

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(20)DEC03 – Drugs revised guidelines
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1 ISSUE

1.1 This is the final consideration of the revised drugs guidelines with the aim of signing them off at this meeting and publishing them in January. This paper focuses on the disparities in sentencing in this area and what steps the Council might take to ensure the guidelines do not exacerbate or contribute to any disparity. In addition, the paper includes some final proposals for change as a result of some comments from MoJ.

1.2 The consultation version of the guidelines can be seen here:

<https://www.sentencingcouncil.org.uk/publications/item/drug-offences-consultation/>

2 RECOMMENDATION

2.1 That the Council consider the proposals set out below.

3 CONSIDERATION

3.1 At the October Council meeting a number of proposals were discussed and it was agreed that a working group would be set up to finalise the detail of any changes and bring the agreed wording back to the full Council. This working group has now met, and the following proposals are made.

Remorse

3.2 A number of respondents to the consultation indicated that the mitigating factor 'remorse' can be problematic due to the subjective way in which remorse is determined. The Council discussed this in October and agreed to amend the current expanded explanation and agreed with the essence of the proposal put forward:

Remorse can present itself in many different ways. A simple assertion of the fact may be insufficient, and the offender's demeanour in court could be misleading, due to nervousness, a lack of understanding of the system, a belief that they will be discriminated against, peer

pressure to behave in a certain way because of others present, a lack of maturity etc. Remorse may be best demonstrated within a Pre-Sentence Report where a professional has had an opportunity to engage with the offender in a less formal setting.

3.3 However, some members were unsure about the wording in particular the inclusion of the phrase, 'a belief that they will be discriminated against'. That phrase has been used in the Children and Young People overarching guideline, although in a different context. In that guideline we used it as an explanation for why a child or young person may conduct themselves inappropriately in court:

The court should consider the reasons why, on some occasions, a child or young person may conduct themselves inappropriately in court (e.g. due to nervousness, a lack of understanding of the system, a belief that they will be discriminated against, peer pressure to behave in a certain way because of others present, a lack of maturity etc) and take this into account.

3.4 The working group discussed the text and decided upon the following revised wording:

The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to reduce the sentence (separate from any guilty plea reduction). Lack of remorse should never be treated as an aggravating factor.

Remorse can present itself in many different ways. A simple assertion of the fact may be insufficient, and the offender's demeanour in court could be misleading, due to nervousness, a lack of understanding of the system, a belief that they have been or will be discriminated against, peer pressure to behave in a certain way because of others present, a lack of maturity etc. A PSR may provide valuable assistance to the court in this regard.

Question 1: Does the Council agree to this expanded explanation for the mitigating factor 'remorse'?

3.5 If the Council does agree it is proposed that this expanded explanation would apply to all guidelines with a mitigating factor of 'remorse'. To have a separate and distinct expanded explanation for drugs might cause confusion and would go against the policy we have so far adopted.

Question 2: Does the Council agree that this expanded explanation will apply to all guidelines with a mitigating factor of 'remorse'?

Additional text highlighting the research

3.6 As the Council will be aware, we have very detailed research published at the same time as the consultation, which looks at sentencing for the offences of Supply and PWITs in the Crown Court between the years 2012 to 2015 and shows sentencing disparities based on race and gender. In addition to this work the Analysis and Research team are now producing analysis for the other guideline offences. It should be noted that this further analysis will be different to the detailed published analysis which was able to control for certain factors. This analysis will look at all of the drug guideline offences covering both the Magistrates Court and Crown Court for the year 2019 but will not control for any factors.

3.7 All Sentencing Council guidelines contain the following reference to the Equal Treatment Bench Book (ETBB):

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

3.8 Respondents have commented that a more specific reference to the relevant sections of the Bench Book would be helpful given that it is so lengthy. We are currently exploring whether this might be possible in the future. It seems that the Judicial College now have a version of the ETBB on the members part of their website where it is possible to link directly to specific sections. Unfortunately, this same version is not available to non-members. However, we will continue to work to see if this can be resolved.

3.9 In addition to this reference at the outset of the guidelines it is proposed that a tailored reference to the evidence of disparities in sentencing should be placed above the sentencing table within each guideline. The Council has already agreed to this approach for Firearms offences.

3.10 This is the proposed wording for the MDA supply guideline:

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Asian offenders receive an immediate custodial sentence than White offenders and that for Asian offenders custodial sentence lengths have on average been longer than for White offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

3.11 This is the proposed wording for the MDA possession guideline:

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders custodial sentence lengths have on average been longer than for White offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

3.12 The wording for the remaining guidelines will be determined by the analysis that is ongoing. For some offences there may be no evidence of disparity in which case the guideline will be silent.

Question 3: Does the Council agree to the inclusion of relevant text above the sentencing table?

