

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.