

Sentencing Council meeting: 10 May 2019
Paper: SC(19)MAY03 – Drug Offences
Lead officials: Eleanor Nicholls
Lead Council members: Rebecca Crane
Sarah Munro

1 ISSUE

1.1 This paper covers sentence levels for the offences covered by these guidelines, including offences under the Misuse of Drugs Act 1971 and the Psychoactive Substances Act 2016. These are based on decisions on structure of the guidelines and factors already agreed.

2 RECOMMENDATION

2.1 That the Council agrees:

- the proposed sentence levels for these offences; and
- some changes to quantities and harm factors for these offences.

3 CONSIDERATION

Sentence levels - general

3.1 In September, you agreed that you did not wish to make any significant changes to sentencing practice overall. I have therefore reviewed available data and information, in the context of the decisions already taken on the structure of these guidelines, to work out whether any change is needed to the sentence levels in the current guidelines in order to maintain current sentencing practice. In particular, I have reviewed the conclusions of the evaluation into the operation of the current guideline and those areas where it appeared that the current guideline had changed sentencing practice.

Importation/Exportation offences (Misuse of Drugs Act 1971) – Annex A

3.2 Current starting points and ranges for these offences are as follows:

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, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent. 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	Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent. 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 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 - 12 weeks' custody

Category 4	Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent. 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.
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3.3 The evaluation shows that, as expected, there was an immediate decrease in sentencing severity for these offences following implementation of these guidelines, followed by a gradual increase. The decrease is likely to be caused by the lowering of sentences for so called “drug mules” as intended by the Council. The slight increase thereafter may be due to changes in the seriousness of the offences coming before the courts; survey data suggests that, for example, there has been an increase in the purity of drugs involved in these offences. Analysis of data from 2016 and 2017 shows that sentence severity has remained relatively stable over the last few years.

3.4 The only concerns expressed by judges we have spoken to in relation to these offences related to those at the very top end, and whether any additional category was needed for the handful of cases involving very large quantities of drugs. You discussed this at the last meeting and agreed not to introduce an additional higher category, but to amend wording. Judges reported no further concerns about sentence levels for these offences.

3.5 Analysis of transcripts of these offences suggests that judges are not finding difficulties with the sentence levels, perhaps in part because of the flexible approach to quantity and the ability of a judge to place a case on the borderline between categories where (for example) they are balancing culpability factors from both significant and lesser role categories. Where sentencers were going outside the range, this was clearly based on either a very large quantity of drugs justifying a very high sentence, or a very low culpability justifying a lower level of sentence than that indicated by the range in the guideline.

3.6 Evidence does not therefore suggest that changes to the sentence levels for the importation offences are needed, and I therefore propose to keep them as they are in the current guideline. The exception to this is the way in which sentence levels are given for Category 4 harm cases, those involving a very small quantity of drugs. The current guideline states that these should be dealt with using the possession guideline. When considering the possession guideline, we found that magistrates are often confused by reference to importation within the possession guideline and you decided to remove the reference from the possession guideline and change the wording in the importation guideline. In the digital version of the guideline, the

references to the possession or supply guideline (in bold below) would be linked directly to those guidelines. I have therefore redrafted the category 4 sections of the table as follows:

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, depending on intent, and consider the importation as an aggravating factor.

Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.

Question 1: Does the Council agree to retaining the sentence levels given in the current guideline for importation offences under the MDA?

Question 2: Does the Council agree to the changes to the sections of the tables relating to category 4 harm, set out above?

Supply/PWITS offences (Misuse of Drugs Act 1971) – Annex B

3.7 The current sentence level tables for these offences are as follows:

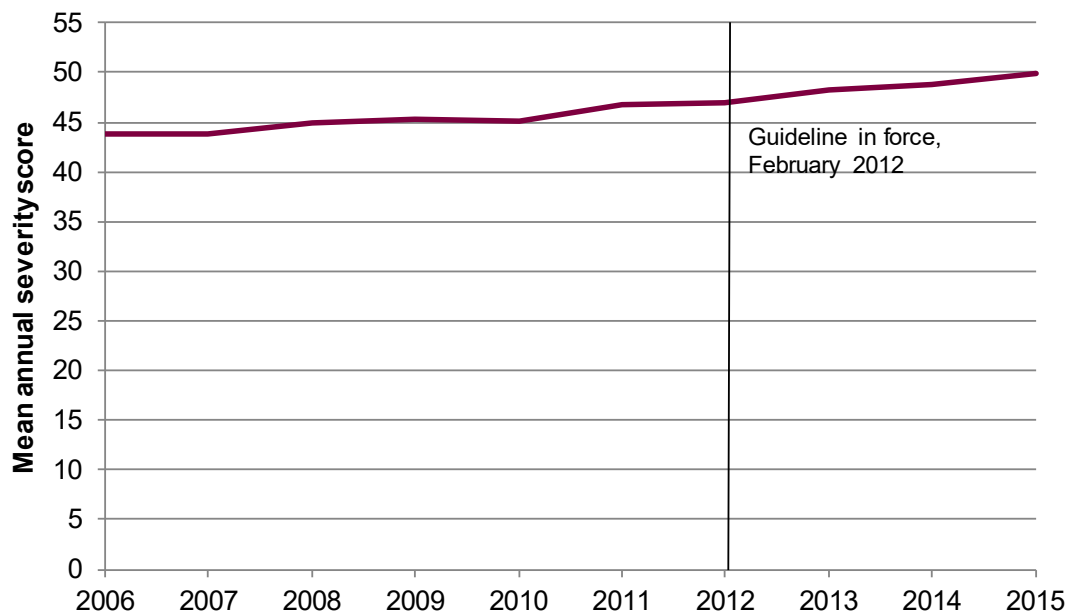
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years' custody Category range 12 – 16 years' custody	Starting point 10 years' custody Category range 9 – 12 years' custody	Starting point 7 years' custody Category range 6 – 9 years' custody
Category 2	Starting point 11 years'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