Further changes to address sentencing disparities

3.13 In October the Council was asked to consider other changes to the guidelines to address concerns around disparities. These changes included additional mitigating factors reflecting the fact that some offenders offend due to issues such as poor education, lack of employment opportunities, deprivation, lack of positive role models etc. During the working group discussion, the members concluded that such considerations go beyond the drugs guidelines and would be relevant to almost all guidelines we produce. There was also a concern that adding such factors would be quite a significant change from the types of factors we currently include, and that these proposals have not been subject to consultation. For these reasons it was proposed that we reconsider these ideas as part of our wider work on preventing discrimination.

Question 4: Does the Council agree that any further ideas to address the disparities in sentencing should be dealt with as part of a wider project, looking at all guidelines?

Further Proposed Guideline Changes

3.14 We have received some comments from the Prison Safety, Security and Operational Policy Division at MoJ which include some helpful proposals.

3.15 The first, concerns the factor, 'Involving an innocent agent in the commission of the offence'. This is an aggravating factor that we have only included within the importation guidelines (both MDA and PSA), however MoJ propose that this could be just as relevant in supply offences:

... a criminal could secretly stash psychoactive substances into a scheduled delivery of food or materials into a prison – the driver of the van could be the innocent party. Legitimate deliveries into prison are unfortunately subverted for the purposes of drug supply.

Question 5: Does the Council agree that this factor should be included in the supply guidelines?

3.16 The second issue concerns the aggravating factor “Offending took place in prison (unless already taken into consideration at step 1)” which appears within the supply, production and possession guidelines. The MoJ question why it is not also an aggravating factor to be the person who is supplying (or orchestrating the supply) from outside of prison, into prison.

I understand that the fact that the person is a prisoner is important but so is the fact that the criminal activity is undermining safety, security, regime and rehabilitation of prisons – and you don’t have to be a prisoner to cause those harms. We have had cases where people have set up the large-scale manufacture of paper soaked in psychoactive substances to supply drugs into multiple prisons from private residences.

Question 6: Does the Council want to include an additional aggravating factor (within the supply guidelines only), such as ‘offender was supplying or involved in the supply of drugs into prison’.

4 NEXT STEPS

4.1 At Annex A the Council can see all of the guidelines with the changes made. The consultation document will now be completed and will be circulated by email at the start of the new year. The aim is to publish on 27 January and the guidelines will be in force on 1 April.

Question 7: Is the Council content to sign off these guidelines?

5 IMPACT AND RISKS

5.1 The resource assessment is attached to this paper at Annex B. Members of the Analysis and Research team will be present at the meeting to address any questions that Council members may have.

Question 8: Is the Council content to sign off the Resource Assessment?

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Misuse of Drugs Act Guidelines

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))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: Band A fine – 16 years' custody

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Discharge – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Discharge – 8 years' custody

This offence is subject to statutory minimum sentencing provisions.

See **STEP THREE** for further details.

STEP ONE

Determine the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference only to the factors listed in 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, or where the level of the offender's role is affected by the scale of the operation, 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

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, grooming and/ or control
- Involvement through naivety, immaturity or 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)

Harm

In assessing harm, quantity is determined by the weight of the product.

Category of harm

Indicative quantities of some common drugs, upon which the starting point is to be based, are given in the table below. Where a drug (such as fentanyl or its agonists) 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.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 7,000 tablets* • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) –very large quantity indicative of an industrial scale operation
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 1,300 tablets* • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) – large quantity indicative of a commercial operation
Category 3	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy –200_tablets* • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – smaller quantity between categories 2 and 4
Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g

	<ul style="list-style-type: none"> • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet¹

STEP TWO			
Starting point and category range			
<p>Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.</p> <p>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.</p> <p>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.</p>			
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 3 years’ custody Category range 18 months’ – 5 years’ custody
Category 4	Starting point 5 years’ custody Category range 4 years 6 months’ – 7 years 6 months’ custody	Starting point 3 years’ custody Category range 18 months’ – 5 years’ custody	Starting point Low level community order Category range Band A fine – 18 months’ custody

¹ NB. In the earlier guidelines, published in 2012, ecstasy tablet quantities were based on a typical quantity of 100mg MDMA per tablet

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 9 months' custody Category range 12 weeks' – 18 months' 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 – 9 months' custody	Starting point Band C fine Category range Discharge – 26 weeks' custody

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 - 26 weeks' custody
Category 4	Starting point 9 months' custody Category range High level community order – 2 years' custody	Starting point High level community order Category range Medium level community order – 12 weeks' custody	Starting point Band B fine Category range Discharge – high level community order

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.

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
- Offence committed on bail

Other aggravating factors:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Involving an innocent agent in the commission of the offence
- Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration 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
- Use of sophisticated methods or technologies in order to avoid or impede detection
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

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.
- Importation only of drug to which offender addicted and quantity consistent with personal use
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- 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

STEP THREE **Minimum Terms**

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years 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.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

STEP FOUR

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is on or after 1 June 2017, or first hearing before 1 June 2017).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See Totality guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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 5(3))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band B fine – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band A – 8 years' custody

This offence is subject to statutory minimum sentencing provisions.

