <u>Synthetic cannabinoid receptor agonists – smaller quantity between categories 2 and 4</u>
Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – <u>13</u> tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g

	<ul style="list-style-type: none"> • Cannabis – 100g • Ketamine – 5g • <u>Synthetic cannabinoid receptor agonists – very small quantity</u>
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet

Step two – starting point and category range

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 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 offender's role.

CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years' custody Category range 12 – 16 years' custody	Starting point 10 years' custody Category range 9 – 12 years' custody	Starting point 8 years' custody Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody Category range 9 – 13 years' custody	Starting point 8 years' custody Category range 6 years 6 months' – 10 years' custody	Starting point 6 years' custody Category range 5 – 7 years' custody
Category 3	Starting point 8 years 6 months' custody Category range 6 years 6 months' – 10 years' custody	Starting point 6 years' custody Category range 5 – 7 years' custody	Starting point 3 years' custody Category range 18 months' – 5 years' custody
Category 4	Starting point 5 years' custody Category range 4 years 6 months' – 7 years 6 months' custody	Starting point 3 years' custody Category range 18 months' – 5 years' custody	Starting point Low level community order Category range Band A fine – 18 months' custody

CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years' custody Category range 7 – 10 years' custody	Starting point 5 years 6 months' custody Category range 5 – 7 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody Category range	Starting point 4 years' custody Category range	Starting point 2 years' custody Category range 18 months' – 3 years' custody

	4 years 6 months' – 8 years' custody	2 years 6 months' – 5 years' custody	
Category 3	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 2 years' custody Category range 18 months' – 3 years' custody	Starting point 1 year's custody Category range 12 weeks' – 9 months' custody
Category 4	Starting point 18 months' custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Medium level community order – 9 months' custody	Starting point Band C fine Category range Discharge – 26 weeks' custody

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody Category range 4 - 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody Category range 2 - 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Medium level community order - 26 weeks' custody
Category 4	Starting point 9 months' custody Category range High level community order – 2 years' custody	Starting point High level community order Category range Medium level community order – 12 weeks' custody	Starting point Band B fine Category range Discharge – high level community order

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
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of drug user to the risk of serious harm, for example, through the method of production/mixing of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- 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~~
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede 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.
- Importation 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

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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.

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 or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility, for example, prison employee, medical professional
- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), 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
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

Category of harm

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step one but is dealt with at step two. Where the offence is supply directly to users (including street dealing), the quantity of product is less indicative of the harm caused and therefore the starting point is not solely based on quantity. The court should consider all offences involving supplying directly to users as at least category 3 harm, and make an adjustment from the starting point within that category considering the quantity of drugs in the particular case.

Indicative quantities of the most common drugs, upon which the starting point is to be based) are given in the table below. Where a drug is not listed in the table below, 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. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

<p>Category 1</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – <u>7,000 tablets*</u> • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • Synthetic cannabinoid receptor agonists – <u>very large quantity indicative of an industrial scale operation</u>
<p>Category 2</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – <u>1,300 tablets*</u> • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • Synthetic cannabinoid receptor agonists – <u>large quantity indicative of a commercial operation</u>
<p>Category 3</p>	<p>Selling directly to users OR Supply of drugs in prison <u>a custodial institution</u> OR</p> <ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – <u>200 tablets*</u> • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists – <u>smaller quantity between categories 2 and 4</u>

Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – <u>13 tablets*</u> • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists – <u>very small quantity</u> <p>Note – where the offence is selling directly to users or supply in <u>a custodial institution</u> prison the starting point is not based on quantity – go to category 3</p>
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet

Step two – starting point and category range

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?

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 offender's role.			
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years' custody Category range 12 – 16 years' custody	Starting point 10 years' custody Category range 9 – 12 years' custody	Starting point 7 years' custody Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody Category range 9 – 13 years' custody	Starting point 8 years' custody Category range 6 years 6 months' – 10 years' custody	Starting point 5 years' custody Category range 3 years 6 months' – 7 years' custody
Category 3	Starting point 8 years 6 months' custody Category range 6 years 6 months' – 10 years' custody	Starting point 4 years 6 months' custody Category range 3 years 6 months' – 7 years' custody	Starting point 3 years' custody Category range 2 – 4 years 6 months' custody
Category 4	Starting point 5 years 6 months' custody Category range	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range