3.8 The evaluation indicated that for supply/PWITS Class A, there was a small but nevertheless statistically significant change in the sentencing severity trend a short while after the guideline was introduced.

Figure 1: Sentencing severity for supply and possession with intent to supply class A, across Crown and magistrates' courts, 2006 to 2015



3.9 This trend may be connected with the expansion of SSOs in LASPO 2012, which came into force around the same time as the current guideline; the evaluation showed an increase in the use of SSOs and decrease in use of Community Orders. However, there was also an increase in average custodial sentence lengths, something which should not be affected by the change to SSOs. Analysis of the Crown Court Sentencing Survey data suggests that the guideline may have had an unintended impact on sentencing practice, perhaps caused by the introduction in the guideline of a clear distinction between sentencing for Class A and Class B drugs. However, some of the increase in severity may have been caused by the offences before the courts actually becoming more serious; CCSS analysis of cases in 2013 and 2014 showed an increase in the proportion of cases classified as “significant” role and a corresponding reduction in the proportion of cases classed as “lesser” role.

3.10 Analysis of the 2016 and 2017 data (analysed since the evaluation), however, shows that sentencing severity for supply offences has remained stable since 2015. For PWITS offences, severity has continued to increase slightly.

3.11 Similar factors as described above may be in play in relation to supply/PWITS Class B offences, where there was an initial drop in sentencing severity when the guideline came into force, caused perhaps by the introduction of the clear distinction between classes A and B. Thereafter, there was a slight increase in sentencing severity, perhaps related to the introduction of SSOs (which may have more impact

on Class B offences for which sentences are more likely to be suspended) and change in the actual seriousness of offences.

3.12 Analysis of more recent sentencing data shows that the trend of increasing sentence severity for supply Class B continued up until 2016, and has since remained stable. For PWITS, which is by far the larger number of offences, severity has remained relatively stable since 2015. Overall, therefore, severity for these offences has remained fairly constant in the last two years.

3.13 Given the above analysis, I had not thought that any change to sentence levels in the supply/PWITS guidelines would be necessary. However, we should consider the changes already suggested to the culpability factors and whether these risk affecting sentence levels, and, if so, whether you wish to change the levels in the tables to maintain current sentence levels overall. I have considered where factors added to the “Leading” role category (see Annex B) may potentially lead to additional cases being placed in this category and receiving higher sentences than they currently receive. This risk could be mitigated by reducing the starting point and/or range for Leading role cases, but this could then reduce sentences for all cases in these categories, not just those additionally placed here. I have therefore concluded that we should not make any changes for these reasons.

3.14 Analysis of transcripts of supply, conspiracy to supply and PWITS cases does not show that judges are having difficulties in using the sentence levels given in the current guideline, or finding themselves having to go outside the given ranges other than when there is a very large quantity of drugs, or particularly high culpability factors, such as the offender being a police officer stealing confiscated drugs to sell on.

3.15 Reviewing all the evidence we have, I do not believe there is a need to make changes to the levels in the current guideline.

Question 3: Is the Council content to retain the sentence levels in the current guideline for the supply and PWITS offences?

Production/cultivation offences (Misuse of Drugs Act 1971) – Annex C

3.16 Volumes of the production offences for Classes A and C drugs are lower than those of the supply offences, making analysis more difficult. Volumes of Class B production/cultivation are high, however, with most offences being cannabis cultivation. For these offences, the evaluation showed that sentencing severity

appeared to stabilise following the introduction of the guideline, and remained flat between 2012 and 2015. This appeared to be because more cases were falling into the lower harm categories than had been expected. Analysis of 2016 and 2017 data shows that this overall trend has continued, though there has been a slight increase in severity in 2017.