See **STEP THREE** for further details.

STEP ONE

Determine 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, **or where the level of the offender's role is affected by the scale of the operation**, 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 demonstrated 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

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, grooming and/ or control
- Involvement through naivety, immaturity or 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)

Harm

In assessing harm, quantity is determined by the weight of the product. Where the offence is supply directly to users (including street dealing or supply in custodial institutions), 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 given in the table below. Where a drug (such as fentanyl or its agonists) 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.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 7,000 tablets* • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very large quantity indicative of an industrial scale operation
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 1,300 tablets* • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) – large quantity indicative of a commercial operation
Category 3	<p>Selling directly to users</p> <p>OR</p> <p>Supply of drugs in a custodial institution</p> <p>OR</p> <ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 200 tablets* • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – smaller quantity between categories 2 and 4

Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity <p>Note – where the offence is selling directly to users or supply in a custodial institution the starting point is not based on quantity – go to category 3</p>
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet²

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Asian offenders receive an immediate custodial sentence than White offenders and that for Asian offenders custodial sentence lengths have on average been longer than for White offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

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	Starting point	Starting point

² NB. In the earlier guidelines, published in 2012, ecstasy tablet quantities were based on a typical quantity of 100mg MDMA per tablet

	8 years 6 months' custody Category range 6 years 6 months' – 10 years' custody	4 years 6 months' custody Category range 3 years 6 months' – 7 years' custody	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

*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 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

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 and 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.

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 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:

- 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
- Involving an innocent agent in the commission of the offence
- Offender was supplying or involved in the supply of drugs into prison
- 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 over and above that expected by the user, for example, through the method of production or subsequent adulteration 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
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offending took place in prison (unless already taken into consideration at step 1)
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to 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
- 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

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years 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.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

STEP FOUR

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Production of a controlled drug

Class A

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band B fine – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Discharge – 8 years' custody

Cultivation of cannabis plant

Maximum: 14 years' custody

Offence range: Band A fine – 8 years' custody

This offence is subject to statutory minimum sentencing provisions.

See **STEP THREE** for further details.

STEP ONE

Determine 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, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising production/cultivation on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

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, grooming and/ or control
- Involvement through naivety, immaturity or 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 advantage, (including meeting the offender's own habit)
-

Harm

In assessing harm, output or potential output are determined by the weight of the product or number of plants/scale of operation.

Indicative output or potential output, upon which the starting point is to be based, is given in the table below. Where a drug (such as fentanyl or its agonists) 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.

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

Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 7 plants** • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet³

**with an assumed yield of 55g per plant

STEP TWO			
Starting point and category range			
<p>Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.</p> <p>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.</p>			
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	Starting point	Starting point 18 months’ custody

³ NB. In the earlier guidelines, published in 2012, ecstasy tablet quantities were based on a typical quantity of 100mg MDMA per tablet

	5 years 6 months' custody Category range 4 years 6 months' – 7 years 6 months' custody	3 years 6 months' custody Category range 2 – 5 years' custody	Category range High level community order – 3 years' custody
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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

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 and 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.

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:

- 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
- 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 over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug

- Exposure of those involved in drug production/cultivation to the risk of serious harm, for example through method of production/cultivation
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offending took place in prison (unless already taken into consideration at step 1)
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to 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
- 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

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years 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.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between

offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

STEP FOUR

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Permitting premises to be used

Misuse of Drugs Act 1971 (section 8)

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: 14 years' custody

Offence range: Low level community order – 4 years' custody

Class B

Maximum: 14 years' custody

Offence range: Band A fine – 18 months' custody

Class C

Maximum: 14 years' custody

Offence range: Discharge – 26 weeks' custody

This offence is subject to statutory minimum sentencing provisions.

See STEP THREE for further details.

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 intimidation or coercion
- 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 and/or premises used for drug activity over a long period
- Higher quantity of drugs (substantially higher than the quantities given for Category 2)

Category 2

- Infrequent drug-related activity and/or premises used for drug activity over a short period
- Lower quantity of drugs

[Drop-down box] Indicative quantities

	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example 'spice') – very small quantity
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STEP TWO**Starting point and category range**

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.

CLASS A	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	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>Starting point Band C fine</p>

	Category range Low level community order - 26 weeks' custody	Category range Band A fine - low level community order
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CLASS C	CULPABILITY	
	A	B
HARM 1	Starting point 12 weeks' custody Category range High level community order – 26 weeks' custody*	Starting point Low level community order Category range Band C fine - high level community order
HARM 2	Starting point Low level community order Category range Band C fine - high level community order	Starting point Band A fine Category range Discharge - low level community order

*When tried summarily, the maximum penalty is 12 weeks' custody.

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.

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.