	4 years 6 months' – 7 years 6 months' custody		High level community order – 3 years' custody
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CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years' custody Category range 7 – 10 years' custody	Starting point 5 years 6 months' custody Category range 5 – 7 years' custody	Starting point 3 years' custody Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody Category range 4 years 6 months' – 8 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody
Category 3	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 4	Starting point 18 months' custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Medium level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody
Category 4	Starting point 26 weeks' custody Category range High level community order – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody	Starting point Low level community order Category range Band A fine – medium level community order

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 where children or other vulnerable persons are likely to be present
- Exposure of drug user to the risk of serious harm, for example, through the method of production/mixing of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- 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
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

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.

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 production/cultivation on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility
- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender’s own habit), 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
- Expectation of limited, if any, financial advantage, (including meeting the offender’s own habit)
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)

Category of harm

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

Indicative output or potential output, upon which the starting point is to be based, is given in the table below. Where a drug is not listed in the table below, 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. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 40,000 <u>7,000</u> tablets (see note below) • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – operation capable of producing industrial quantities for commercial use • Ketamine – 5kg • Synthetic cannabinoid receptor agonists – <u>very large quantity indicative of an industrial scale operation</u>
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 2000 <u>1,300</u> tablets (see note below) • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – operation capable of producing significant quantities for commercial use • Ketamine – 1kg • Synthetic cannabinoid receptor agonists – <u>large quantity indicative of a commercial operation</u>
Category 3	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 300 <u>200</u> tablets (see note below) • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 28 <u>20</u> plants* • Ketamine – 150g • Synthetic cannabinoid receptor agonists – <u>smaller quantity between categories 2 and 4</u>
Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 20 <u>13</u> tablets (see note below) • MDMA – 5g

	<ul style="list-style-type: none"> • LSD – 170 squares • Amphetamine – 20g • Cannabis – 97 plants* • Ketamine – 5g • Synthetic cannabinoid receptor agonists – <u>very small quantity</u>
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Note: ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet

*with an assumed yield of 4055g per plant

Step two – starting point and category range

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?

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 offender’s role.

CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	<p>Starting point 14 years’ custody Category range 12 – 16 years’ custody</p>	<p>Starting point 10 years’ custody Category range 9 – 12 years’ custody</p>	<p>Starting point 7 years’ custody Category range 6 – 9 years’ custody</p>
Category 2	<p>Starting point 11 years’ custody Category range 9 – 13 years’ custody</p>	<p>Starting point 8 years’ custody Category range 6 years 6 months’ – 10 years’ custody</p>	<p>Starting point 5 years’ custody Category range 3 years 6 months’ – 7 years’ custody</p>
Category 3	<p>Starting point 8 years 6 months’ custody Category range 6 years 6 months’ – 10 years’ custody</p>	<p>Starting point 4 years 6 months’ custody Category range 3 years 6 months’ – 7 years’ custody</p>	<p>Starting point 3 years’ custody Category range 2 – 4 years 6 months’ custody</p>
Category 4	<p>Starting point 5 years 6 months’ custody Category range 4 years 6 months’ – 7 years 6 months’ custody</p>	<p>Starting point 3 years 6 months’ custody Category range 2 – 5 years’ custody</p>	<p>Starting point 18 months’ custody Category range High level community order – 3 years’ custody</p>

CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years' custody Category range 7 – 10 years' custody	Starting point 5 years 6 months' custody Category range 5 – 7 years' custody	Starting point 3 years' custody Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody Category range 4 years 6 months' – 8 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody
Category 3	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 4	Starting point 18 months' custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Medium level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody
Category 4	Starting point 26 weeks' custody Category range High level community order – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody	Starting point Low level community order Category range Band A fine – medium level community order

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, where not charged separately

- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- Exposure of drug user to the risk of serious harm, for example, through the method of production/mixing of the drug
- Exposure of those involved in drug ~~dealing~~ production/cultivation to the risk of serious harm, for example through method of ~~transporting drugs~~ production/cultivation
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- 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
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede 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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STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

