

# Drug Offences Guideline

## Professional Consultation



# Drug Offences Guideline Professional Consultation

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A consultation produced by the Sentencing Council.  
This information is also available on the Sentencing Council's website:

**[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**

## About this consultation

### To:

This professional consultation is primarily aimed at members of the judiciary, legal practitioners and any individuals and organisations involved in the criminal justice system.

### Duration:

From 28 March to 20 June 2011

### Enquiries:

(including requests for the paper in an alternative format)

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### Additional ways to feed in your views:

A shorter public consultation paper, a resource assessment, an equality impact assessment and an online questionnaire are also available during this consultation period. These can be found at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

A series of consultation meetings with interested parties is also taking place. For further information please use the 'Enquiries' contact details above.

### Response paper:

Following the conclusion of this consultation exercise, a response will be published at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

### Freedom of information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.

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# Introduction

**T**he Sentencing Council is proposing a draft guideline on sentencing for drug offences, and is keen to seek views from as wide an audience as possible as it develops its proposals.

## Why drugs?

The Sentencing Advisory Panel (SAP) produced advice for the Sentencing Guidelines Council (SGC), entitled *Sentencing for Drug Offences*, in March 2010. No Crown Court guideline has since been produced, although guidance for magistrates when sentencing drug offences is provided in the *Magistrates' Court Sentencing Guidelines* (MCSG). The proposals set out in this consultation paper will impact on a large number of cases – in 2009, 50,325 adult offenders were sentenced for offences involving controlled drugs.

The Sentencing Council, which replaced the SGC and the SAP in April 2010, is grateful to the SAP for providing its valuable advice and has considered it carefully in developing the draft guideline. The specific recommendations that were made in the SAP's advice will be discussed in detail in Section two of this consultation paper. The Council supports several of the proposals of the SAP but takes a different view on others, and it seeks views upon the latter particularly. It has also considered new research on sentencing for drug offences, published by the Sentencing Council on 28 March 2011.

## The Council's aims

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to a number of statutory duties, which are set out at Annex B of this consultation paper. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences. This is reflected in the draft guideline itself which can be found at Annex C.

The Council has considered both case law and current sentencing practice during the development of this draft guideline. For most offences, the guideline aims to increase the consistency of sentencing while leaving the average severity of sentencing unchanged. The Council especially seeks to uphold the current level of sentencing for those offenders playing a leading role in importation, supply and production offences (offences introducing drugs into the market) where large or very large quantities of drug are involved. It considers that it is important to ensure that sentencing is as fair, consistent and proportionate as possible within each offence and across all the offences covered by the draft guideline, and the sentencing ranges and starting points have been set with this in mind throughout. There is one group of offenders, however, for whom in some cases the Council considers current sentencing to be disproportionate to the levels of culpability and harm caused. These are the so-called

drug “mules”. An increased focus on role in the development of the sentencing ranges for importation offences may result in a downward shift in sentences for these types of offenders, to bring them in line with the overall sentencing framework and ensure that these offenders are sentenced fairly and consistently according to the severity of their offence.

### **Consultation process**

The consultation period is 12 weeks and meetings with interested parties will be held during this time in order to seek views on the proposals.

This consultation paper first sets out the offences covered by the draft guideline. It then details the decision making process to be used for each guideline before setting out the proposed starting points and ranges. A summary of the consultation questions can be found at Annex A.

Alongside this draft professional consultation paper and guideline the Council has produced a shorter public version of the consultation paper, a consultation stage resource assessment, an equality impact assessment and an online questionnaire. These documents can be found at **[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**.

# Section one: Drug offences

## Drug offences covered by the draft guideline

The Council has followed the advice of the SAP in deciding which offences should be covered by this draft guideline. These are set out briefly below and in full in the Misuse of Drugs Act 1971 and the Customs & Excise Management Act 1979. The CPS *Legal Guidance on Drug Offences, incorporating the Charging Standard*, sets out definitions used by prosecutors when charging.

The offences covered by the guideline are all triable either way.

## Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug – Misuse of Drugs Act (section 3) and Customs & Excise Management Act 1979

This offence occurs when an offender is knowingly engaged in bringing into or taking out of the UK a controlled (illegal) drug. There is a wide range of possible levels of an offender's involvement in this type of operation, and therefore an offender's role is a key consideration when determining the seriousness of the offence. An offender can be sentenced to a maximum of life imprisonment for an offence involving Class A drugs, and to a maximum of 14 years' imprisonment and/or an unlimited fine for offences involving Class B or C drugs.

## Supplying or offering to supply a controlled drug – Misuse of Drugs Act 1971 (section 4(3))

This offence occurs when an offender supplies, offers to supply, or is concerned in the supply of a controlled drug to another person. This includes distribution of a drug. The offence does not require proof of payment or reward, nor does it require proof that the offender intended to produce the drugs or had the drugs in his/her possession when making the offer to supply. An offender can be sentenced to a maximum of life imprisonment for supplying a Class A drug, and to a maximum of 14 years' imprisonment and/or an unlimited fine for supplying Class B or C drugs.

## Possession of a controlled drug with the intent to supply it to another – Misuse of Drugs Act 1971 (section 5(3))

This offence occurs when an offender is in possession of a controlled drug with the intent of supplying it to another. An offender can be sentenced for up to a maximum of life imprisonment for possessing a Class A drug with the intent to supply it to another, and to a maximum of 14 years' imprisonment and/or an unlimited fine for possessing Class B or C drugs with the intent of supplying to another.

**Production of a controlled drug – Misuse of Drugs Act 1971 (section 4(2)(a) or (b))**

This offence occurs when an offender produces (by manufacture, cultivation or any other method) a controlled drug of Classes A, B or C, or where an offender has in some way participated in such production. Production also includes conversion of one drug to another, for example producing “crack” cocaine from cocaine hydrochloride. An offender can be sentenced to a maximum of life imprisonment for production of a Class A drug, and to a maximum of 14 years’ imprisonment for the production of Class B or C drugs.

**Cultivation of cannabis plant – Misuse of Drugs Act 1971 (section 6(2))**

This exists as an offence separate to production of a controlled drug and occurs when an offender cultivates a cannabis plant of any kind. It is a matter for the prosecution to decide with which offence a defendant should be charged. An offender can be sentenced to a maximum of 14 years’ imprisonment for this offence.

**Permitting premises to be used – Misuse of Drugs Act 1971 (section 8)**

This offence occurs when an offender who is the occupier of a premises, or involved in its management, knowingly allows this premises to be used for drug-related activity. An offender can be sentenced to a maximum of 14 years’ imprisonment for this offence.

**Possession of a controlled drug – Misuse of Drugs Act 1971 (section 5(2))**

This offence occurs when an offender is in physical possession or control of a controlled drug but without the intent to supply to another. The offender must have knowledge of possessing the item, even if he/she did not know it was a controlled drug. An offender can be sentenced to a maximum of seven years’ imprisonment (Class A), five years’ imprisonment (Class B) or two years’ imprisonment (Class C) for this offence.

**Grouping of offences into guidelines**

Where offences have common factors which merit similar starting points and ranges, these offences have been grouped together. The aim is to ensure that offences for which similar considerations are taken into account as part of the sentencing process are sentenced in a consistent way. “Supplying or offering to supply a controlled drug” has been grouped together with “possession of a controlled drug with the intent to supply it to another”, and “production of a controlled drug” has been grouped together with “cultivation of cannabis plant”. This has resulted in five individually tailored guidelines:

- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug (these will be referred to as “importation offences” throughout);
- Supplying or offering to supply a controlled drug/possession of a controlled drug with the intent to supply it to another (“supply offences”);
- Production of a controlled drug/cultivation of cannabis plant (“production/cultivation offences”);
- Permitting premises to be used (“offences of permitting premises to be used”); and
- Possession of a controlled drug (“possession offences”).

Q1

Do you agree with the proposed groupings of offences into five guidelines?

**Applicability of the guideline**

The definitive guideline that is issued following consultation will be applicable to all drug offences that it covers, irrespective of the date of the offence. It is to be used in both the Crown Court and magistrates’ courts, and will replace the MCSG for the relevant offences.



## Section two: Developing the guideline

### Guideline structure

In developing the *Assault Definitive Guideline*, which was published on 16 March 2011, the Council considered how the structure of guidelines could be modified to aid both sentencers and the public. It developed a new structure which sets out the applicability of the guideline and then incorporates all necessary information into individually tailored decision making processes for each offence. The Council developed the model with a view to replicating this format in future guidelines where appropriate. The approach adopted was a three offence category model based on equally weighted assessments of harm and culpability. The approach proposed in this draft guideline takes into account both the structure adopted in the *Assault Definitive Guideline* and the advice provided by the SAP. However, there are certain differences which are detailed in this Section.

### The decision making process

The decision making process adopted for the *Assault Definitive Guideline* was intended to be applicable in all offence specific guidelines where appropriate and therefore forms the basis of the draft guideline for drug offences. It is a step by step process, which provides the method of determining seriousness. The eight steps set out on page 9 are to be followed for each of the drug offences detailed in this draft guideline.

However, the Council proposes that the determinants of seriousness (considered at step 1) and the aggravating/mitigating factors (considered at step 2) should vary slightly according to the offences considered, resulting in each individual guideline being tailored specifically to the offences it covers. This takes account of the complex nature of the offences, and the variations and different elements that need to be taken into consideration for each.

For this reason, Section three sets out step 1 and step 2 separately for each guideline in turn. Steps 3 to 8 will be identical throughout.

**STEP ONE Determining the offence category**

At step 1, the court should determine an offence category for the offence based on the principal factual elements of the case. The offence category reflects the degree of seriousness of a case and sets the range of sentences within which an offender is sentenced.

**STEP TWO Starting point and category range**

At step 2, the court is asked to determine a provisional sentence. Based on the offence category identified at step 1, the court should take into consideration any aggravating and mitigating factors in order to move upwards or downwards from the starting point that is given at this stage. As in the *Assault Definitive Guideline*, starting points apply to all offenders, in all cases irrespective of plea or previous convictions. They are **no longer** based upon a defendant with no previous convictions who has been convicted after trial.

**STEP THREE Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

In the Crown Court the court must 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 in both courts any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, sentencers will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE Totality principle**

Many offenders are sentenced for multiple offences. When a court is sentencing an offender for more than one offence, firstly it needs to consider whether those sentences should be consecutive or concurrent. It then needs to decide whether the total sentence is appropriate to the offending behaviour and balanced. The latter is known as the ‘totality’ principle. The Sentencing Council has a duty to prepare sentencing guidelines about the application of any rule of law as to the totality of sentences<sup>1</sup> and, until it does so, the draft guideline does not provide any further guidance on the totality principle.

**STEP SIX Confiscation and Ancillary Orders**

In all cases, the court should consider whether to make confiscation and/or other 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 remand time**

Sentencers must take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

<sup>1</sup> s. 120(3)(b) Coroners and Justice Act 2009

### Advice provided by the Sentencing Advisory Panel

The SAP's advice to the SGC, *Sentencing for Drug Offences*, sets out three main recommendations to which the Council has given careful consideration during the development of the guideline as a whole.

While the overall direction of the guideline and the principles that underpin it have taken into account the helpful advice provided by the SAP, the specific ranges and starting points proposed by the Council were developed primarily through consideration of current sentencing practice and case law. This has resulted in different ranges to those proposed by the SAP in many cases.

**Recommendation 1** – For asset recovery to have the desired effect, it is important for courts to make full use of confiscation orders and have confidence that they will be rigorously and successfully enforced. The Panel recommends that research into the effectiveness of confiscation orders and improvements to the speed and effectiveness of enforcement would be beneficial in terms of increasing confidence in the orders and asset recovery process.

The SAP recognised the likely punitive effect that confiscation orders might have, considering that they were an important part of the sentence for a drug-related offence in serious cases and could be the most effective element in deterring future offending. There were a number of consultation responses which argued that confiscation proceedings should not be taken into account when determining the appropriate sentence for the offence because the sentence and the order had different purposes: the purpose of the sentence is to punish the offender for the culpability and harm while the purpose of the confiscation order is to recover the financial proceeds of his/her criminality from the offender. In addition, many of the offenders who would be affected would not possess any assets which could be confiscated, for example, small scale street dealers or foreign drug “mules”.