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 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
- 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
- Involved due to naivety
- Isolated incident
- 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)

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years 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.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;

- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

STEP FOUR

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Possession of a controlled drug

Misuse of Drugs Act 1971 (section 5(2))

Triable either way

Class A

Maximum: 7 years' custody

Offence range: Fine – 51 weeks' custody

Class B

Maximum: 5 years' custody

Offence range: Discharge – 26 weeks' custody

Class C

Maximum: 2 years' custody

Offence range: Discharge – Medium community order

STEP ONE
Determining the offence category

The court should identify the offence category based on the class of drug involved.

Category 1	Class A drug
Category 2	Class B drug
Category 3	Class C drug

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders custodial sentence lengths have on average been longer than for White offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

Offence category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1 (class A)	Band C fine	Band A fine – 51 weeks’ custody
Category 2 (class B)	Band B fine	Discharge – 26 weeks’ custody*
Category 3 (class C)	Band A fine	Discharge – medium level community order

*NB where dealt with in the magistrates’ court the maximum is 3 months

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 may be a proper alternative to a custodial sentence.

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 particular, possession of drugs in prison is likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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
- Offence committed on bail

Other aggravating factors

- Possession of drug in prison
- Presence of others, especially children and/or non-users
- Possession of drug in a school or licensed premises
- Large quantity*
- Failure to comply with current court orders
- Offence committed on licence
- Attempts to conceal or dispose of evidence, where not charged separately
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Small quantity*
- Offender is using cannabis to help with a diagnosed medical condition
- 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 where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

*The court should bear in mind that different types of drug have different levels of potency and therefore the relevance of high or low quantity will depend on the drug concerned.

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SIX

Ancillary orders

In all cases, the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Psychoactive Substance Guidelines

Importing or exporting a psychoactive substance

Psychoactive Substances Act 2016 (section 8)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years' custody

STEP ONE**Determine 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, **or where the level of the offender's role is affected by the scale of the operation**, 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

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, grooming and/ or control
- Involvement through naivety, immaturity or 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)

Harm	
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.	
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
Category 2	<ul style="list-style-type: none"> • Quantity indicative of smaller-scale commercial operation
Category 3	<ul style="list-style-type: none"> • Very small quantity

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Band B fine Category range Discharge – high level community order

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.

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:

- Exploitation of children and/or vulnerable persons to assist in the offending
- Involving an innocent agent in the commission of the offence
- 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 over and above that expected by the user, for example, through the method of production or subsequent adulteration 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 weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Use of sophisticated methods or technologies in order to 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.
- Importation only of psychoactive substance to which offender addicted and of quantity consistent with personal use
- Mistaken belief of the offender regarding the type of substance, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- 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

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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))

Maximum: 7 years' custody
Offence range: Band B Fine – 6 years' custody

STEP ONE

Determine 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, **or where the level of the offender's role is affected by the scale of the operation**, 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

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, grooming and/or control
- Involvement through naivety, immaturity or 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)

Harm	
<p><i>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></p> <p>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.</p>	
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

Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

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

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.

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:

- 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
- 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 over and above that expected by the user, for example, through the method of production or subsequent adulteration 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
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offending took place in prison (unless already taken into consideration at step 1)
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to 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
- 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

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Producing a psychoactive substance

Psychoactive Substances Act 2016 (section 4)

Triable either way

Maximum: 7 years' custody

Offence range: Band B Fine – 6 years' custody

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, **or where the level of the offender's role is affected by the scale of the operation**, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising production 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

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, grooming and/ or control
- Involvement through naivety, immaturity or 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)

Harm

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.

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 industrial scale operation
Category 2	<ul style="list-style-type: none"> Quantity indicative of smaller-scale commercial operation
Category 3	<ul style="list-style-type: none"> Very small quantity

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point 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 or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

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.

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:

- 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
- 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 psychoactive substance user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the substance
- Exposure of those involved in producing the psychoactive substances to the risk of serious harm, for example through method of production
- 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
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offending took place in prison (unless already taken into consideration at step 1)
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to 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
- 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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See [Totality](#) guideline.

STEP SIX**Ancillary orders**

In all cases, the court should consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Final Resource Assessment

Drug Offences

Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In February 2012, the Sentencing Council's definitive *Drug Offences* guideline came into force. An assessment of the guideline published in June 2018² found that the nature of drug offending had changed since the guideline came into force, with the research suggesting that some drug offending was becoming more serious. The Council therefore decided to revise the existing guideline, to ensure that it fully reflects the type of offending currently coming before the courts.

In addition, in May 2016 a number of new offences were created under the Psychoactive Substances Act 2016, for which no current guideline exists.

The Council has now produced sentencing guidelines covering these new offences, along with revised guidelines for all of the offences covered by the existing guideline, for use in all courts in England and Wales.