3.17 We have not spoken to magistrates and judges about the cultivation offences, so have no additional information on any concerns about the sentence level tables in the current guideline.

3.18 As with other offences, analysis of transcripts has not shown any significant concerns with current levels in the tables at step 2. Sentencers seemed to use the tables as intended, moving between categories where necessary, or outside them in cases with, for example, particularly large numbers of cannabis plants, or particularly low level of role.

3.19 Given the above evidence, I am not proposing to change the sentence levels within the current guideline for the production/cultivation offences.

Question 4: Is the Council content to retain the sentence levels in the current guideline for the production and cultivation offences?

Permitting premises to be used for drug-related activity - Annex D

3.20 The current sentence level tables for this offence, put into the standard format as agreed at the November meeting, are as follows:

Class A	Culpability A	Culpability 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	Culpability A	Culpability 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	Culpability A	Culpability B
	<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>

3.21 These offences are very low volume (only around 260 offenders were sentenced in 2017 across all classes) which makes analysis of sentencing data difficult. The evaluation and consideration of more recent data on these offences suggests that mean sentencing severity fell on the introduction of the guideline, which is likely to be caused by the guideline narrowing the range of sentences given for an uncommon offence for which sentencing severity was previously widely dispersed. Since then, sentencing severity has remained fairly stable for class B, although there has been a very small increase in 2017 for class A.

3.22 In November, you agreed that, especially as the introduction of this guideline appears to have narrowed the range of sentences across this offence, you wished to revise the guideline as little as possible, so as to maintain this trend rather than disrupt it. Analysis of transcripts does not suggest that judges in the Crown Court are experiencing any difficulties with current sentencing starting points or ranges.

3.23 In the absence of evidence that current sentence levels in the guideline are causing problems, I am therefore proposing to retain current sentence levels as in the table above.

Question 5: Is the Council content to retain the starting points and ranges in the current guideline for these offences?

3.24 At the November meeting, you agreed to make some changes to the quantities given in the Harm table, removing reference to specific quantities, and instead referring to categories in the supply/PWITS offences. We have therefore made some changes to the Harm table, as follows:

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	
Category 1	<ul style="list-style-type: none"> • Regular drug-related activity <u>Premises used for drug activity over a long duration</u> • Higher quantity of drugs, <u>amounting to category 3 and above [link to supply guideline]</u> for example: <ul style="list-style-type: none"> • Heroin, cocaine – more than 5g • Cannabis – more than 50g
Category 2	<ul style="list-style-type: none"> • Infrequent drug-related activity <u>Premises used for drug activity over a short duration</u> • Lower quantity of drugs, <u>amounting to category 4 [link to supply guideline]</u> for example <ul style="list-style-type: none"> • Heroin, cocaine – up to 5g • Cannabis – up to 50g

Question 6: Does the Council agree with the changes to wording of harm factors relating to quantity in the above table?

Psychoactive Substances Act 2016 (PSA) offences – Annex E

3.25 In April you agreed the culpability and harm factors for offences under the PSA. Setting appropriate starting points and ranges for these offences is difficult, as there are few cases and the range of potential substances is broad. We have reviewed existing sentencing data for these offences since they came into force in 2016, and have considered transcripts for some of these cases. The statutory maximum penalty for the production/cultivation, supply/PWITS and importation offences is 7 years, half that of the equivalent drug offences. Nevertheless, the sentence level tables for drug offences help to suggest starting points and ranges for these offences.

3.26 Transcripts also suggest that judges are using starting points and ranges set out in the current Drug Offences guideline to frame their thinking when sentencing the equivalent psychoactive substances offences, but taking into account the lower

statutory maximum. This is leading to sentences somewhat similar to those for equivalent class C offences, though slightly lower.

3.27 In keeping with the approach taken to the equivalent MDA offences, I propose setting the same starting points and ranges for all of the importation/exportation, supply/PWITS and production offences, given the common statutory maximum (seven years). With the low number of offences currently having been sentenced, and the variation in types of substance, any starting points and ranges are likely to be somewhat arbitrary.

3.28 As sentence levels for the PSA importation, supply and production offences are similar to those for equivalent Class C drug offences, I initially considered using the lower sections of the Class C drug offences sentencing tables for the PSA offences. However, there are some differences in the current sentence levels, particularly for custodial sentence lengths, which suggest that some elements of the Class C table would risk increasing sentences. In particular, Class C offences more frequently receive a sentence of around 18 months, whereas sentences of 12 months are more common for the PSA offences. I therefore suggest that for the PSA offences, we consult on starting points and ranges which are, at the upper end, slightly lower than those for Class C offences, giving the following sentence level table:

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 12 months' custody Category range 9 months' – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 2	Starting point 12 months' custody Category range 9 months' – 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 3	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

Question 7: Are you content to consult on the above starting points and ranges for these PSA offences? Are you content to consult on the same starting

points and ranges across the importation/exportation, supply/offer to supply/PWITS and production offences under the PSA?