The Council notes that the making of a confiscation order is a process separate by statute from determining the appropriate sentence. The court is required to consider confiscation where the Crown invokes the process or where the judge considers it appropriate. Most of the serious drug offences are lifestyle offences for the purposes of section 75 and Schedule 2 of the Proceeds of Crime Act 2002. These offences will almost always result in confiscation proceedings. The guideline at step 6 of the decision making process reminds sentencers to consider this order as well as any other ancillary orders.

Issues of enforcement of orders are outside the remit of the Sentencing Council. However, the Sentencing Council's Crown Court Sentencing Survey collects information on sentencing decisions undertaken in the Crown Court. It is anticipated that this will include data on the offences for which confiscation orders are imposed.

**Recommendation 2** – The Panel recommends that, where it is established that an offender who has imported drugs on or in their person or in their luggage was involved as a result of naivety and comes within the general category of being a person who is poor or disadvantaged and motivated primarily by need rather than greed, in the absence of evidence of previous involvement in such activity their role should be regarded as subordinate. When combined with factors of offender mitigation that might be present, this will result in less severe sentences for some drug couriers than at present.

The Council agrees with this recommendation. In order to take account of the frequent vulnerability of these offenders as set out in the SAP's advice, the draft guideline proposes that this particular type of offender should be considered to have played a subordinate role in the offence. This is discussed in more detail in Section four, which sets out the starting points and category ranges of the offences covered by this guideline and seeks to explain how these might apply.

**Recommendation 3** – The determinants of seriousness for drug offences should be the quantity of drug (or scale of operation) and the role of the offender. In most cases, purity or street value will not be determinants of seriousness but may assist a court in determining the scale of the operation or role of the offender.

The Council has reviewed this advice and agrees with the principle of the two elements of role and quantity being determinants of seriousness. It is also of the view that street value is rarely useful as a determinant of seriousness, as reflected in current sentencing practice, because of its highly variable nature. The Council concluded that the concepts of an offender's role and the quantity of drug involved are simply a reflection of the wider concepts of culpability and harm that form the basis of the Council's *Assault Definitive Guideline*. Using role and quantity, therefore, serves to tailor these wider concepts to the drug offences and make them easier to understand in that context.

The role an offender plays in a drug offence (for example, their position in the wider supply chain) can be seen broadly to capture the extent of an offender's culpability – for example, one is likely to conclude that the organiser of a large scale drug importation operation is more culpable than the employed drug “mule” who has no or very limited knowledge of the wider operation of which he/she is a part. The quantity of drug involved in the offence could be seen to be indicative of the harm caused by the offence – for example, the supply of 5kg of cocaine for wider distribution would carry a greater potential of harm than the supply of five tablets of ecstasy to an acquaintance for their personal use.

Therefore, for the majority of offences in this draft guideline the Council has proposed the use of role (indicative of culpability) and of quantity (indicative of harm) as key factors in determining seriousness at step 1. For production/cultivation offences, the Council has decided that a focus on the scale of the operation is most appropriate

for sentencing offenders producing cannabis. This is because the offence is committed in a different way to the other offences and the number of plants recovered does not reflect the full scope of the harm (as the plants are capable of producing more than one crop, thereby extending the harm). For this reason, the Council recommends that the determinant of harm should be the potential yield or scale of the operation for this offence. The Council has referred to an estimated number of plants at the lower end of the scale in order to help sentencers recognise a domestic operation. The Council also considered substituting scale of the operation for quantity as a determinant of seriousness for a number of other offences, and would welcome views on this.

Exceptions to this overall approach are the offences of permitting premises to be used (where the Council has proposed the use of the overarching concepts of harm and culpability as in the *Assault Definitive Guideline*) and that of possession of a controlled drug (where the offence category is determined by considering the quantity of drug and whether or not the possession of the drug occurred in prison). The reasons for these decisions will be detailed in Section four of this consultation paper.

The Council has also considered further issues addressed by the SAP's advice which are discussed below.

### Divisions of role

The responses to the SAP consultation broadly supported the three options regarding role that had been proposed: a leading role, a significant role and a subordinate role. Similar positive comments have been received from initial discussions that the Council has had with interested parties regarding an offender's role. Therefore, the Council has decided to proceed with this approach in this draft guideline.

## Quantities

The Council agrees with the approach taken by the SAP in identifying specific quantities of some of the most commonly prosecuted types of drugs, so that the levels of quantity set out within the draft guideline can be meaningful and proportionate. The quantities themselves have been revised and adapted for the offences where quantity has been used as a determinant of seriousness in order to reflect the different quantities that currently could be expected for each type of offence. For example, what would be considered a large quantity for a possession offence would be considered to be small in the context of a commercial importation.

## Purity

The issue of purity has proved a challenge in the development of this draft guideline. The court is required at step 1 to establish quantity, but should it be based on the pure controlled substance, or on the weight of the overall product? Current sentencing for some Class A offences, particularly importation, takes purity into account as a significant factor in determining seriousness. For other Class A offences, for example possession, and for Class B offences, courts have not seen purity as relevant.

The Council has discussed different approaches to whether and to what extent purity affects seriousness. This consultation sets out one approach, but the Council is keen to receive any views, suggestions, or alternative solutions. In its advice to the SGC, the SAP considered whether purity was an indicator of culpability or of harm and concluded it had little relevance to either. It was not felt significant in most cases in determining seriousness but could help determine scale of the operation or role of offender where the purity was high, because it positioned the offender close to the source of the drug.

Current sentencing practice for importation and some supply offences uses purity as one factor in assessing seriousness and it has been taken into account to set starting points. Forensic testing of drugs by law enforcement agencies is not consistent across the country and its frequency is likely to be considerably reduced given the pressures on all public budgets.

The initial decision for the Sentencing Council was whether purity is relevant to seriousness. It could affect harm, because the higher the purity the greater the supply of drug to the end user or addict. Whether it had that effect would depend on the offence charged and the circumstances of its commission. For example, street dealers of any drug would be unlikely to control purity, so a low level of purity should not generally mitigate. By contrast, for those involved in wholesaling or in importation of large quantities, a drug of a higher purity would allow wider distribution, leading to greater harm, which would increase the seriousness of the offence.

Having decided that purity could be an indicator of harm, the Council considered whether to treat it as a core element of the offence (step 1) or as giving context to commission (step 2). If included at step 1 it will influence the starting point and category; if at step 2 it will be taken into account in moving the sentence up or down from the starting point.

If purity is part of the decision making process there are several options:

The first is to assume that quantity recovered is at 100% purity. That assumption could be rebutted, and the sentence reduced, after analysis, which might then be sought more often by defendants because of its potential advantage to them. Further delays and increased expense to the legal aid fund or to prosecution/law enforcement budgets might follow.

The second is to base quantities on an assumption of average purity. This would allow upwards or downwards movement between category ranges if analysis were available and proved that purity was significantly higher or lower than the average. The Home Office publishes an annual report setting out the average purity of drugs analysed in the preceding year. The Council considered that problems with this approach included year-on-year fluctuations of average purity and the practical difficulties for sentencers in accessing this information.

A third is to fix a quantity threshold below which the court would assume 100% purity, on the basis that analysis would generally be available for quantities above it. Current sentencing practice for importation offences takes 500g of 100% pure Class A drug as a starting point for a drug “mule”. The Serious Organised Crime Agency<sup>2</sup> publication of average purities suggests quantities less than 500g are unlikely to be 100% pure. The Council is astute to the potential for perverse outcomes; for example, an offender with 490g of assumed 100% purity could be punished more than an offender with 510g at 40%.

The fourth option and that proposed by the Council in this consultation is to make no assumption at step 1 about purity and to base quantities on the entire product recovered. However, to cater for analysis where available and to acknowledge the contextual information purity may provide (for example, as to proximity of an offender to the source), high purity is included as an aggravating factor at step 2. The Council is aware that this differs from the approach currently taken and has identified that it could have an unintended impact on sentencing practice. Any unintended impact could be mitigated by an adjustment of the quantities that are proposed in this draft guideline, and the Council would therefore be

grateful if, when commenting on this issue, consultees could provide their perspective on the probability of unintended consequences and potential adjustments. The Council tentatively proposes this option, because it believes it the most likely to deliver a consistent approach to sentencing.

These options rely on the use of quantity as a determinant of seriousness at either step 1 or step 2 of the decision making process. If scale of the operation were to be used throughout at step 1, with quantity and purity taken into account when assessing the scale of the operation, the issue of purity of drug would not arise quite in the way it does at the moment.

A final option would be for differing approaches to be adopted in relation to purity, depending on the offence and class of drug. This could bring with it an unhelpful layer of complexity, and risks disproportionate sentencing.

Q2

Do you agree with the Council’s approach to the issue of purity? If you do not agree, it would be helpful to the Council if you would explain your reasoning.

2 SOCA “Project Endorse” <http://www.soca.gov.uk/threats/drugs/forensic-intelligence>



### Class of drug

The drugs classification system was established in the Misuse of Drugs Act 1971 and divides drugs into the three Classes A, B and C, with the drugs in Class A considered to be those likely to cause the most harm. This classification system may only be amended by order and the Council has no authority to change the classification of any drug that falls within it.

In its advice, the SAP concluded that “it would be inappropriate for sentencing guidelines to distinguish between drugs within each class” and affirmed the approach of linking starting points and sentencing ranges to the three classes. The Council agrees with this approach, and has developed a draft guideline based on class of drug rather than differentiating between individual drugs within each class.

The SAP’s advice provided starting points and ranges for Class A and B drugs only. Where a Class C drug was involved, it was proposed that the starting points and ranges for Class B would be used but the fact that the drug was Class C would be a mitigating factor. This decision was made in the context of the reclassification of cannabis as a Class B drug on 26 January 2009, with the implication that this would reduce the number of sentences for offences involving a Class C drug.

However, the statutory maximum penalties differ between Classes B and C for certain offences; for example possession, where the statutory maximum for Class B is five years’ custody whereas for Class C it is two years’ custody. The Council considers that the statutory differentiation should not be diluted, and is also concerned that combining the two classes in this way could result in an offence range that would give little indication as to the sentence Class C drug offences would attract.

For these reasons, the Council proposes to separate Classes B and C in this draft guideline. It believes that this allows each guideline to be more specifically tailored to the offence it covers by providing separate starting points and ranges for each class of drug. It would also allow a more measured approach to the sentencing of Class C drugs by taking into account differences in statutory maximum penalties where appropriate. Therefore the guideline would be more transparent and offer a greater level of guidance to defendants, legal practitioners and the general public.

The draft guideline is not intended to predict future classifications in any way. The classification of new drugs remains a matter for the Home Office. However, the Council intends that this draft guideline be able to encompass any new drugs that are classified in future, and proposes that basing the guideline on class of drug and including separate Class C guidelines is the best way of ensuring that this is the case.

Q3

Do you agree with the Council’s approach of separating Classes B and C?

### Research into sentencing for drug offences

Two pieces of research, one commissioned and one carried out by the Office of the Sentencing Council, have informed the development of this draft guideline.

The first is a qualitative research study examining public views on sentencing for a variety of drug offences.<sup>3</sup> This study involved 15 focus groups to explore views around the purposes of sentencing, the seriousness of drug offences, and sentences for a number of different drug offences. Although the findings should not be regarded as necessarily representative of views of the wider population, they have informed the development of this draft guideline as they provide an indication of the range of views held in this area and a greater understanding of the reasons for these views. The research has been considered in its entirety, but elements of particular note and relevance to the proposals put forward have been highlighted throughout the document.

The second, undertaken by researchers in the Office of the Sentencing Council, comprised case studies with women imprisoned for unlawful importation of drugs. This was based on only a small number of women (and therefore cannot be said to be representative of all such offenders), and the accounts are subjective with no attempt to verify accuracy. However, it has allowed a greater insight into, and understanding of, the involvement of the women in importation offences, and has helped to highlight the types of role that they may play within the importation chain. The findings will be discussed in more detail in Section four.

A series of research and analysis bulletins, which outline current sentencing practice for a number of drug offences, have also been produced and can be found at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk). However, it is important to keep in mind when reading these that the information provided in the bulletins is based on final sentencing outcomes (that is, taking into account all factors of a case including guilty pleas) and is therefore not directly comparable with the ranges proposed in this consultation paper, which have only taken into account step 1 and step 2 of the decision making process.