The Council's aim in developing the guidelines has been to ensure that sentencing for these offences is proportionate to the offence committed and to promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² <https://www.sentencingcouncil.org.uk/publications/item/drug-offences-assessment-of-guideline/>

This resource assessment covers the following offences³:

- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug, Misuse of Drugs Act 1971 (section 3) and Customs and Excise Management Act 1979 (section 170(2));
- 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 5(3));
- 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));
- Possession of a controlled drug, Misuse of Drugs Act 1971 (section 5(2));
- Permitting premises to be used, Misuse of Drugs Act 1971 (section 8);
- Importing or exporting a psychoactive substance, Psychoactive Substances Act 2016 (section 8);
- 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));
- Producing a psychoactive substance, Psychoactive Substances Act 2016 (section 4).

The *Drug Offences* guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the revised guidelines will encourage consistency of sentencing and in the majority of cases will not change overall sentencing practice. In order to develop guidelines that maintain current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks, sentencing data from the Court Proceedings Database, findings from the *Drug Offences* guideline assessment⁴, and references to case law and news articles. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Research was conducted with sentencers to explore whether the guidelines will work as anticipated. This research provided some further understanding of the likely

³ The Sentencing Council consulted on a draft guideline for 'Possession of a psychoactive substance in a custodial institution' (Psychoactive Substances Act 2016 – Section 9) and so this was included in the draft resource assessment. However, the Council decided not to include this offence in the definitive guidelines due to low volumes and therefore, it is not included in the final resource assessment.

⁴ <https://www.sentencingcouncil.org.uk/publications/item/drug-offences-assessment-of-guideline/>

impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for drug offences covered by the guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/publications/item/drug-offences-statistical-bulletin/>

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug (“importation offences”)⁵

The statutory maximum sentence for these offences is life imprisonment for class A and 14 years’ custody for classes B and C. In 2019, around 240 offenders were sentenced for these offences.^{6,7} Nearly three quarters of offenders (71 per cent) were sentenced for class A offences, 24 per cent for class B, and 5 per cent for class C.

In 2019, the vast majority of offenders sentenced for class A offences were sentenced to immediate custody (96 per cent). The average (mean) custodial sentence length (ACSL) for those sentenced to immediate custody was 8 years 2 months, after any reduction for guilty plea.

For offenders sentenced for class B offences, 69% were sentenced to immediate custody in 2019 and a further 24 per cent received a suspended sentence order. The ACSL in 2019 was 3 years 6 months.

Sixty-four per cent of offenders sentenced for class C offences in 2019 were sentenced to immediate custody, and a further 36 per cent received a suspended sentence order. The ACSL in 2019 was 3 years 3 months.

Supplying or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another (“supply/PWITS”)

The statutory maximum sentence for class A offences is life imprisonment, and for classes B and C it is 14 years’ custody. Around 10,500 offenders were sentenced for these offences in 2019. The majority were sentenced for class A (71 per cent), followed by class B (28 per cent) and class C (one per cent).

⁵ The figures provided for fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug include other sections of legislation not specifically covered by the revised guideline, but for which the guideline could still be applied, such as sections 50(2), 170(1). In 2018, these other offences comprised 28 per cent of the total.

⁶ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

⁷ Cannabis was reclassified from class C to class B in January 2009, and ketamine was reclassified from class C to class B in June 2014. Figures shown here categorise cannabis and ketamine as per their legal drug classification. The figures for classes B and C may therefore differ from figures published by the MoJ, which are based on how drug offences were coded by the courts.

The vast majority of offenders sentenced for class A offences in 2019 received a custodial sentence, either immediate (82 per cent) or suspended (14 per cent). The ACSL for class A in 2019 was 4 years.

Just under half of offenders sentenced for class B offences in 2019 received a suspended sentence order (46 per cent). A further 29 per cent were sentenced to immediate custody, and 20 per cent received a community order. The ACSL in 2019 was 1 year 6 months.

The most common sentencing outcome in 2019 for class C offenders was a suspended sentence order (45 per cent), followed by immediate custody (25 per cent) and a community order (13 per cent). The ACSL for class C in 2019 was 1 year 2 months.

Production of a controlled drug/cultivation of cannabis plant (“production/cultivation offences”)

The statutory maximum sentence for production/cultivation offences is life imprisonment for class A, and 14 years’ custody for classes B and C. Around 2,100 offenders were sentenced for these offences in 2019, and the vast majority were sentenced for class B (12 offenders were sentenced for classes A and C combined).

For class B offences, 35 per cent of offenders in 2019 were sentenced to immediate custody. A further 21 per cent received a suspended sentence order, 20 per cent received a community order, and 16 per cent received a fine. The ACSL in 2019 for class B offences was 1 year 10 months.

Possession of a controlled drug

Possession of a controlled drug is the highest volume offence covered by the revised guideline, with around 23,000 offenders sentenced in 2019. Just under two thirds of offenders were sentenced for class B offences (63 per cent), around one third were sentenced for class A (35 per cent) and two per cent for class C.

Most offenders sentenced for class A offences in 2019 received a fine (63 per cent). A further 13 per cent received a discharge, and 10 per cent received a community order. Six per cent of offenders were sentenced to immediate custody, and the ACSL was three months.