Quantities – MDMA and synthetic cannabinoid receptor agonists

3.29 At the April meeting you discussed approach to quantities, and there were several outstanding questions, including those relating to quantities of MDMA/ecstasy and synthetic cannabinoid receptor agonists (SCRAs). We have now had some additional information on these from experts at the National Crime Agency which helps to suggest quantities we can use in the Harm tables for the main MDA offences. On MDMA, you decided to include both numbers of ecstasy tablets and weights of MDMA in the table. Your approach is supported by the evidence from the NCA, who say that it is very difficult to equate the two, not only because of wide variation in the purity of ecstasy tablets (in terms of quantity of MDMA per tablet) but also because the two operate in separate markets. It is not the case that MDMA powder is imported in order to be made into tablets in the UK; instead, it is sold in powder or crystal form to the end users, or even sometimes in a tablet form but not known or marketed as “ecstasy” (and may be “cut” with different adulterants). The NCA suggest that MDMA in its powder or crystal form should be treated as any other Class A drug, and the weights given should be those of cocaine and heroin. This also has the advantage of simplicity, for us and for the courts. For ecstasy tablets, as discussed at your April meeting, I propose to retain the current quantities.

Question 8: Do you agree to consulting on using the same weights of MDMA as are used for cocaine and heroin, and retaining the current quantities of ecstasy tablets?

3.30 On SCRAs, the picture is less clear. The NCA state that giving a standard weight to use in a guideline is going to be very difficult, because of the variety of ways in which the drugs can be produced and sold. The drug is normally imported/produced as a powder, which is then dissolved and then sprayed onto a carrier substance, which could be herbal matter, paper or something else, which can then be smoked. Not only can the initial dilution vary, but the amount of herbal matter/paper covered by the given quantity of solution also varies. Given this uncertainty, there are two options:

- a) Do not provide weights, but use the approach to quantities which you agreed for Psychoactive Substances Offences 2016, describing quantities as “Large quantity indicative of commercial scale operation”, “Supply directly to users” and “Very small quantity”.

- b) Consult on some suggested quantities, perhaps fixing them between those for cannabis and those for ketamine, also a Class B drug. These levels are arbitrary, and may not be those which will most assist sentencers, but would give us something to work with. The indicative quantities could be as follows:

Category 1	100kg
Category 2	20kg
Category 3	1kg
Category 4	50g

3.31 At this consultation stage, I propose to take the latter approach, suggesting quantities and seeking respondents' views on how appropriate those quantities are. If this does not lead to clear information on which to base the definitive guideline for SCRA's, we can revert to the approach taken for psychoactive substances, but at least consulting on it gives us a chance to gather additional views and information on how this might work in practice.

Question 9: Does the Council agree to consulting on proposed quantities as set out under option b) above?

4. IMPACT AND RISKS

4.1 Some of the changes proposed above may have resource impacts and risks. A resource assessment will be carried out prior to consultation, including some analysis of 2018 sentencing data which will become available in late May. Further information will be available to the Council when these guidelines are signed off for consultation.

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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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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 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>	<p>Selling directly to users OR Supply of drugs in prison OR</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

	<ul style="list-style-type: none"> • MDMA – <u>5g</u> • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists – <u>50g</u> <p>Note – where the offence is selling directly to users or supply in prison the starting point is not based on quantity – go to category 3</p>
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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
- 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

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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 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
- 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.

<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>

Category 4	<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>
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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 4 years 6 months' – 7 years 6 months' custody	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range High level community order – 3 years' 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 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 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 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**.

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.

A - Higher culpability:

- 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

B – Lower culpability

- Permits use for limited or no financial gain
- No active role in drug activity taking place
- Involved due to ~~pressure~~, intimidation or coercion ~~falling just short of duress~~
- Offender’s vulnerability has been exploited

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

Category 1

- ~~Regular drug-related activity~~ Premises used for drug activity over a long duration
- Higher quantity of drugs, ~~for example~~ amounting to category 3 and above (link to supply guideline)
 - ~~Heroin, cocaine – more than 5g~~
 - ~~Cannabis – more than 50g/100g or 9 plants~~

Category 2

- ~~Infrequent drug-related activity~~ Premises used for drug activity over a short duration
- Lower quantity of drugs, ~~for example~~ amounting to category 4 (link to supply guideline)
 - ~~Heroin, cocaine – up to 5g~~
 - ~~Cannabis – up to 50g/100g or 9 plants~~

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)

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 3 years' custody Category range 2 – 5 years' custody	Starting point 12 months' custody Category range 9 months' – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 2	Starting point 12 months' custody Category range 9 months' – 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 3	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
- 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