3 Jacobson, Kirby and Hough (2011): *Public Attitudes to the Sentencing of Drug Offences* London: Office of the Sentencing Council



## Section three: Determining a provisional sentence

This section sets out step 1 (“determining the offence category”) and step 2 (“starting point and category range”) for each of the five drug guidelines.

The same principles apply to all offences:

- at step 1, the court should determine the **offence category**;
- at step 2, the court is asked to **determine the provisional sentence** based on the offence category identified at step 1.

### Importing or exporting a controlled drug

#### STEP ONE

#### Determining the offence category

For importation offences, the Council is proposing that the offence category be determined by establishing the culpability of the offender in committing the offence (assessed by their **role**) and the harm that they have caused, or intended to be caused (assessed by the **quantity** of drug). This follows the SAP’s advice, as the Council considers that the concepts of role and quantity are better suited to assessing the seriousness of this particular offence than the wider concepts of harm and culpability.

#### Determining the role of the offender

The Council has decided to adopt the SAP’s recommended approach to determining the role of the offender by using one of three options: leading role, significant role or subordinate role. Some characteristics which frequently define these roles are given in Table 1 opposite. These have been individually tailored to importation offences, and will be different for the other offences within this draft guideline. A question relating to the descriptions of role for all of the proposed drug guidelines will be asked at the end of this Section.

For this offence and for all offences where the role of the offender is used as a key determinant of seriousness at step 1, it is important to note that the descriptions outlined are not intended to be exhaustive. Other factors relating to the role that the offender played in the offence may also be taken into consideration at this stage. Any other factors **not** relating to the offender’s role, including factors relating to previous convictions and personal mitigation, should be taken into account at step 2. The descriptions may also include examples of the types of offender that may fall into certain categories in order to illustrate further the distinctions between the roles.

**TABLE 1 –  
Characteristics determining an offender’s role  
for importation offences**

<b>Offender’s role – this list is <b>NOT</b> exhaustive but examples include:</b>
<p><b>Leading:</b></p> <ul style="list-style-type: none"> <li>• Top tier organisational role in own/another’s operation, for example funding purchase of drugs</li> <li>• Substantial links to, and influence on, others involved in the chain</li> <li>• Expectation of <b>substantial</b> financial gain</li> <li>• Uses business to aid and/or conceal illegal activity</li> <li>• Abuse of position/breach of trust, for example law enforcement officer</li> </ul>
<p><b>Significant:</b></p> <ul style="list-style-type: none"> <li>• Mid-tier organisational role in operation that is not their own, for example arranging transportation/professional courier</li> <li>• Engages others in illegal activity by pressure, influence, intimidation or reward</li> <li>• Limited, if any, influence on those above them in the chain</li> <li>• Expectation of <b>some</b> gain, either financial or benefit in kind</li> </ul>
<p><b>Subordinate:</b></p> <ul style="list-style-type: none"> <li>• Performs a limited function under direction, in operation which is not their own</li> <li>• Engaged by pressure, influence, intimidation or relatively small reward, for example drug “mule”</li> <li>• Imported in, or on, the person/luggage</li> <li>• Involvement through naivety</li> <li>• No influence on those above them in the chain</li> <li>• If own operation, <b>solely</b> for own use (considering reasonableness of account in all the circumstances)</li> </ul>

### Determining the quantity

For importation offences, the quantity of drugs has been broken down into five levels: very large, large, medium, small and very small. Within each of these levels, specific quantities have been identified for some of the most commonly sentenced drugs of each class in order to aid the court when determining the most appropriate category. These are specified in Table 2 overleaf. In all cases where quantity is used at step 1, if the specific drug involved in the offence is not mentioned, then an amount equivalent to those listed should be used. A question regarding the quantities set out for this and all the proposed drug guidelines will be asked at the end of this Section.

The Council proposes that the importation of very small quantities of drugs may be considered to be more akin to a supply or a possession offence, depending on the intent of the offender, and therefore should be sentenced in line with the guidelines for these offences. For this reason, the court is referred to the guidelines for supply or possession for offences involving this quantity of drug. However, in recognition of importation being a more serious offence, the sentence will be aggravated at step 2 of the corresponding guideline. This approach will allow the court to take a more measured response to an offence that involves a very small quantity of drug consistent with personal use or small scale supply but where the customs point at the border between two countries has been crossed.

**Q4**

Do you agree that the court should be referred to the guideline for supply or possession (according to intent) when the quantity of drug involved in the offence is very small?

**TABLE 2 –  
Quantities for importation offences**

Quantity of drugs
<p>Very large, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 2.5kg to 10kg</li> <li>• Ecstasy – 5,000 to 20,000 tablets</li> <li>• LSD – 2,500 to 10,000 squares</li> <li>• Amphetamine – 10kg to 40kg</li> <li>• Cannabis – 100kg to 400kg</li> <li>• Ketamine – 2.5kg to 10kg</li> </ul>
<p>Large, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 500g to 2.49kg</li> <li>• Ecstasy – 1,000 to 4,999 tablets</li> <li>• LSD – 500 to 2,499 squares</li> <li>• Amphetamine – 2.5kg to 9.99kg</li> <li>• Cannabis – 25kg to 99.99kg</li> <li>• Ketamine – 500g to 2.49kg</li> </ul>
<p>Medium, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 50g to 499.9g</li> <li>• Ecstasy – 100 to 999 tablets</li> <li>• LSD – 50 to 499 squares</li> <li>• Amphetamine – 250g to 2.49kg</li> <li>• Cannabis – 1kg to 24.99kg</li> <li>• Ketamine – 50g to 499.9g</li> </ul>
<p>Small, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 5g to 49.9g</li> <li>• Ecstasy – 20 to 99 tablets</li> <li>• LSD – 10 to 49 squares</li> <li>• Amphetamine – 20g to 249.9g</li> <li>• Cannabis – 100g to 999.9g</li> <li>• Ketamine – 5g to 49.9g</li> </ul>
<p>Very small, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – up to 4.9g</li> <li>• Ecstasy – up to 19 tablets</li> <li>• LSD – up to 9 squares</li> <li>• Amphetamine – up to 19.9g</li> <li>• Cannabis – up to 99.9g</li> <li>• Ketamine – up to 4.9g</li> </ul>

### Determining the offence category

The combination of role and quantity determines the offence category: for example, leading role/large quantity, or subordinate role/medium quantity. There are twelve such combinations for each class of drug, and therefore twelve offence categories within which an importation offence can fall (for very small quantities the court is referred to the guidelines on supply or possession). For further detail of how these offence categories function, please refer to Section four of this consultation paper.

### STEP TWO Starting point and category range

The provisional sentence is determined by reference to the offence category identified at step 1. In order to determine the provisional sentence within the appropriate category range, the court is provided with a starting point for the relevant offence category and then asked to consider any additional factors (which include further factors relating to the offence, as well as some factors relating to the offender) which may indicate an upward or downward movement from this point within the appropriate category range. The starting points and ranges for each of these categories will be discussed in Section four.

The aggravating and mitigating factors relating to an importation offence are given in Table 3 opposite. Some factors are general and apply to all offences; others apply only to importation offences, such as “use of others, especially children” which relates to using others in order to conceal the drugs and transport them into or out of the country. A question relating to these factors and to the aggravating and mitigating factors for all of the drug guidelines will be asked at the end of this Section.

It should be noted that, for all the offences covered by this draft guideline, the lists of aggravating and mitigating factors are not exhaustive. The court should consider any factors relevant

to the offence or offender **that have not already been considered at step 1** and identify whether the combination of these should result in an upward or downward movement from the starting point.

For all the offences covered by this draft guideline, the following should also be taken into account:

- in exceptional cases it may be appropriate to move outside the given category range;
- in certain cases the court is also asked to consider the custody threshold;
- once the provisional sentence has been determined at step 2, the court should follow the remaining steps (3 to 8) of the decision making process outlined in Section three.

### Drug rehabilitation requirements

Given the nature of the offending, it is likely that some of the offenders convicted of the offences covered by this draft guideline – particularly those in subordinate roles – may themselves be addicted to drugs. The draft guideline includes “determination and/or

demonstration of steps having been taken to address addiction or offending behaviour” as a mitigating factor at step 2 of the decision making process. This does not make it a key determinant of seriousness, but acknowledges that determined efforts to address such an addiction may influence the final sentence imposed, particularly where the offender has limited or no previous convictions.

In addition, where the court is dealing with such an offender, it can consider whether a drug rehabilitation requirement under s. 209 of the Criminal Justice Act 2003 (as a condition of either a community order or suspended sentence order) may be an alternative to a short or moderate custodial sentence. However, before imposing such an order, the court will need to ensure that a drug rehabilitation programme will be available and assess whether there is a real prospect of the order successfully dealing with the offender’s addiction.

**TABLE 3 –  
Aggravating and mitigating factors for importation offences**

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	Lack of sophistication as to nature of concealment
Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since the conviction	Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1
Offender used or permitted a person under 18 to deliver a controlled drug to a third person	Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
Offence committed on bail	Isolated incident
<i>Other aggravating factors include:</i>	No previous convictions <b>or</b> no relevant/recent convictions
Sophisticated nature of concealment/attempts to avoid detection	Offender’s vulnerability was exploited
Attempts to conceal or dispose of evidence, where not separately charged	Remorse
Exposure of others to more than usual danger, for example drugs cut with harmful substances	Good character and/or exemplary conduct
Use of others, especially children	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Presence of weapons, where not separately charged	Serious medical condition requiring urgent, intensive or long-term treatment
High purity	Age and/or lack of maturity where it affects the responsibility of the offender
Failure to comply with current court orders	Mental disorder or learning disability
Offence committed on licence	Sole or primary carer for dependent relatives
Failure to respond to warnings or concerns expressed by others about the offender’s behaviour	

## Supply, offering to supply and possession with intent to supply

### STEP ONE

#### Determining the offence category

For supply offences, the offence category is determined by establishing the culpability of the offender in committing the offence (as assessed by **role**) and the harm that they have caused, or intended to cause (as assessed by **quantity** of drug).

#### Determining the role of the offender

As for importation offences, it is proposed that the role of the offender is determined by using one of three options: leading role, significant role or subordinate role. Some characteristics which may define these roles for supply offences are given in Table 4.

#### Determining the quantity

For supply and possession with intent to supply offences the quantity of drug has been broken down into five distinct categories – very large, large, medium, small, and very small. Specific quantities of some of the most commonly sentenced drugs of each class for supply offences are given in Table 5 opposite.

#### Determining the offence category

The offence category is determined by combining the assessments of role and quantity. There are fifteen possible combinations and therefore fifteen offence categories per class of drug within which a supply offence can fall.

TABLE 4 –  
Characteristics of role for supply/possession with intent to supply offences

#### Offender's role – this list is **NOT** exhaustive but examples include:

##### Leading:

- Top tier organisational role in own/another's operation, for example funds/arranges purchases from importer
- Uses business to aid and conceal illegal activity
- Expectation of **substantial** financial gain
- Direct supply to drug users for gain, for example street dealer
- Evidence of professional dealing, for example deal lists, drug dealing paraphernalia, such as scales, packaging or quantities of cash inconsistent with any legitimate source of income
- Abuses a position of trust or responsibility, for example law enforcement/prison officer
- Supply **by** prisoner

##### Significant:

- Mid-tier organisational role in an operation which is not their own, for example acts as link in the chain
- Engages others in illegal activity whether by pressure, influence, intimidation or reward
- Limited/no influence on those above them in the organisational chain
- Expectation of **some** gain, either financial or benefit in kind
- Supply **to** prisoner (other than by prison officer)

##### Subordinate:

- Performs a limited function under direction, in operation which is not their own, for example runners
- Engaged by pressure, influence, intimidation or relatively small reward
- No expectation of gain, for example introducers
- No influence on those above them in the chain
- If own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis, such as a reefer

**TABLE 5 –  
Quantities for supply/possession with intent to  
supply offences**

Quantity of drugs
<p>Very large, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 2.5kg to 10kg</li> <li>• Ecstasy – 5,000 to 20,000 tablets</li> <li>• LSD – 2,500 to 10,000 squares</li> <li>• Amphetamine – 10kg to 40kg</li> <li>• Cannabis – 100kg to 400kg</li> <li>• Ketamine – 2.5kg to 10kg</li> </ul>
<p>Large, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 500g to 2.49kg</li> <li>• Ecstasy – 1,000 to 4,999 tablets</li> <li>• LSD – 500 to 2,499 squares</li> <li>• Amphetamine – 2.5kg to 9.99kg</li> <li>• Cannabis – 25kg to 99.99kg</li> <li>• Ketamine – 500g to 2.49kg</li> </ul>
<p>Medium, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 50g to 499.9g</li> <li>• Ecstasy – 100 to 999 tablets</li> <li>• LSD – 50 to 499 squares</li> <li>• Amphetamine – 250g to 2.49kg</li> <li>• Cannabis – 1kg to 24.99kg</li> <li>• Ketamine – 50g to 499.9g</li> </ul>
<p>Small, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 5g to 49.9g</li> <li>• Ecstasy – 20 to 99 tablets</li> <li>• LSD – 10 to 49 squares</li> <li>• Amphetamine – 20g to 249.9g</li> <li>• Cannabis – 100g to 999.9g</li> <li>• Ketamine – 5g to 49.9g</li> </ul>
<p>Very small, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – up to 4.9g</li> <li>• Ecstasy – up to 19 tablets</li> <li>• LSD – up to 9 squares</li> <li>• Amphetamine – up to 19.9g</li> <li>• Cannabis – up to 99.9g</li> <li>• Ketamine – up to 4.9g</li> </ul>

## STEP TWO

### Starting point and category range

The provisional sentence is determined by reference to the offence category identified at step 1, for which the starting points and ranges will be discussed in Section four.