The majority of offenders sentenced for class B offences in 2019 received either a fine or a discharge (59 per cent and 23 per cent, respectively). Three per cent of offenders were sentenced to immediate custody, and the ACSL was two months.

For class C offences, the most frequently used sentence outcome in 2019 was a discharge (37 per cent) and 35 per cent received a fine. Six per cent of offenders were sentenced to immediate custody, and the ACSL was three months.

Permitting premises to be used

In 2019 around 210 offenders were sentenced for permitting premises to be used. The majority were sentenced for class B (57 per cent), while 41 per cent were sentenced for class A, and one per cent for class C.

For class A offences, the most common sentencing outcome in 2019 was a suspended sentence order (40 per cent), followed by a community order (27 per cent) and immediate custody (20 per cent). The ACSL in 2019 was 17 months.

For class B offences, 40 per cent of offenders sentenced in 2019 received a community order, 28 per cent received a suspended sentence order and 13 per cent were 'otherwise dealt with'⁸. Four per cent of offenders were sentenced to immediate custody in 2019 (five offenders), and the ACSL in 2019 was five months.

Importing or exporting a psychoactive substance (“importation offences”)/supplying, or offering to supply, a psychoactive substance/possession of psychoactive substance with intent to supply (“supply/PWITS”)/producing a psychoactive substance (“production offences”)

There were around 50 offenders sentenced in 2019 for these offences; all of which were sentenced for supply/PWITS. No offenders were sentenced for production or importation in 2019.

Importation and production offences are very low volume. Since they came into force in May 2016, fewer than 10 offenders have been sentenced for these offences combined.

For supply/PWITS, 35 per cent of offenders received a community order in 2019, 33 per cent were sentenced to a suspended sentence, 15 per cent received a fine, 13 per cent were sentenced to immediate custody and four per cent received a discharge. The statutory maximum sentence for these offences is 7 years' custody, and in 2019 the ACSL for supply/PWITS was 12 months, for those who were sentenced to immediate custody.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the definitive guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the definitive guideline are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, the data available are limited. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed definitive guidelines, and an assessment of the

⁸ The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

effects of changes to the structure and wording of the guidelines where previous guidelines existed.

The resource impact of the definitive guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the guidelines are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance, evaluation evidence and data on current sentence levels has been considered.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm in the guidelines, due to a lack of data available regarding the seriousness of current cases. Analysis of transcripts of judges' sentencing remarks has helped to inform guideline development and the resource assessment by providing some details of the factors taken into account by sentencers. However, it has only been possible to analyse a sample of transcripts, and as transcripts are only available for offenders sentenced at the Crown Court there is less information about sentencing at magistrates' courts. Therefore, it is difficult to ascertain how sentence levels may change under the guidelines.

It remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, research interviews were undertaken with sentencers, to provide more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/crown-court/>.

Summary

The expected impact of each guideline is provided in detail below. Overall, the guidelines aim to improve consistency of sentencing, but not to change average sentencing practice.

For importation of a class A drug, there may be a decrease in sentences for offenders categorised as lesser role culpability and harm level 3, due to a reduction in the starting point sentence when compared with the existing guideline. It is estimated that this may lead to a need for around 10 fewer prison places per year.

For importation offences, supply/PWITS and production/cultivation offences, there have been some changes to the quantities provided in the revised guidelines (see section below for further details). These changes mean that it is possible the guidelines may have an impact on correctional resources (although it is not possible to quantify what this impact might be).

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug (“importation offences”), supplying or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another (“supply/PWITS”), production of a controlled drug/cultivation of cannabis plant (“production/cultivation offences”)

The revised guidelines for these offences are broadly similar to the existing guidelines. A number of changes have, however, been made in relation to the culpability factors listed in the guidelines,⁹ and wording around sentences over 20 years has been moved to a different position within the guidelines.

An analysis of transcripts of Crown Court judges’ sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. Based on this analysis of a sample of cases, most of the changes in the revised guidelines are not expected to result in an impact on prison and probation resources. However, there are two changes in the importation guideline which may lead to decreases in sentences for a small number of offenders, and there are some changes to the quantities of drugs specified within the categorisation of harm for all three guidelines (importation, supply/PWITS and production) which may also lead to changes. These are detailed separately below.

Changes specific to the guideline for importation offences

The existing guideline for importation offences contains wording in harm category 4, directing sentencers to either the possession or supply/PWITS guideline. The revised guideline for these offences has replaced this wording with sentence levels, which are broadly similar to the sentence levels in harm category 4 of the possession or supply/PWITS guideline.

While no recent data are available on the number of offenders that are categorised at each level of harm for this offence, data from the Crown Court Sentencing Survey (CCSS)¹⁰ from 2014 suggest that very few offenders are categorised at harm category 4. For the small number of offenders for whom data were available, sentences under the existing guideline were broadly similar to those that would be expected to be imposed under the revised guideline, with decreases for a very small number of offenders (fewer than five). It is therefore expected that this change would have at most a minimal impact on decreasing sentences for this offence, with a negligible impact on prison and probation resources.