<p>Culpability Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.</p>	
<p>A - Higher culpability:</p> <ul style="list-style-type: none"> • Participates in the exploitation of a child or vulnerable person including one who is also involved in the drugs operation • Permits premises to be used primarily for drug activity • Permits use in expectation of substantial financial gain • Uses legitimate business premises to aid and/or conceal illegal activity 	
<p>B – Lower culpability</p> <ul style="list-style-type: none"> • Permits use for limited or no financial gain • No active role in drug activity taking place • Involved due to intimidation or coercion • Offender’s vulnerability has been exploited 	

<p>Harm Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm caused or likely to be caused</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • <u>Regular drug-related activity and/or premises used for drug activity over a long period</u> • Higher quantity of drugs <p>[Drop-down box] Indicative quantities:</p> <ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – <u>200 tablets</u> • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists – <u>large quantity indicative of a commercial-scale operation</u>

Category 2	<ul style="list-style-type: none"> • <u>Infrequent drug-related activity and/or premises used for drug activity over a short period</u> • Lower quantity of drugs <p>[Drop-down box] Indicative quantities</p> <ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – <u>13 tablets</u> • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists – <u>very small quantity</u>
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STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

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 offences, 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

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 2 years 6 months' custody</p> <p>Category range 18 months' – 4 years' custody</p>	<p>Starting point 36 weeks' custody</p> <p>Category range High level community order - 18 months' custody</p>
Harm 2	<p>Starting point 36 weeks' custody</p> <p>Category range High level community order - 18 months' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order - High level community order</p>

Class B

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' – 18 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order - 26 weeks' custody</p>
Harm 2	<p>Starting point High level community order</p> <p>Category range Low level community order - 26 weeks' custody</p>	<p>Starting point Band C fine</p> <p>Category range Band A fine - low level community order</p>

Class C

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order – 26 weeks' custody*</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine - high level community order</p>
Harm 2	<p>Starting point Low level community order</p> <p>Category range Band C fine - high level community order</p>	<p>Starting point Band A fine</p> <p>Category range Discharge - low level community order</p>

*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.

When considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

- 1) **Has the custody threshold been passed?**
- 2) **If so, is it unavoidable that a custodial sentence be imposed?**

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Other aggravating factors:

- ~~Premises used for drug activity over a long period of time~~
- Premises adapted to facilitate drug activity
- Location of premises, for example proximity to school
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- ~~High purity~~
- Presence of weapons, where not charged separately
- Failure to comply with current court orders
- Other offences taken into consideration (TICs)
- Offence committed whilst on licence or subject to post sentence supervision
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- ~~Premises used for drug activity over a short period of time~~
- Involved due to naivety
- Isolated incident
- Low purity
- 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, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)

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

**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 below.

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 may be a proper alternative to a 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

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
- Offence committed on bail

Other aggravating factors include

- Possession of drug in prison
- Presence of others, especially children and/or non-users
- Possession of drug in a school or licensed premises
- Large quantity*
- Failure to comply with current court orders
- Offence committed on licence
- Attempts to conceal or dispose of evidence, where not charged separately
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Small quantity*
- Offender is using cannabis to help with a diagnosed medical condition
- 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
- Isolated incident
- 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

*The court should bear in mind that different types of drug have different levels of potency and therefore the relevance of high or low quantity will depend on the drug concerned.

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Importing or exporting a psychoactive substance

Psychoactive Substances Act 2016 (section 8)

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.

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 or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility
- Exploitation of children and/or vulnerable persons to assist in the offending
- ~~Exercising control over the home of another person for drug related activity~~

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage, (save where this advantage is limited to meeting the offender’s own habit) 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)
- Expectation of limited, if any, financial or other advantage (including meeting the offender’s own habit)

In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.

<i>Category of harm</i>	
Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.	
Category 1	<ul style="list-style-type: none"> • Large quantity indicative of commercial-scale operation • Supply in a custodial institution
Category 2	<ul style="list-style-type: none"> • Supply directly to users • <u>Quantity indicative of smaller-scale commercial operation</u>
Category 3	<ul style="list-style-type: none"> • Very small quantity

Step two – starting point and category range

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?

