

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 the most~~ 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.

<p>Category 1</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 10,000 tablets • MDMA – <u>5kg</u> • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • Synthetic cannabinoid receptor agonists – <u>100kg</u>
<p>Category 2</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 2,000 tablets • MDMA – <u>1kg</u> • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • Synthetic cannabinoid receptor agonists – <u>20kg</u>
<p>Category 3</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 300 tablets • MDMA – <u>150g</u> • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists – <u>1kg</u>
<p>Category 4</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 20 tablets • MDMA – <u>5g</u> • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists – <u>50g</u>

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 4 years 6 months' custody Category range 3 years 6 months' – 5 years' custody
Category 4	Where the quantity falls below the indicative amount set out for category 4 on the previous page above , first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, <u>and consider the importation as an aggravating factor</u> . Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges in the importation guideline.		

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 4 years 6 months' – 8 years' custody	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
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' – 18 months' custody

Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page above, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, <u>and consider the importation as an aggravating factor</u>.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges in the importation guideline.</p>
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CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	<p>Starting point 5 years' custody Category range 4 - 8 years' custody</p>	<p>Starting point 3 years' custody Category range 2 – 5 years' custody</p>	<p>Starting point 18 months' custody Category range 1 – 3 years' custody</p>
Category 2	<p>Starting point 3 years 6 months' custody Category range 2 - 5 years' custody</p>	<p>Starting point 18 months' custody Category range 1 – 3 years' custody</p>	<p>Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody</p>
Category 3	<p>Starting point 18 months' custody Category range 1 – 3 years' custody</p>	<p>Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody</p>	<p>Starting point High level community order Category range Medium level community order - 12 weeks' custody</p>
Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page above, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, <u>and consider the importation as an aggravating factor</u>.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges in the importation guideline.</p>		

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

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

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