In order to determine a provisional sentence within the appropriate category range, the court is provided with a starting point and asked to consider any additional factors which may indicate an upward or downward movement from this.

The aggravating and mitigating factors relating to supply offences are given in Table 6 overleaf. These take into account behaviour which is particularly associated with supply offences, for example “targeting of any premises intended to locate vulnerable individuals”.

### Supplying to undercover police officers

In the guideline case of *Afonso*<sup>4</sup> the Court of Appeal identified a very narrow group of suppliers of drugs whose sentences appeared disproportionately high and recommended a reduction of these. A number of factors were taken into account: the offenders being first time offenders, drug addicts, out of work (thus with no other means of funding their habit), dealing solely to fund their own habit and having supplied to undercover police officers only.

There has been concern that this reference to supplying to undercover police officers has been isolated from the other factors in a way that was not intended and may have led to inconsistencies in sentencing practice.



The draft guideline does not propose the inclusion of “supply to undercover police officers” at either step 1 or step 2, as the Council does not agree that on its own this factor necessarily makes an offence of supply less serious.

Q5

Do you think that supplying to an undercover police officer should be included in the guideline? If yes, please state at which stage.

**TABLE 6 –  
Aggravating and mitigating factors for supply/possession with intent to supply offences**

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	
Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since the conviction	Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1
Offender used or permitted a person under 18 to deliver a controlled drug to a third person	Supply only of drug to which offender addicted
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	Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
Offence committed on bail	Isolated incident
<i>Other aggravating factors include:</i>	No previous convictions <b>or</b> no relevant/recent convictions
Targeting of any premises intended to locate vulnerable individuals	Offender’s vulnerability was exploited
Exposure of others to more than usual danger, for example cutting drugs with harmful substances	Remorse
An attempt to conceal or dispose of evidence, where not separately charged	Good character and/or exemplary conduct
Presence of others, especially children and/or non-users	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
Presence of weapons, where not separately charged	Serious medical conditions requiring urgent, intensive or long-term treatment
Charged as importation of a very small amount	Age/lack of maturity where it affects the responsibility of the defendant
High purity	Mental disorder or learning disability
Failure to comply with current court orders	Sole or primary carer for dependent relatives
Offence committed on licence	
Failure to respond to warnings or concerns expressed by others about the offender’s behaviour	
Established evidence of community impact	

# Production of a controlled drug and cultivation of cannabis

## STEP ONE

### Determining the offence category

For production/cultivation offences, the offence category is determined in the same way as for importation and supply offences – by establishing the culpability of the offender in committing the offence (assessed by their **role**) and the harm they have caused, or intended to be caused (assessed by the **quantity of drug** or, for offences involving cannabis, by the **scale of the operation**).

### Determining the role of the offender

Following the approach taken for importation offences, the role of the offender in production/cultivation offences is determined by using one of three options: leading role, significant role or subordinate role. Some characteristics that frequently define these roles for production/cultivation offences are given in Table 7.

### Determining the quantity

For production/cultivation offences, the Council proposes to use the quantity of the drug involved as a key determinant of seriousness at step 1 of the decision making process. The quantity is measured in terms of actual or potential yield in order to be able to take into account the harm that could be caused by quantities of drug that could potentially be produced or cultivated. Where the drug involved is cannabis, the quantity has been described in terms of the scale of the operation rather than in weight or in number of plants. However, the number of plants has been given to aid the distinction at the lower end, as the only real means of differentiation between different levels of domestic operation would be the number of plants involved. These are intended as a guide and convey only approximate amounts.

There are five levels of quantity to be considered for production/cultivation offences – very large, large, medium, small and very small. As with importation, specific quantities have been identified within each of these levels for some of the most commonly sentenced drugs of each

TABLE 7 –  
Characteristics of role for production or cultivation offences

**Offender's role – this list is NOT exhaustive but examples include:**

#### Leading:

- Top tier organisational role, for example funding the purchase of the production equipment/raw materials
- Significant links to others involved in the drug trade
- Carried out in expectation of **substantial** financial gain
- Uses business to aid and/or conceal illegal activity
- Abuse of position/breach of trust, for example law enforcement officer

#### Significant:

- Mid-tier organisational role, for example arranges rental of premises/purchase of equipment
- Main organisational role where production is **primarily** for own use but includes some supply to others
- Expectation of either **some** gain, financial or benefit in kind
- Engages others in the illegal activity whether by pressure, influence, intimidation or reward
- Limited/no influence on those above them in chain

#### Subordinate:

- Performs a limited function under direction, in operation which is not their own
- Engaged to perform a limited function whether by pressure, influence, intimidation or relatively small reward, for example gardener
- Involvement through naivety
- No influence on those above them in the organisational chain
- If own operation, **solely** for own use (considering reasonableness of account in all the circumstances)



**TABLE 8 –  
Quantities for production/cultivation offences**

Quantity of drugs or scale of operation (actual and/or potential yield)
<p>Very large, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 2.5kg to 10kg</li> <li>• Ecstasy – 5,000 to 20,000 tablets</li> <li>• LSD – 2,500 to 10,000 squares</li> <li>• Amphetamine – 10kg to 40kg</li> <li>• Ketamine – 2.5kg to 10kg</li> <li>• Cannabis – operation capable of producing industrial quantities for commercial use</li> </ul>
<p>Large, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 500g to 2.49kg</li> <li>• Ecstasy – 1,000 to 4,999 tablets</li> <li>• LSD – 500 to 2,499 squares</li> <li>• Amphetamine – 2.5kg to 9.99kg</li> <li>• Ketamine – 500g to 2.49kg</li> <li>• Cannabis – operation capable of producing significant quantities for commercial use</li> </ul>
<p>Medium, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 50g to 499.9g</li> <li>• Ecstasy – 100 to 999 tablets</li> <li>• LSD – 50 to 499 squares</li> <li>• Amphetamine – 250g to 2.49kg</li> <li>• Ketamine – 50g to 499.9g</li> <li>• Cannabis – domestic operation involving about 15 plants or more</li> </ul>
<p>Small, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – 5g to 49.9g</li> <li>• Ecstasy – 20 to 99 tablets</li> <li>• LSD – 10 to 49 squares</li> <li>• Amphetamine – 20g to 249.9g</li> <li>• Ketamine – 5g to 49.9g</li> <li>• Cannabis – domestic operation in the general range of about 9 – 15 plants</li> </ul>
<p>Very small, for example:</p> <ul style="list-style-type: none"> <li>• Heroin, cocaine – up to 4.9g</li> <li>• Ecstasy – up to 19 tablets</li> <li>• LSD – up to 9 squares</li> <li>• Amphetamine – up to 19.9g</li> <li>• Ketamine – up to 4.9g</li> <li>• Cannabis – domestic operation involving no more than about 8 plants</li> </ul>

class in order to aid the court when determining the most appropriate category. The exception to this is cannabis, as outlined above. Where the specific drug involved in the offence is not mentioned, equivalent quantities should be used. The quantities for production and cultivation offences are specified in Table 8.

### Determining the offence category

The offence category is determined by combining the assessments of role and quantity. There are fourteen resulting offence categories per class of drug, as the combination leading role/very small quantity was deemed unlikely to occur for this offence (see also page 38).

### STEP TWO

#### Starting point and category range

The provisional sentence is determined by reference to the category identified at step 1, for which the starting points and ranges will be discussed in Section four.

In order to determine the sentence within the appropriate category range, the court is asked to consider any additional factors (which include further factors relating to the offence, as well as some factors relating to the offender) which may indicate an upward or downward movement from the starting point.

The aggravating and mitigating factors relating to production/cultivation offences are given in Table 9 opposite. The factors listed differ slightly from those that should be taken into account for importation offences. For example, “use of premises accompanied by unlawful access to electricity/other utility supply of others” is specific to offences of production, and therefore has been included as an additional factor increasing seriousness. “Sophisticated nature of concealment/importation”, which was included in the table for importation, is not included here as it bears no relevance to this particular offence.

**TABLE 9 –  
Aggravating and mitigating factors for production and cultivation offences**

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	
Previous convictions, having regard to a) nature of the offence to which the conviction relates and relevance to current offence; and b) time elapsed since the conviction	Involvement due to pressure, intimidation or coercion falling short of duress except where taken into account at step 1
Offence committed on bail	Isolated incident
<i>Other aggravating factors include:</i>	No previous convictions <b>or</b> no relevant/recent convictions
Nature of any likely supply	Offender's vulnerability was exploited
Level of any profit element	Remorse
Use of premises accompanied by unlawful access to electricity/other utility supply of others	Good character and/or exemplary conduct
Ongoing/large scale operation as evidenced by presence and nature of specialist equipment	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Exposure of others to more than usual danger, for example drugs cut with harmful substances	Serious medical conditions requiring urgent, intensive or long-term treatment
Attempts to conceal or dispose of evidence, where not separately charged	Age and/or lack of maturity where it affects the responsibility of the offender
Presence of others, especially children and/or non-users	Mental disorder or learning disability
Presence of weapons, where not separately charged	Sole or primary carer for dependent relatives
High purity	
Failure to comply with current court orders	
Offence committed on licence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Established evidence of community impact	

## Permitting premises to be used

### STEP ONE

#### Determining the offence category

The Council considers that offences of permitting premises to be used require a different approach to that adopted for importation, supply and production/cultivation offences.

As well as the quantity of drugs, the extent of the drug-related activity is a significant factor to be considered when determining the harm caused, or intended to be caused, by the commission of the offence. In addition, the three levels of role used thus far (leading, significant and subordinate) seem too nuanced for this particular offence, where a wider measure of the culpability of the offender is required.

Therefore, the Council proposes that the offence category for offences of permitting premises to be used should be determined by the concepts of harm and culpability as used in the Council's *Assault Definitive Guideline*.

The factors listed in Table 10 are considered by the Council to comprise the principal factual elements of the offence and are key in determining the seriousness of the offence and therefore the offence category. The lists in this table are not intended to be exhaustive.

All offences will fall within one of three categories:

- greater harm **and** higher culpability
- greater harm **and** lower culpability; **or** lesser harm **and** higher culpability
- lesser harm **and** lower culpability.

**TABLE 10 –**  
Harm and culpability factors for offences of permitting premises to be used

Factors indicating harm (non-exhaustive)	Factors indicating culpability (non-exhaustive)
<i>Greater harm:</i>	<i>Higher culpability:</i>
Regular drug-related activity	Permits premises to be used primarily for drug activity, for example crack house
Large quantity of drugs, for example: <ul style="list-style-type: none"> <li>• Heroin, cocaine – 5g or more</li> <li>• Cannabis – 50g or more</li> </ul>	Permits use in expectation of <b>substantial</b> financial gain
<i>Lesser harm:</i>	Uses legitimate business premises to aid and/or conceal illegal activity, for example public house/club
Infrequent drug-related activity	<i>Lower culpability:</i>
Small quantity of drugs, for example: <ul style="list-style-type: none"> <li>• Heroin, cocaine – up to 4.9g</li> <li>• Cannabis – up to 49.9g</li> </ul>	Permits use for <b>limited/no</b> financial gain
	No active role in any supply taking place
	Involvement through naivety

## STEP TWO

### Starting point and category range

The provisional sentence is determined by reference to the offence category identified at step 1, for which the starting points and category ranges will be discussed in Section four.