The starting point sentence for an offender sentenced for importation of a class A drug, categorised as lesser role culpability and harm category 3 has been lowered in the revised guideline (from 4 years 6 months in the existing guideline to 3 years in the revised guideline). This change was found to lower sentence starting points in research interviews, a change met favourably by most Crown Court judges who took

⁹ For more details of these changes, please refer to the consultation response document, available here: <https://www.sentencingcouncil.org.uk/publications?s&cat=consultations>

¹⁰ During the period 1 October 2010 to 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see: <https://www.sentencingcouncil.org.uk/research-and-resources/data-collections/crowncourt-sentencing-survey/>

part. While no recent data are available on the number of offenders placed in this category, data from the CCSS from 2014 suggests that of adult offenders sentenced for importation class A, around 12 per cent were categorised as lesser role culpability and harm category 3. Assuming that approximately the same proportion would be categorised in the same way under the revised guideline, analysis suggests that the new guideline may lead to a reduction in the need for approximately 10 prison places per year.

A similar change has been made to the starting point for the same categories of culpability and harm (lesser role and harm category 3) for class B drugs, decreasing from 1 year in the existing guideline to 9 months under the revised guideline. Data from the CCSS from 2014 suggests that very few offenders are placed in this category, partly due to the lower volumes for this offence for class B drugs. Additionally, the data suggests that offenders placed in this category generally already receive sentences below the existing guideline's starting point. It is therefore unlikely that this change will have any impact on aggregate sentences for this offence, and so no impact on prison or probation resources is expected.

Ecstasy tablets

The current guideline for importation offences, supply/PWITS, and production/cultivation offences provides numbers of ecstasy tablets based on an average purity of 100mg of MDMA per tablet. Evidence from the Metropolitan Police and National Crime Agency suggests that the average purity has now increased to 150mg per tablet. The indicative numbers of ecstasy tablets in the revised guideline have therefore been adjusted accordingly.¹¹

It seems likely that changing the quantities of ecstasy tablets given in the guideline may result in an increase in sentences in some cases as, for example, in category 1 harm the indicative quantity has been lowered from 10,000 tablets to 7,000 tablets. However transcript analysis of Crown Court judges' sentencing remarks showed that on occasion sentencers adjusted the starting point due to the actual quantity of drugs in the case being slightly different to the indicative quantity in the guideline. This is corroborated by the findings from early research undertaken with a small number of Crown Court judges, which also found that sentencers use the indicative quantities and then adjust the starting point according to the quantities in the case.

As the new guideline takes account of the fact that the average purity is now higher (so no adjustments need to be made by sentencers), the net impact of revising these quantities may be small.¹²

MDMA

The revised guideline for importation offences, supply/PWITS and production/cultivation offences also includes quantities in grams/kilograms for MDMA

¹¹ For example, category 1 harm in the current guideline gives an indicative quantity of 10,000 ecstasy tablets (based on an average purity of 100mg per tablet). Given that average purity is now around 150mg per tablet (i.e. it has increased by a factor of 1.5), the revised guideline gives the quantity of 7,000 tablets in category 1 harm, as 10,000 tablets at a purity of 100mg roughly equates to 7,000 tablets at a purity of 150mg.

¹² The factor of "High purity" has been removed from the revised guideline.

(the current guideline does not include this).¹³ Analysis of sentencing transcripts found that in a small proportion of cases, the new MDMA weights given in the guideline might result in different categorisations or adjustments from the new indicative quantity starting points, but it is expected that any impact would be small.

Cannabis plants

In the current production/cultivation guideline, indicative numbers of cannabis plants are given based on the assumption that the average yield of a plant is 40g. Evidence has shown that over time, the average yield of a cannabis plant has increased and is now around 55g. Therefore, similarly to ecstasy tablets, the indicative numbers of cannabis plants indicated in the revised guideline have been adjusted.¹⁴

It therefore seems likely that, as with ecstasy tablets, changing the number of plants indicated in the guideline may result in an increase in sentences in some cases as, for example, in category 3 harm the indicative quantity has been lowered from 28 plants to 20 plants.

However, analysis of transcripts suggested that in some cases, sentencers adjusted the starting point according to the actual number of plants in the case. As the new guideline takes account of the fact that the average yield is now higher (so no adjustments need to be made by sentencers), the net impact of revising these quantities may be small.

Given the changes to indicative quantities for ecstasy tablets and cannabis plants, along with the additional indicative quantities for MDMA, it is possible that the revised guidelines for these offences may have an impact on correctional resources (although it is not possible to quantify what this impact might be).

Synthetic Cannabinoid Receptor Agonists (SCRAs)

Harm categorisation in the revised guidelines for importation offences, supply/PWITS, and production/cultivation offences now also includes descriptive factors for synthetic cannabinoid receptor agonists (SCRAs), also known by the street name 'spice'.¹⁵

Analysis of a small number of transcripts for SCRA offences found that information relating to weights or quantities was rarely mentioned. It therefore remains difficult to estimate whether the guideline will result in any changes to sentencing practice for these offences.

