

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"> <li>• Large quantity indicative of commercial-scale operation</li> <li>• Supply in a custodial institution</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Supply directly to users</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Very small quantity</li> </ul>

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?

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

*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