In order to determine the provisional sentence within the appropriate category range, the court is asked to consider any additional factors which may indicate an upward or downward movement from the starting point.

The aggravating and mitigating factors relating to an offence of permitting premises to be used are outlined in Table 11. Some of these factors are only relevant to offences of permitting premises to be used and therefore do not feature for any of the other offences covered by this guideline. These include the length of time over which premises are used for drug activity and the volume of drug activity that is permitted within these premises.

**TABLE 11 –**  
**Aggravating and mitigating factors for offences of permitting premises to be used**

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	Involvement due to pressure, intimidation or coercion falling short of duress
Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to the current offence; and b) time elapsed since the conviction	Isolated incident
Offence committed on bail	No previous convictions <b>or</b> no relevant/recent convictions
<i>Other aggravating factors include:</i>	Offender's vulnerability exploited
Length of time over which premises used for drug activity	Remorse
Volume of drug activity permitted	Good character and/or exemplary conduct
Premises adapted to facilitate drug activity	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Location of premises, for example proximity to school	Serious medical conditions requiring urgent, intensive or long-term treatment
Attempts to conceal or dispose of evidence, where not separately charged	Age and/or lack of maturity where it affects the responsibility of the offender
Presence of others, especially children and/or non-users	Mental disorder or learning disability
Presence of weapons, where not separately charged	Sole or primary carer for dependent relatives
Failure to comply with current court orders	
Offence committed on licence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Established evidence of community impact	

## Possession of a controlled drug

### STEP ONE

#### Determining the offence category

The Council proposes that the offence category be determined slightly differently for possession offences. It was considered that, in cases of possession, the quantity of drug was likely to be more significant in the context of an offence than the role of the offender, where variations would not be as pronounced as for the other offences.

Therefore, the Council proposes that the offence category for offences of possession be determined according to **four categories** as outlined in Table 12. Categories 2, 3 and 4 specify quantities for some of the most commonly sentenced drugs of each class in order to aid the court when determining the most appropriate category for the offence.

In line with the SAP's advice, the Council proposes that possession of a drug in prison by any person (be this a prisoner, a prison officer or any other person in the prison estate) is a singular factor resulting in an offence being categorised in the most serious category (Category 1). The gravity of this offence is considered to be greater for a number of reasons. The supply of drugs within prison establishments is a long-standing problem, especially as it counteracts the work being done to tackle drug addiction and, given its status as a potent currency in prison, also fuels corruption and is a means by which dangerous power is exercised. In addition, in cases where the offender is already serving a custodial sentence, the deterrent effect of any subsequent sentence imposed must be taken into account.

**TABLE 12 –**  
Determining the offence category for possession

<b>Category 1</b>
Possession of any quantity of drug in prison
<b>Category 2</b>
Large quantity, for example: <ul style="list-style-type: none"> <li>• Heroin, cocaine – 5g to 10g</li> <li>• Ecstasy – 10 to 20 tablets</li> <li>• LSD – 5 to 10 squares</li> <li>• Amphetamine – 5g to 10g</li> <li>• Cannabis – 25g to 50g</li> <li>• Ketamine – 5g to 10g</li> </ul>
<b>Category 3</b>
Small quantity, for example: <ul style="list-style-type: none"> <li>• Heroin, cocaine – 1g to 4.9g</li> <li>• Ecstasy – 3 to 9 tablets</li> <li>• LSD – 3 to 4 squares</li> <li>• Amphetamine – 1g to 4.9g</li> <li>• Cannabis – 10g to 24.9g</li> <li>• Ketamine – 1g to 4.9g</li> </ul>
<b>Category 4</b>
Very small quantity, for example: <ul style="list-style-type: none"> <li>• Heroin, cocaine – up to 0.9g</li> <li>• Ecstasy – up to 2 tablets</li> <li>• LSD – up to 2 squares</li> <li>• Amphetamine – up to 0.9g</li> <li>• Cannabis – up to 9.9g</li> <li>• Ketamine – up to 0.9g</li> </ul>

Q6

Do you agree that possession of a drug in a prison should put an offender into the most serious offence category for possession offences?

**STEP TWO****Starting point and category range**

The provisional sentence is determined by reference to the offence category identified at step 1, for which the starting points and category ranges will be discussed in Section four.

In order to determine the provisional sentence within the appropriate category range, the court is asked to consider any additional factors which may indicate an upward or downward movement from the starting point.

The aggravating and mitigating factors relating to possession offences are given in Table 13. Although some of these factors are common to other offences that are covered by this draft guideline, the possession of drug in a school or licensed premises is a distinguishing factor for this particular offence.

**Use of the drug to help with a medical condition**

For possession offences, particularly of cannabis, a point often made in mitigation is that the drug was used to alleviate a medical condition. The Council considered whether it

should be included in the possession guideline as a factor relevant to the offender that could reduce seriousness at step 2. However, evidence as to whether cannabis relieves medical conditions is mixed, in some instances suggesting that the benefits may well be offset by potential harms and undesirable effects.<sup>5</sup> It also considered the practical implication of including this factor, which could result in delays to the criminal justice system if adjournments had to be sought in order to obtain medical evidence. This is also reflected in the public focus group research where views were mixed – some participants maintained the illegality of the action and the consequences that should be faced, whereas others highlighted that there was no reason for the criminal justice system to get involved. The Council would be keen to hear your views.

Q7

Should “medical evidence that a drug is used to help with a medical condition” be included as a mitigating factor for possession offences?

**TABLE 13 –  
Aggravating and mitigating factors for possession offences**

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or <b>no</b> relevant/recent convictions
Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since the conviction	Remorse
Offence committed on bail	Good character and/or exemplary conduct
<i>Other aggravating factors include:</i>	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Presence of others, especially children and/or non-users	Serious medical conditions requiring urgent, intensive or long-term treatment
Possession of drug in a school or licensed premises	Isolated incident
Failure to comply with current court orders	Age/lack of maturity where it affects the responsibility of the defendant
Offence committed on licence	Mental disorder or learning disability
Attempts to conceal or dispose of evidence, where not separately charged	Sole or primary carer for dependent relatives
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Charged as importation of a very small amount	
Established evidence of community impact	

5 See for example Campbell F. et al. Are cannabinoids an effective and safe treatment option in the management of pain? A qualitative systematic review. *BMJ VOLUME 323 7 JULY 2001 and PainMed. 2009 Nov;10(8):1353-68. Epub 2009 Sep 1*

### Aggravating and mitigating factors

This Section has outlined the aggravating and mitigating factors for each of the drug guidelines proposed, highlighting those particularly relevant to certain offences as well as those on which the Council would welcome views. However, the majority of the factors listed in the tables at step 2 are more generic factors that apply to all the offences. Some of these are factors that by statute must be considered, and these have been highlighted in the relevant tables. A number have recently been consulted on as part of the proposals for the assault guideline – these include general factors, often relating to the offender, such as the mitigating factor “No previous convictions or no relevant/recent convictions” or the aggravating factor “Offence committed on licence”. These factors apply to all offences. There are some factors which have been included in the *Assault Definitive Guideline* as a result of detailed discussion with relevant organisations during the consultation period. An example of this is the mitigating factor “Sole or primary carer for dependent relatives” which has been included following the consultation period as it was considered that a custodial sentence could affect the relative (rather than the offender) and that, where possible, this adverse impact should be taken into account. “Age and/or lack of maturity” was also a mitigating factor included following consultation. It had originally been consulted on as “Youth/lack of maturity or age”, but it was felt that, given the guideline’s applicability to adult offenders, youth was not a relevant consideration, and the wording has been changed accordingly.

Question 11 seeks views on the aggravating and mitigating factors listed for each of the five drug guidelines. The Council would be keen to receive views both on the general factors replicated from the *Assault Definitive Guideline* and those common to all offences, as well as those that have been highlighted as relevant to particular offences.

## For all the offences covered by this draft guideline

Q8

Do you agree with the quantities set out for each of the drug guidelines?

Q9

Do you agree with the roles as proposed for each of the offences covered by the draft guideline?

Q10

Do you agree with the aggravating and mitigating factors outlined for each of the offences covered by the draft guideline?

Q11

Do you think that there are any other factors that should be taken into account at these two steps?



## Section four: Ranges and starting points

This section outlines the starting points and category ranges for each of the proposed drug guidelines. In addition, examples of the sentence lengths that could be expected by certain types of offender are given under each of the offence headings in this section. It is important to note that these are merely illustrative of the ranges given in this draft guideline, and have not taken into account any aggravating or mitigating factors that may affect the final sentence.

### Starting points

As in the *Assault Definitive Guideline*, this draft guideline adopts an offence based starting point, which means that the starting points apply to **all offences** within the corresponding category and are applicable to **all offenders**, in all cases (irrespective of plea or previous convictions).



## Importing or exporting a controlled drug

Collectively, importation and exportation offences accounted for 2% of all drug offences sentenced in 2009. The guideline for importation offences proposes to maintain the existing level of sentences especially for those offenders in a leading role – that is, those involved in the funding or management of large scale drug importation operations, those high up in the organisational structure of such operations or those offenders operating in expectation of significant financial gain. This will include, for example, those funding the purchase of drugs. Under the Council’s proposals, an offender who is the organiser of a large scale operation responsible for the importation of 5kg of heroin may expect to receive a sentence of between 12 and 16 years’ custody.

In developing this guideline, the Council wished to distinguish between professional couriers – that is, those who are employed by someone else to import/export drugs regularly for financial gain but do so in the knowledge that they are committing an offence and are not unduly pressurised into doing so – and so-called drug “mules”, outlined in more detail below. The professional courier would generally be assessed as playing a significant role – for example, as someone expecting some financial gain and found in a position towards the middle of the supply chain. According to this draft guideline, therefore, for importing a large quantity of Class A drug (for example, 800g of heroin), such an individual would be likely to receive anywhere between seven years six months’ and nine years’ custody.

Drug “mules” were a key group of offenders identified as an area of concern in the SAP’s consultation and advice. These offenders are generally seen to have been involved in the offence as a result of naivety or undue pressure – often poor or disadvantaged and motivated primarily by need rather than by financial gain. The SAP’s advice suggests that, in the

absence of evidence of previous involvement in such activity their role should be regarded as subordinate. The case of *Aramah*<sup>6</sup> states that it will seldom be that an importer of any appreciable amount of Class A drug will deserve less than four years.

The Council has taken into account both the advice and the relevant case law, and has aimed to ensure that sentencing for these offenders is more proportionate to the extent of their intent and involvement in the overall crime. This means that sentences for drug “mules” will be shorter than those given under current sentencing practice, as these types of offender will fall into the “subordinate” category of role. The Council considers this to be an appropriate approach to this particular type of offender; one which takes into account the frequent vulnerability of individuals who would fall under this description, whose naivety and lack of knowledge of the consequences or of the drug laws (and penalties) in countries other than their own is often exploited and whose involvement, as suggested by the case studies on drug “mules”, can often be due to a misplaced trust in a family member, friend or acquaintance. It therefore proposes that a drug “mule” importing 800g (large quantity) of cocaine should be classed as playing a subordinate role and would therefore expect to receive a sentence of between six years’ and seven years six months’ custody. This reduction also seems to align with the views expressed in the public focus group research conducted. Although views towards the circumstances of such an offender were mixed, participants were in general less punitive when taking into account their vulnerability and circumstances.

The starting points and ranges for all importation offences (except for very small quantities, where the court is referred to the guidelines for possession or supply) are set out in Tables 14 – 16.

6 [1982] 4 Cr App R (S) 407

**TABLE 14 –**  
**Starting points and category ranges for Class A importation offences**

**Statutory maximum: life imprisonment**

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 8 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody
<b>Large quantity</b>	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years 6 months' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody	<b>Category range</b> 6 years' – 7 years 6 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 6 years 6 months' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 7 years 6 months' – 11 years' custody	<b>Category range</b> 6 years' – 7 years 6 months' custody	<b>Category range</b> 4 years 6 months' – 6 years' custody
<b>Small quantity</b>	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody
	<b>Category range</b> 6 – 9 years' custody	<b>Category range</b> 4 years 6 months' – 6 years' custody	<b>Category range</b> 3 years' – 4 years 6 months' custody
<b>Very small quantity</b>	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

**Minimum sentences**

Section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a **third** Class A trafficking offence, except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender and (b) would make it unjust to do so in all the circumstances. In cases such as these, the minimum term should be applied regardless of the starting points and category ranges outlined above.