The lack of data available means it is not possible to say whether there will be an impact on prison and probation resources for SCRA offences. However, given that

¹³ Methylenedioxyamphetamine (MDMA) can be found in powder form, whereas ecstasy is often used to refer to MDMA in tablet or capsule form.

¹⁴ For example, category 4 harm in the current guideline gives an indicative quantity of 9 plants, and in the revised guideline this has been adjusted to 7 plants, as 9 plants with a yield of 40g each roughly equates to 7 plants with a yield of 55g each.

¹⁵ Quantities for SCRAs are also included within the permitting premises guideline. Details of this are covered within the 'Permitting premises' section below.

there is currently no guideline for these offences, it is likely that sentencing will become more consistent following the introduction of the guideline.

Possession of a controlled drug

The revised possession guideline is very similar to the existing guideline; both the structure of the guideline (where the offence category is determined by the class of drug) and the sentence levels have remained unchanged.

It is therefore not anticipated that this guideline will have an impact on prison and probation resources.

Permitting premises to be used

The revised guideline for permitting premises to be used contains two levels of culpability and two levels of harm (as per the existing guideline). The combination of these two components determines the appropriate offence category, in the form of a two by two sentencing table (for each class of drug). This differs from the existing guideline which contains three offence categories for each class of drug.

As with the importation offences, supply/PWITS, and production/cultivation guidelines, the guideline for permitting premises to be used now also includes descriptive factors for synthetic cannabinoid receptor agonists (SCRAs). As mentioned previously in relation to those guidelines, it is not possible to say whether this will have an impact on resources, however it is likely that sentencing will become more consistent for these offences.

There have, however, been some small changes to the culpability and harm categories in the revised guideline for this offence.¹⁶ Transcripts of judges' sentencing remarks were analysed for a sample of these cases, to assess how sentences might change under the revised guideline. This analysis of a small sample of cases indicated that sentence levels would remain either the same or broadly similar under the revised guideline. It is therefore not anticipated that this guideline will have an impact on prison and probation resources.

Psychoactive substances¹⁷importation offences"/supplying, or offering to supply, a psychoactive substance/possession of psychoactive substance with intent to supply ("supply/PWITS")/producing a psychoactive substance ("production")

There is currently no guideline for these offences, which cover psychoactive substances (harmful substances which are not controlled under the Misuse of Drugs Act 1971). These offences are relatively low in volume, with around 50 offenders sentenced in total in 2019.

The definitive guidelines for importation and production offences have three levels of culpability and three levels of harm. These offences have a statutory maximum sentence of 7 years' custody. The sentencing table in the importation offences

¹⁶ For more details of these changes, please refer to the consultation document, available here: <https://www.sentencingcouncil.org.uk/publications?s&cat=consultations>

guideline spans from a discharge to 6 years' custody, whereas for production the range is a fine to 6 years' custody.

Fewer than 10 offenders have been sentenced in total for importation and production offences since they came into force in 2016 and no adults were sentenced for these offences in 2019. Due to the limited information available it is not possible to say whether the definitive guideline for these offences will have an impact on correctional resources. It is anticipated, however, that sentencing will become more consistent following the introduction of the definitive guideline, and given the very low number of offenders sentenced for these offences, any impact on resources is likely to be minimal.

The definitive guideline for supply/PWITS has three levels of culpability and three levels of harm, with a sentencing range from a fine to 6 years' custody. The statutory maximum sentence for these offences is 7 years' custody.

Transcripts of judges' sentencing remarks for these offences were used to assess how sentences might change under the revised guidelines. The analysis indicated that overall, some sentences would be likely to increase under the revised guidelines. Based on the data available, however, it is not possible to estimate the potential resource impact, as the transcripts analysed include substances which are now controlled under the Misuse of Drugs Act 1971 (such as some variants of 'spice' which are now classified as class B drugs). The transcripts do not therefore provide sufficient evidence upon which to calculate a robust estimate. It is anticipated, however, that sentencing of these offences will become more consistent following the introduction of the guidelines.

Risks

In attempting to estimate the likely resource impacts of these guidelines, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines come into effect.

This risk is mitigated by information that was gathered by the Council as part of the consultation phase. This includes research interviews which were undertaken with sentencers, where case scenarios were used to test whether the guidelines had the intended effect. However, there were limitations on the number of scenarios which could be explored, so the risk could not be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals. This information provided further information on which the final resource assessment has been based.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret it as intended. Sentencing ranges have been agreed on by considering sentencing ranges in the existing *Drug Offences* guidelines, in conjunction with Council members' experience of sentencing. Sentencing data have also been considered, and transcripts of Crown Court judges' sentencing remarks for drugs cases have been studied to gain a greater understanding of current sentencing practice. Research carried out with sentencers also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees have also given feedback on their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.