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Band B fine Category range Discharge – high level community order

*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:

- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of psychoactive substance user to the risk of serious harm, for example, through the method of production/mixing of the substance
- Exposure of those involved in dealing in the psychoactive substance to the risk of serious harm, for example through method of transporting the substance
- Exposure of third parties to the risk of serious harm
- 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~~
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede 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.
- Importation only of psychoactive substance to which offender addicted
- Mistaken belief of the offender regarding the type of substance, 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 psychoactive substance
Psychoactive Substances Act 2016 (sections 5(1) or 5(2))

Possession of psychoactive substance with intent to supply
Psychoactive Substances Act 2016 (section 7(1))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused 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.

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 or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility, for example, prison employee, medical professional
- Exploitation of children and/or vulnerable persons to assist in the offending
- Exercising control over the home of another person for the purposes of the offending

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), 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
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.

<i>Category of harm</i>	
Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.	
Category 1	<ul style="list-style-type: none"> • Large quantity indicative of commercial-scale operation • Supply in a custodial institution
Category 2	<ul style="list-style-type: none"> • Supply directly to users
Category 3	<ul style="list-style-type: none"> • Very small quantity

Step two – starting point and category range

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?

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

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
- In connection with the offence, the offender used a courier who, at the time of the commission of the offence, was aged under 18 (except where taken into account at Step 1)
- The offence was committed on or in the vicinity of school premises at a relevant time
- The offence was committed in a custodial institution
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of psychoactive substance user to the risk of serious harm, for example, through the method of production/mixing of the substance
- Exposure of those involved in dealing in the psychoactive substance to the risk of serious harm, for example through method of transporting the substance
- Exposure of third parties to the risk of serious harm
- 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
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of psychoactive substance 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 psychoactive substance 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 psychoactive substance to which offender addicted
- Mistaken belief of the offender regarding the type of substance, 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

Producing a psychoactive substance

Psychoactive Substances Act 2016 (section 4)

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.

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 production on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility
- Exploitation of children and/or vulnerable persons to assist in the offending
- Exercising control over the home of another person for the purposes of the offending

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), 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
- Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)

In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.

<i>Category of harm</i>	
Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.	
Category 1	<ul style="list-style-type: none"> • <u>Large quantity indicative of industrial scale operation</u>
Category 2	<ul style="list-style-type: none"> • <u>Quantity indicative of smaller-scale commercial operation</u>
Category 3	<ul style="list-style-type: none"> • Very small quantity

Step two – starting point and category range

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?

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

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, where not charged separately
- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- Exposure of psychoactive substance user to the risk of serious harm, for example, through the method of production/mixing of the substance
- Exposure of those involved in producing the psychoactive substances to the risk of serious harm, for example through method of production
- Exposure of third parties to the risk of serious harm
- 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
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede 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

Possession of a psychoactive substance in a custodial institution

Psychoactive Substances Act 2016 (section 9)

Triable either way

Maximum: 2 years’ custody

Offence range: Medium level community order – 18 months’ custody

STEP ONE
Determining the offence category

The court should identify the offence category based on the culpability factors set out below.

Category 1	Offender was in a position of trust/responsibility in the custodial institution Deliberate attempts to evade detection/conceal evidence
Category 2	Cases falling between Categories 1 and 3 because: <ul style="list-style-type: none"> • factors in both categories 1 and 3 are present which balance each other out; and/or • the offender’s culpability falls between the factors as described in Categories 1 and 3.
Category 3	Evidence that offence was committed under pressure falling short of duress

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 below.

Where the defendant is not in custody at the point of sentence, but is dependent on or has a propensity to misuse controlled drugs or psychoactive substances and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a custodial sentence.

Where the offender is serving a custodial sentence at the point of sentence for this offence a community order will not be available and a short custodial sentence should be substituted. Generally the sentence for the new offence will be consecutive to the sentence being served as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender’s criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Refer to the [Totality guideline](#) for detailed guidance.

Offence category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1	6 months' custody	3 months' custody to 18 months' custody
Category 2	4 months' custody	1 months' custody to 12 months' custody
Category 3	2 months' custody	Medium level community order to 6 months' 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.

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

Other aggravating factors include

- Presence of others, especially non-users
- Large quantity*
- Failure to comply with current court orders
- Established evidence of impact in the custodial institution concerned

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions / no relevant, recent convictions
- Remorse
- Good character and/or exemplary conduct
- Small quantity*
- 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
- Isolated incident
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

*The court should bear in mind that different types of psychoactive substance have different levels of potency and therefore the relevance of high or low quantity will depend on the substance concerned.