This applies to all Class A trafficking offences, and therefore should be taken into account by the court at this stage in the proposed guidelines on offences of importation, supply, production and permitting premises to be used.

It is important to note that, in cases where the quantity is significantly greater than the largest quantity specified in the tables, a sentence above the category range may be justified and applied at the discretion of the court. This applies to all offences covered by the Council's proposals.

**TABLE 15 –**  
**Starting points and category ranges for Class B importation offences**

**Statutory maximum: 14 years' custody and/or unlimited fine**

<b>CLASS B</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 year 6 months' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody
<b>Large quantity</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody	<b>Category range</b> 2 years' – 3 years 6 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 3 years 6 months' – 6 years' custody	<b>Category range</b> 2 years' – 3 years 6 months' custody	<b>Category range</b> 1 – 2 years' custody
<b>Small quantity</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 12 – 51 weeks' custody
<b>Very small quantity</b>	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

**TABLE 16 –**  
**Starting points and category ranges for Class C importation offences**

**Statutory maximum: 14 years' custody and/or unlimited fine**

<b>CLASS C</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 2 years' custody
<b>Large quantity</b>	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 26 – 51 weeks' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 26 – 51 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 18 months' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

## Supply, offering to supply and possession with intent to supply

As for importation offences, the Council has placed emphasis on the quantity of drug involved and the role played by the offender. The proposals are based on current sentencing practice with the aim of supporting consistency in sentencing for supply.

The focus group research showed that people favoured more severe sentences as the quantity of the drug involved increased. This was related to their views on the culpability of the offender and the greater harm potentially associated with larger quantities of drugs.

In producing this particular guideline on supply offences, the Council has sought to highlight the distinction between large scale commercial suppliers and street dealers, and those supplying without any financial gain whatsoever in order to ensure that the sentences are in line with the harm caused and the financial gain received by the offender. This has been reflected in the descriptions of role.

The description of a leading role would include an offender orchestrating the wider supply of drugs for which significant financial gain would be expected. This could be, for example, a typical large scale commercial supplier in a high tier organisational role who arranges the sale of drugs to others in the supply chain for significant financial gain. For the supply in this way of, for example, 500g heroin, such an offender may expect to receive between 9 and 13 years' custody.

Street dealers (that is, those distributing drugs for financial gain) would also be expected to be covered by the description of a leading role. These offenders often maintain a stock of drugs to supply to drug users for a commercial motive, but will, in general, be supplying far lower quantities than a large scale commercial supplier. For the supply of a very small quantity of Class B drug – for example, 90g of cannabis – such an offender may expect to receive between a high level community order and six months' custody.

The term “social supplier” is frequently used when discussing the role of an offender in a supply offence. However, it is a highly problematic term as its interpretations vary widely. The term can be applied to those selling drugs to friends, where the supply is commercial but the recipients are known. It is also sometimes applied to those offenders who supply for no gain, for example by conducting a joint purchase with friends. The Council's aim is to draw a distinction in role, and therefore in culpability, between the commercial supplier providing a regular supply for not insignificant financial gain, and the person who provides small amounts of the drug to friends for no financial gain whatsoever, for example by conducting a shared purchase. In order to maintain this distinction throughout, the terms “social supply” and “social supplier” have been avoided so that it is always clear which type of offender is being referred to.

Offender types that would be expected to fall under the description of a subordinate role include dealers making no financial gain but supplying solely to feed their own addiction, so-called runners or those acting as “introducers” (receiving no gain by introducing the user to the dealer) and those who supply to friends or acquaintances for no gain, for example when conducting a shared purchase. Any offender seeking to make financial gain from supplying a drug would fall outside of this category and be regarded as performing a significant or a leading role.

Tables 17 – 19 set out the starting points and ranges for these offences.

**TABLE 17 –**  
**Starting points and category ranges for Class A supply offences**

**Statutory maximum: life imprisonment**

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 8 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody
<b>Large quantity</b>	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years 6 months' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody	<b>Category range</b> 5 years' – 7 years 6 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 6 years 6 months' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 years 6 months' – 11 years' custody	<b>Category range</b> 5 years' – 7 years 6 months' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody
<b>Small quantity</b>	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody	<b>Category range</b> High level community order – 3 years 6 months' custody
<b>Very small quantity</b>	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 4 years 6 months' – 7 years' custody	<b>Category range</b> 2 years' – 4 years 6 months' custody	<b>Category range</b> High level community order – 2 years' custody

**TABLE 18 –**  
**Starting points and category ranges for Class B supply offences**

**Statutory maximum: 14 years' custody and/or unlimited fine**

<b>CLASS B</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody
<b>Large quantity</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 3 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 12 – 51 weeks' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> High level community order – 26 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order

**TABLE 19 –**  
**Starting points and category ranges for Class C supply offences**

**Statutory maximum: 14 years' custody and/or unlimited fine**

<b>CLASS C</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 2 years' custody
<b>Large quantity</b>	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 12 – 51 weeks' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 12 – 51 weeks'	<b>Category range</b> High level community order – 26 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 12 weeks' – 51 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band A fine – Low level community order



## Production of a controlled drug and cultivation of cannabis

Production offences increased in number over the decade up to 2009, making this offence the third most commonly sentenced drug offence that year. The majority of sentences for production offences are for offences involving cannabis, hence the Council's especial focus on offences of this nature.

Sentencing for these offences has provided a challenge for the Council in developing this particular guideline. This has largely been as a result of uncertainty around the interpreting of current sentencing practice, especially in the magistrates' courts where almost all offenders receive non-custodial sentences ranging from discharges to suspended sentence orders. The Council has been unable to identify any data regarding the quantities of drug that attract these non-custodial options. This has made it difficult to predict to what extent the proposals will impact on current sentencing practice. This is explained in more detail in the resource assessment that accompanies the consultation papers and can be found at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk). The Council would be very interested in views as to sentencing for production/cultivation offences, especially in the magistrates' courts, and would welcome any information that sentencers could provide about the types of cases they are dealing with, which will help inform the decisions made with regard to the definitive guideline.

In developing this particular guideline, it was the intention of the Council to reflect current sentencing practice as closely as possible. However, it also wanted to ensure that sentencing for these offences was proportionate to the other offences within the guideline. This was particularly because the Council felt that production and cultivation offences could incorporate aspects of both possession (at the lower end) and supply. It concluded that the offence should in general be regarded as more serious than supply because it involves producing the drug from the source and in some cases introducing it into the supply chain.

Another consideration of the Council was to maintain the distinction between production/cultivation of cannabis as a commercial enterprise and where it is grown solely for the offender's own use. The former can involve different offenders taking different roles. This is reflected in the descriptions of roles. An individual who takes a main organisational role in a commercial operation would be classed as leading role, but where the production is primarily for their own use, he/she would be classed as playing a significant rather than a leading role. Where it can be proven that the production is solely for his/her own use, the offender would be classed as playing only a subordinate role.

The Council also aims to ensure that sentences for those with a lesser role – for example, minders of the plants with little or no knowledge of the wider operation, commonly referred to as gardeners – are more proportionate to the role they have undertaken, despite the often large quantities that such offenders are involved in looking after. Therefore, the minder or gardener of cannabis plants in a medium scale domestic operation engaged to water the plants on a daily basis in return for his free accommodation and food could expect to receive a sentence of between a medium level community order and 12 months' custody.

All starting points and ranges for production/cultivation offences are set out in Tables 20 – 22. There are no starting points and ranges given for the very small quantity/leading role category, as such a combination would be unlikely to occur given that such a small number of plants would not suggest a leading role.

**TABLE 20 –**  
**Starting points and category ranges for Class A production offences**  
**Statutory maximum: life imprisonment**

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody
<b>Large quantity</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody
<b>Medium quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 15 months' custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 36 weeks' – 2 years' custody
<b>Small quantity</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 15 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 36 weeks' – 2 years' custody	<b>Category range</b> High level community order – 51 weeks' custody
<b>Very small quantity</b>	N/A	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	N/A	<b>Category range</b> High level community order – 51 weeks' custody	<b>Category range</b> Low level community order – High level community order

**TABLE 21 –**  
**Starting points and offence ranges for Class B production/cultivation offences**  
**Statutory maximum: 14 years' custody and/or unlimited fine**

<b>CLASS B</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity/industrial commercial operation</b>	<b>Starting point</b> 6 years 6 months' custody	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 6 – 8 years' custody	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 2 – 4 years' custody
<b>Large quantity/significant commercial operation</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> High level community order – 2 years' custody
<b>Medium quantity/medium scale domestic operation involving about 15 plants or more</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> Medium level community order – 51 weeks' custody
<b>Small quantity/small scale domestic operation in general range of 9 – 15 plants</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> High level community order – 51 weeks' custody	<b>Category range</b> Low level community order – 26 weeks' custody
<b>Very small quantity/very small domestic operation involving no more than about 8 plants</b>	N/A	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	N/A	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Discharge – Low level community order



**TABLE 22 –**  
**Starting points and category ranges for Class C production offences**  
**Statutory maximum: 14 years' custody and/or unlimited fine**

<b>CLASS C</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 4 – 7 years' custody	<b>Category range</b> 3 – 5 years' custody	<b>Category range</b> 18 months' – 3 years' custody
<b>Large quantity</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 3 – 5 years' custody	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> High level community order – 18 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 36 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 12 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	N/A	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band A fine
	N/A	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Discharge – Low level community order

## Permitting premises to be used

For offences of permitting premises to be used, of which there is only a very small number, the Council has sought to reflect current sentencing practice which it considers to be at the right level for offences of this type.

The determination of the offence category for this offence takes into consideration a wider range of factors than the role of the offender and the quantity of drug involved, and uses the concepts of culpability and harm. An offender causing a greater level of harm and with high culpability – for example, an individual who permits their house to be used primarily for extensive drug-related activity involving at

least 10g of cocaine for which they expect significant financial gain – may expect to receive a sentence of between 18 months' and four years' custody. This is in contrast to an offender infrequently permitting their premises to be used for smoking cannabis (less than 50g), for which they do not receive any financial gain. This offender would fall into Category 3 and therefore may expect a Band A fine to a low level community order.

Tables 23 – 25 set out the starting points and ranges for offences of permitting premises to be used.

**TABLE 23 – Starting points and category ranges for Class A offences of permitting premises to be used**

### Class A Statutory maximum: 14 years' custody

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	2 years 6 months' custody	18 months' – 4 years' custody
Category 2	36 weeks' custody	High level community order – 18 months' custody
Category 3	Medium level community order	Low level community order – High level community order

**TABLE 24 – Starting points and category ranges for Class B offences of permitting premises to be used**

### Class B Statutory maximum: 14 years' custody

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	1 year's custody	26 weeks' – 18 months' custody
Category 2	High level community order	Low level community order – 26 weeks' custody
Category 3	Band C fine	Band A fine – Low level community order

**TABLE 25 – Starting points and category ranges for Class C offences of permitting premises to be used**

### Class C Statutory maximum: 14 years' custody

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	12 weeks' custody	High level community order – 26 weeks' custody*
Category 2	Low level community order	Band C fine – High level community order
Category 3	Band A fine	Discharge – Band C fine

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

## Possession of a controlled drug

As for offences of permitting premises to be used, the proposed offence ranges and starting points for possession offences aim to reflect current sentencing practice, which the Council considers to be at the right level for offences of this type. This also aligns with public opinion as reflected in the public focus group research, which showed that participants generally did not wish to see custodial penalties for drug possession offences. This will have an impact on a large number of offences, as possession

offences have made up over two thirds of all adults sentenced for drug offences over the last ten years. The ranges outlined in Tables 26 – 28 would mean only custodial starting points for any offender found in possession of any quantity of drug in a prison – for 5g of heroin, this may mean six months' to three years' custody. For an offender in possession of 0.5g ketamine (not in prison), a discharge to a Band A fine could be expected.

