

**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.

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

	<ul style="list-style-type: none"> <li>• LSD – 170 squares</li> <li>• Amphetamine – 20g</li> <li>• Cannabis – 97 plants*</li> <li>• Ketamine – 5g</li> <li>• Synthetic cannabinoid receptor agonists – <u>very small quantity</u></li> </ul>
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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><b>Starting point</b> 14 years' custody <b>Category range</b> 12 – 16 years' custody</p>	<p><b>Starting point</b> 10 years' custody <b>Category range</b> 9 – 12 years' custody</p>	<p><b>Starting point</b> 7 years' custody <b>Category range</b> 6 – 9 years' custody</p>
Category 2	<p><b>Starting point</b> 11 years' custody <b>Category range</b> 9 – 13 years' custody</p>	<p><b>Starting point</b> 8 years' custody <b>Category range</b> 6 years 6 months' – 10 years' custody</p>	<p><b>Starting point</b> 5 years' custody <b>Category range</b> 3 years 6 months' – 7 years' custody</p>
Category 3	<p><b>Starting point</b> 8 years 6 months' custody <b>Category range</b> 6 years 6 months' – 10 years' custody</p>	<p><b>Starting point</b> 4 years 6 months' custody <b>Category range</b> 3 years 6 months' – 7 years' custody</p>	<p><b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 4 years 6 months' custody</p>
Category 4	<p><b>Starting point</b> 5 years 6 months' custody <b>Category range</b> 4 years 6 months' – 7 years 6 months' custody</p>	<p><b>Starting point</b> 3 years 6 months' custody <b>Category range</b> 2 – 5 years' custody</p>	<p><b>Starting point</b> 18 months' custody <b>Category range</b> High level community order – 3 years' custody</p>

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

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	<b>Starting point</b> 5 years' custody <b>Category range</b> 4 – 8 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 18 months' custody <b>Category range</b> 1 – 3 years' custody
Category 2	<b>Starting point</b> 3 years 6 months' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 18 months' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 26 weeks' custody <b>Category range</b> 12 weeks' – 18 months' custody
Category 3	<b>Starting point</b> 18 months' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 26 weeks' custody <b>Category range</b> 12 weeks' – 18 months' custody	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 12 weeks' custody
Category 4	<b>Starting point</b> 26 weeks' custody <b>Category range</b> High level community order – 18 months' custody	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 12 weeks' custody	<b>Starting point</b> Low level community order <b>Category range</b> 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

Blank page