

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 average⁸ 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 per cent were sentenced to immediate custody in 2019 and a further 24 per cent received a suspended sentence order. The ACSL (for immediate custody) 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

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 2019, these other offences comprised 31 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 average custodial sentence length values for offenders sentenced to determinate, immediate 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.

⁸ The average referred to in the text is the mean, which is calculated by adding all of the individual values and dividing the total by the number of values.

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).

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 immediate custody) 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'⁹. 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,

⁹ 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.

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 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 have been considered.

While data exists on the number of offenders and the sentences imposed due to a lack of data available regarding the seriousness of current cases, assumptions have been made about how current cases would be categorised across the levels of culpability and harm in the guidelines. 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,¹⁰ 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)¹¹ 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.

¹⁰ For more details of these changes, please refer to the consultation response document, available here: <https://www.sentencingcouncil.org.uk/publications?s&cat=consultations>

¹¹ 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/>

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 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.¹²

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.¹³

¹² 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.

¹³ The factor of "High purity" has been removed from the revised guideline.

MDMA

The revised guideline for importation offences, supply/PWITS and production/cultivation offences also includes quantities in grams/kilograms for MDMA (the current guideline does not include this).¹⁴ 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.¹⁵

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'.¹⁶

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

¹⁴ Methylenedioxyamphetamine (MDMA) can be found in powder form, whereas ecstasy is often used to refer to MDMA in tablet or capsule form.

¹⁵ 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.

¹⁶ Quantities for SCRAs are also included within the permitting premises guideline. Details of this are covered within the 'Permitting premises' section below.

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 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.¹⁷ 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 substances¹⁸importation 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

¹⁷ For more details of these changes, please refer to the consultation document, available here: <https://www.sentencingcouncil.org.uk/publications?s&cat=consultations>

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 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.