**TABLE 26 – Starting points and category ranges for Class A possession offences**

### Class A Statutory maximum: 7 years' custody

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	1 year's custody	26 weeks' – 3 years' custody
Category 2	High level community order	Medium level community order – 51 weeks' custody
Category 3	Medium level community order	Low level community order – 26 weeks' custody
Category 4	Band C fine	Band A fine – Low level community order

**TABLE 27 – Starting points and category ranges for Class B possession offences**

### Class B Statutory maximum: 5 years' custody

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	26 weeks' custody	12 – 51 weeks' custody
Category 2	Band C fine	Band B fine – 12 weeks' custody
Category 3	Band B fine	Band A fine – Medium level community order
Category 4	Band A fine	Discharge – Low level community order

**TABLE 28 – Starting points and category ranges for Class C possession offences**

### Class C Statutory maximum: 2 years' custody

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	12 weeks' custody	6 – 26 weeks' custody
Category 2	Band C fine	Band A fine – Medium level community order
Category 3	Band B fine	Discharge – Low level community order
Category 4	Band A fine	Discharge – Band B fine

## For all the offences covered by this draft guideline

This Section has set out the starting points and category ranges that are proposed for each of the five drug guidelines. The Council would welcome your views on whether these have been set at the appropriate level. It would be helpful if you could specify any areas where you disagree, setting out the reasons why.

**Q12**

Do you agree with the proposed offence ranges, category ranges and starting points for all of the offences in the draft guideline?

### Impact of sentencing decisions on victims

The Council, by statute, must have regard to the impact of sentencing decisions on victims.<sup>7</sup> It always welcomes views on whether it can do more in relation to the impact on victims, in particular from victims themselves and from representative bodies of victims.

In developing the guideline, the Council has been alert to the fact that victims of drug offences are not necessarily easily identifiable in all cases. There is some difficulty in determining a direct causal link between the offender and the victim, as the victim will often be much later on in the process. For example, where a drug is imported into the country by a drug “mule”, it will be unclear to the offender who the drug will reach, which means that the causal link between the offender and the victim becomes difficult to establish.

The Council recognises the impact that drug offending can have on the wider community, especially where it is persistent or prevalent. In order to take account of this, “established evidence of community impact” has been included as a factor increasing seriousness at step 2 for offences of supply, production/cultivation, permitting premises to be used and possession. The consideration of this factor is reliant upon the provision of community impact

statements, which set out the concerns of a particular community regarding the impact of crime in the area. This makes the particular factor unsuitable for importation offences, where the community affected will most likely not be defined in the same way.

**Q13**

Are there any ways in which you think victims can and/or should be considered in the proposed draft guideline?

### Equality and diversity

The Council has produced an initial equality impact assessment in conjunction with this draft guideline, and has contacted a number of organisations with an interest in this area. It would welcome any views as to whether the draft guideline has sufficiently considered this impact.

**Q14**

Is there any other way in which equality and diversity should be considered as part of this draft guideline?

### Public confidence

In preparing guidelines, the Council must have regard to promoting public confidence. The Council’s intention is that the proposed draft guideline will be clearer for both sentencers and the public to understand, making it more likely that the public will have increased confidence in sentencing.

The Council would welcome views on the clarity of the proposed draft guideline and its public accessibility.

**Q15**

Are there any further comments that you wish to make?

## Annex A: Summary of consultation questions

Q1

Do you agree with the proposed groupings of offences into five guidelines?

Q2

Do you agree with the Council's approach to the issue of purity? If you do not agree, it would be helpful to the Council if you would explain your reasoning.

Q3

Do you agree with the Council's approach of separating Classes B and C?

Q4

Do you agree that the court should be referred to the guideline for supply or possession (according to intent) when the quantity of drug involved in the offence is very small?

Q5

Do you think that supplying to an undercover police officer should be included in the guideline? If yes, please state at which stage.

Q6

Do you agree that possession of a drug in a prison should put an offender into the most serious offence category for possession offences?

Q7

Should "medical evidence that a drug is used to help with a medical condition" be included as a mitigating factor for possession offences?

Q8

Do you agree with the quantities set out for each of the drug guidelines?

Q9

Do you agree with the roles as proposed for each of the offences covered by the draft guideline?

- Q10 Do you agree with the aggravating and mitigating factors outlined for each of the offences covered by the draft guideline?
- Q11 Do you think that there are any other factors that should be taken into account at these two steps?
- Q12 Do you agree with the proposed offence ranges, category ranges and starting points for all of the offences in the draft guideline?
- Q13 Are there any ways in which you think victims can and/or should be considered in the proposed draft guideline?
- Q14 Is there any other way in which equality and diversity should be considered as part of this draft guideline?
- Q15 Are there any further comments that you wish to make?

# Annex B:

## Background

### The Sentencing Council

**T**he Sentencing Council was set up on 6 April 2010 as the new, independent body responsible for developing sentencing guidelines and promoting greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. The Sentencing Council also has a key role to play in promoting public awareness and confidence in sentencing.

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and the Sentencing Advisory Panel (SAP), which were disbanded. The Sentencing Council is a more streamlined body with a broader remit for work on sentencing through improvements to guidelines, the development of a robust evidence base, and better engagement with the public to improve understanding of sentencing. The Council brings together wide experience in sentencing and in the Criminal Justice System and comprises eight judicial and six non-judicial members.

On 16 March 2011, the Sentencing Council issued its first definitive guideline on assault, which incorporated a new structure aimed to be straightforward for sentencers to apply and clearer for victims and the public to understand.

#### Statutory requirements

##### Purposes of sentencing

In producing this draft guideline, the Council has had regard to the purposes of sentencing as stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

##### Sentencing Guidelines

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;



- the Council may review the guidelines and may revise them;<sup>8</sup>
- the Council must publish a resource assessment in respect of the guidelines;<sup>9</sup> and,
- the Council must monitor the operation and effect of its sentencing guidelines.<sup>10</sup>

Under the previous bodies (the SGC and SAP), courts had to “have regard to any guidelines which are relevant to the offender’s case”<sup>11</sup> and give reasons if a sentence fell outside of the range.<sup>12</sup> Section 125(a) of the Coroners and Justice Act states that “every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case”. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so, and the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:<sup>13</sup>

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and,
- the resources required for the provision of youth justice services.<sup>14</sup>

The Council has had regard to these duties throughout the preparation of this draft guideline and evidence and rationale relating to these statutory duties is set out further in Section three. The Council has considered case law on drug offences, evidence on current sentencing practice and has drawn on members’ own experience in the fields of criminal justice and sentencing. The intention is for the decision making process in the proposed draft guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the public, so that they too can have a better understanding of how a sentence has been reached.

The consultation will be a 12 week public consultation and focus groups will be held with representative groups, in order to seek their views. Meetings have already taken place with a number of interested parties and organisations and these have informed the development of this draft guideline.

In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence which is contained in the resource assessment which accompanies this consultation paper.

8 s. 120 Coroners and Justice Act 2009

9 s. 127(2) *ibid*

10 s. 128(1) *ibid*

11 s. 172(1) Criminal Justice Act 2003

12 s. 174(2) *ibid*

13 s. 120(11) Coroners and Justice Act 2009

14 s. 127(3) *ibid*

### Structure of the guidelines

The Coroners and Justice Act 2009 proposes a structure for guidelines and the Council is to have regard to the desirability of following this structure.<sup>15</sup> As in the *Assault Definitive Guideline*, the Council has taken this proposed structure into consideration and has adopted parts of this model for the new draft guideline. The Council has taken into consideration in the draft guideline:

- the offender’s culpability in committing the offence;
- the harm caused, or intended to be caused, or which might foreseeably have been caused; and,
- other factors the Council considers to be particularly relevant to the seriousness of the offence.

In order to assist the courts in discharging their duties contained in section 125 (3)–(4) of the Coroners and Justice Act 2009, the draft guideline proposed by the Council:

- specifies the range of sentences for each offence (“the offence range”);
- specifies for each category the range of sentences (“the category range”) within the offence range;
- specifies the sentencing starting point in the offence range of each of those categories; and,
- lists any aggravating and mitigating factors to take into account when considering the seriousness of the offence.

In order to avoid confusion, the Council has adopted the definitions from the Coroners and Justice Act 2009.

### Sentencing Youths

In November 2009, the SGC published a guideline, *Overarching Principles – Sentencing Youths*, providing comprehensive guidance on how to sentence offenders under the age of 18. This has been welcomed by youth representative groups and youth court magistrates. The Council is of the opinion that this sufficiently covers the issues for offenders under the age of 18 and should be referred to in conjunction with the proposed new guideline on drug offences when sentencing young offenders. The age, maturity and experience of an offender are considered together as a mitigating factor in the draft guideline on drug offences.

<sup>15</sup> s. 121 Coroners and Justice Act 2009

# Annex C: Draft guideline

## Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all offenders aged 18 and older, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences after 6 April 2010:

“Every court -  
(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and  
(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

### Structure, ranges and starting points

For the purposes of section 125(3)–(4) Coroners and Justice Act 2009, the guideline specifies **offence ranges** – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of **categories** which reflect varying degrees of seriousness. The offence range is split into **category ranges** – sentences appropriate for each level of seriousness. The Council has also identified a **starting point** within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in the Sentencing Council’s *Assault Definitive Guideline*, this guideline adopts an offence based starting point. **Starting points apply to all offences within the corresponding category and are applicable to all offenders in all cases irrespective of plea or previous convictions.** Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Credit for a guilty plea is taken into consideration only at step 4 in the process, after the appropriate sentence has been identified.

**Information on community orders and fine bands is set out in the annex at page 80.**



# 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))

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## Class A

Maximum: Life imprisonment

Offence range: Offence range: 3 – 16 years' custody

A Class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

## Class B

Maximum: 14 years' custody and/or unlimited fine

Offence range: 12 weeks' – 10 years' custody

## Class C

Maximum: 14 years' custody and/or unlimited fine

Offence range: Community order – 6 years' custody

**STEP ONE****Determining the offence category**

The court should determine the culpability for the offence (offender's role) and the harm (quantity of drugs) using the tables below.

Quantity is determined by weight of the product without any assumption as to purity. Purity is dealt with at step 2.

Where the quantity is significantly above “**very large**” a sentence above the range may be justified.

**Offender's role – this list is NOT exhaustive but examples include:****Leading:**

- Top tier organisational role in own/another's operation, for example funding purchase of drugs
- Substantial links to, and influence on, others involved in the chain
- Expectation of **substantial** financial gain
- Uses business to aid and/or conceal illegal activity
- Abuse of position/breach of trust, for example law enforcement officer

**Significant:**

- Mid-tier organisational role in operation that is not their own, for example arranging transportation/professional courier
- Engages others in illegal activity by pressure, influence, intimidation or reward
- Limited, if any, influence on those above them in the chain
- Expectation of **some** gain, either financial or benefit in kind

**Subordinate:**

- Performs a limited function under direction, in operation which is not their own
- Engaged by pressure, influence, intimidation or relatively small reward, for example drug “mule”
- Imported in, or on, the person/luggage
- Involvement through naivety
- No influence on those above them in the chain
- If own operation, **solely** for own use (considering reasonableness of account in all the circumstances)

**Quantity of drugs**

## Very large, for example:

- Heroin, cocaine – 2.5kg to 10kg
- Ecstasy – 5,000 to 20,000 tablets
- LSD – 2,500 to 10,000 squares
- Amphetamine – 10kg to 40kg
- Cannabis – 100kg to 400kg
- Ketamine – 2.5kg to 10kg

## Large, for example:

- Heroin, cocaine – 500g to 2.49kg
- Ecstasy – 1,000 to 4,999 tablets
- LSD – 500 to 2,499 squares
- Amphetamine – 2.5kg to 9.99kg
- Cannabis – 25kg to 99.99kg
- Ketamine – 500g to 2.49kg

## Medium, for example:

- Heroin, cocaine – 50g to 499.9g
- Ecstasy – 100 to 999 tablets
- LSD – 50 to 499 squares
- Amphetamine – 250g to 2.49kg
- Cannabis – 1kg to 24.99kg
- Ketamine – 50g to 499.9g

## Small, for example:

- Heroin, cocaine – 5g to 49.9g
- Ecstasy – 20 to 99 tablets
- LSD – 10 to 49 squares
- Amphetamine – 20g to 249.9g
- Cannabis – 100g to 999.9g
- Ketamine – 5g to 49.9g

## Very small, for example:

- Heroin, cocaine – up to 4.9g
- Ecstasy – up to 19 tablets
- LSD – up to 9 squares
- Amphetamine – up to 19.9g
- Cannabis – up to 99.9g
- Ketamine – up to 4.9g

**STEP TWO****Starting point and category range**

The court should use the table below to identify the corresponding starting point. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

In addition, for **Class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third Class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 8 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody
<b>Large quantity</b>	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years 6 months' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody	<b>Category range</b> 6 years' – 7 years 6 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 6 years 6 months' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 7 years 6 months' – 11 years' custody	<b>Category range</b> 6 years' – 7 years 6 months' custody	<b>Category range</b> 4 years 6 months' – 6 years' custody
<b>Small quantity</b>	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody
	<b>Category range</b> 6 – 9 years' custody	<b>Category range</b> 4 years 6 months' – 6 years' custody	<b>Category range</b> 3 years' – 4 years 6 months' custody
<b>Very small quantity</b>	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	



<b>CLASS B</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 year 6 months' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody
<b>Large quantity</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody	<b>Category range</b> 2 years' – 3 years 6 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 3 years 6 months' – 6 years' custody	<b>Category range</b> 2 years' – 3 years 6 months' custody	<b>Category range</b> 1 – 2 years' custody
<b>Small quantity</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 12 – 51 weeks' custody
<b>Very small quantity</b>	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	
<b>CLASS C</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 2 years' custody
<b>Large quantity</b>	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 26 – 51 weeks' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 26 – 51 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 18 months' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

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.

For Class C offences, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### 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 the conviction [see page 53 if third conviction for drug trafficking offence]

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offence committed on bail

#### *Other aggravating factors include:*

Sophisticated nature of concealment/attempts to avoid detection

Attempts to conceal or dispose of evidence, where not separately charged

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Use of others, especially children

Presence of weapons, where not separately charged

High purity

Failure to comply with current court orders

Offence committed on licence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

### Factors reducing seriousness or reflecting personal mitigation

Lack of sophistication as to nature of concealment

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

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/recent convictions

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical condition 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 whether there are any factors which indicate a reduction in sentence, 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) by the offender 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 *Guilty Plea* guideline.

**Where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act 2000, the discount for an early guilty plea must not exceed 20%.**

**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.

**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 other 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider credit for time spent on remand in custody or on bail in accordance with sections 240 and 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 the intent to supply it to another

Misuse of Drugs Act 1971 (section 5(3))

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## Class A

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A Class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

## Class B

Maximum: 14 years and/or unlimited fine

Offence range: Fine – 8 years' custody

## Class C

Maximum: 14 years and/or unlimited fine

Offence range: Fine – 6 years' custody

**STEP ONE****Determining the offence category**

The court should determine the culpability for the offence (offender's role) and the harm (quantity) using the tables below.

Quantity is determined by weight of the product without any assumption as to purity. Purity is dealt with at step 2.

Where the quantity is significantly above "very large" a sentence above the range may be justified.

**Offender's role – this list is NOT exhaustive but examples include:****Leading:**

- Top tier organisational role in own/another's operation, for example funds/arranges purchases from importer
- Uses business to aid and conceal illegal activity
- Expectation of **substantial** financial gain
- Direct supply to drug users for gain, for example street dealer
- Evidence of professional dealing, for example deal lists, drug dealing paraphernalia, such as scales, packaging or quantities of cash inconsistent with any legitimate source of income
- Abuses a position of trust or responsibility, for example law enforcement/prison officer
- Supply **by** prisoner

**Significant:**

- Mid-tier organisational role in an operation which is not their own, for example acts as link in the chain
- Engages others in illegal activity whether by pressure, influence, intimidation or reward
- Limited/no influence on those above them in the organisational chain
- Expectation of **some** gain, either financial or benefit in kind
- Supply **to** prisoner (other than by prison officer)

**Subordinate:**

- Performs a limited function under direction, in operation which is not their own, for example runners
- Engaged by pressure, influence, intimidation or relatively small reward
- No expectation of gain, for example introducers
- No influence on those above them in the chain
- If own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis, such as a reefer

**Quantity of drugs**

## Very large, for example:

- Heroin, cocaine – 2.5kg to 10kg
- Ecstasy – 5,000 to 20,000 tablets
- LSD – 2,500 to 10,000 squares
- Amphetamine – 10kg to 40kg
- Cannabis – 100kg to 400kg
- Ketamine – 2.5kg to 10kg

## Large, for example:

- Heroin, cocaine – 500g to 2.49kg
- Ecstasy – 1,000 to 4,999 tablets
- LSD – 500 to 2,499 squares
- Amphetamine – 2.5kg to 9.99kg
- Cannabis – 25kg to 99.99kg
- Ketamine – 500g to 2.49kg

## Medium, for example:

- Heroin, cocaine – 50g to 499.9g
- Ecstasy – 100 to 999 tablets
- LSD – 50 to 499 squares
- Amphetamine – 250g to 2.49kg
- Cannabis – 1kg to 24.99kg
- Ketamine – 50g to 499.9g

## Small, for example:

- Heroin, cocaine – 5g to 49.9g
- Ecstasy – 20 to 99 tablets
- LSD – 10 to 49 squares
- Amphetamine – 20g to 249.9g
- Cannabis – 100g to 999.9g
- Ketamine – 5g to 49.9g

## Very small, for example:

- Heroin, cocaine – up to 4.9g
- Ecstasy – up to 19 tablets
- LSD – up to 9 squares
- Amphetamine – up to 19.9g
- Cannabis – up to 99.9g
- Ketamine – up to 4.9g

**STEP TWO****Starting point and category range**

The court should use the table below to identify the corresponding starting point. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

In addition, for **Class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third Class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 8 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody
<b>Large quantity</b>	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years 6 months' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 7 years 6 months' – 9 years' custody	<b>Category range</b> 5 years' – 7 years 6 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 6 years 6 months' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 years 6 months' – 11 years' custody	<b>Category range</b> 5 years' – 7 years 6 months' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody
<b>Small quantity</b>	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody	<b>Category range</b> High level community order – 3 years 6 months' custody
<b>Very small quantity</b>	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 4 years 6 months' – 7 years' custody	<b>Category range</b> 2 years' – 4 years 6 months' custody	<b>Category range</b> High level community order – 2 years' custody

<b>CLASS B</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody
<b>Large quantity</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 3 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 12 – 51 weeks' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> High level community order – 26 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order
<b>CLASS C</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 2 years' custody
<b>Large quantity</b>	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 2 years' custody	<b>Category range</b> 12 – 51 weeks' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 12 – 51 weeks'	<b>Category range</b> High level community order – 26 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 12 weeks' – 51 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band A fine – Low 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.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

### 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 the conviction (see box at page 59 if third drug trafficking conviction)

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used

Offence committed on bail

#### *Other aggravating factors include:*

Targeting of any premises intended to locate vulnerable individuals

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Attempts to conceal or dispose of evidence, where not separately charged

Presence of others, especially children and/or non-users

Presence of weapons, where not separately charged

Charged as importation of a very small amount

High purity

Failure to comply with current court orders

Offence committed on licence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Established evidence of community impact

### 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 1

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/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 whether there are any factors which indicate a reduction in sentence, 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) by the offender 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 *Guilty Plea* guideline.

**Where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act 2000, the discount for an early guilty plea must not exceed 20%.**

**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.

**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 other 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Production of a controlled drug

## Misuse of Drugs Act 1971 (section 4(2)(a) or (b))

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### Class A

Maximum: Life imprisonment

Offence range: Community order – 10 years' custody

A Class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

### Class B

Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

### Class C

Maximum: 14 years' custody

Offence range: Discharge – 7 years' custody

# Cultivation of cannabis plant

## Misuse of Drugs Act 1971 (section 6(2))

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Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

**STEP ONE****Determining the offence category**

The court should determine the culpability for the offence (offender's role) and the harm (quantity or scale of operation) using the tables below.

Quantity is determined by weight of the product without any assumption as to purity. Purity is dealt with at step 2.

Where the quantity is significantly above "**very large**" a sentence above the range may be justified.

**Offender's role – this list is NOT exhaustive but examples include:****Leading:**

- Top tier organisational role, for example funding the purchase of the production equipment/raw materials
- Significant links to others involved in the drug trade
- Carried out in expectation of **substantial** financial gain
- Uses business to aid and/or conceal illegal activity
- Abuse of position/breach of trust, for example law enforcement officer

**Significant:**

- Mid-tier organisational role, for example arranges rental of premises/purchase of equipment
- Main organisational role where production is **primarily** for own use but includes some supply to others
- Expectation of either **some** gain, financial or benefit in kind
- Engages others in the illegal activity whether by pressure, influence, intimidation or reward
- Limited/no influence on those above them in chain

**Subordinate:**

- Performs a limited function under direction, in operation which is not their own
- Engaged to perform a limited function whether by pressure, influence, intimidation or relatively small reward, for example gardener
- Involvement through naivety
- No influence on those above them in the organisational chain
- If own operation, **solely** for own use (considering reasonableness of account in all the circumstances)

**Quantity of drugs or scale of operation (actual and/or potential yield)**

## Very large, for example:

- Heroin, cocaine – 2.5kg to 10kg
- Ecstasy – 5,000 to 20,000 tablets
- LSD – 2,500 to 10,000 squares
- Amphetamine – 10kg to 40kg
- Ketamine – 2.5kg to 10kg
- Cannabis – operation capable of producing industrial quantities for commercial use

## Large, for example:

- Heroin, cocaine – 500g to 2.49kg
- Ecstasy – 1,000 to 4,999 tablets
- LSD – 500 to 2,499 squares
- Amphetamine – 2.5kg to 9.99kg
- Ketamine – 500g to 2.49kg
- Cannabis – operation capable of producing significant quantities for commercial use

## Medium, for example:

- Heroin, cocaine – 50g to 499.9g
- Ecstasy – 100 to 999 tablets
- LSD – 50 to 499 squares
- Amphetamine – 250g to 2.49kg
- Ketamine – 50g to 499.9g
- Cannabis – domestic operation involving about 15 plants or more

## Small, for example:

- Heroin, cocaine – 5g to 49.9g
- Ecstasy – 20 to 99 tablets
- LSD – 10 to 49 squares
- Amphetamine – 20g to 249.9g
- Ketamine – 5g to 49.9g
- Cannabis – domestic operation in the general range of about 9 – 15 plants

## Very small, for example:

- Heroin, cocaine – up to 4.9g
- Ecstasy – up to 19 tablets
- LSD – up to 9 squares
- Amphetamine – up to 19.9g
- Ketamine – up to 4.9g
- Cannabis – domestic operation involving no more than about 8 plants

**STEP TWO****Starting point and category range**

The court should use the table below to identify the corresponding starting point. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

In addition, for **Class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third Class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody
<b>Large quantity</b>	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody
<b>Medium quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 15 months' custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 36 weeks' – 2 years' custody
<b>Small quantity</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 15 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 36 weeks' – 2 years' custody	<b>Category range</b> High level community order – 51 weeks' custody
<b>Very small quantity</b>	N/A	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	N/A	<b>Category range</b> High level community order – 51 weeks' custody	<b>Category range</b> Low level community order – High level community order

<b>CLASS B</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity/industrial commercial operation</b>	<b>Starting point</b> 6 years 6 months' custody	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 6 – 8 years' custody	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 2 – 4 years' custody
<b>Large quantity/significant commercial operation</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 4 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> High level community order – 2 years' custody
<b>Medium quantity/medium scale domestic operation involving about 15 plants or more</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> Medium level community order – 51 weeks' custody
<b>Small quantity/small scale domestic operation in general range of about 9 – 15 plants</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> High level community order – 51 weeks' custody	<b>Category range</b> Low level community order – 26 weeks' custody
<b>Very small quantity/very small domestic operation involving no more than about 8 plants</b>	N/A	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	N/A	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Discharge – Low level community order

<b>CLASS C</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Subordinate role</b>
<b>Very large quantity</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 4 – 7 years' custody	<b>Category range</b> 3 – 5 years' custody	<b>Category range</b> 18 months' – 3 years' custody
<b>Large quantity</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 3 – 5 years' custody	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> High level community order – 18 months' custody
<b>Medium quantity</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 36 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody
<b>Small quantity</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 12 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Very small quantity</b>	N/A	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band A fine
	N/A	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Discharge – Low 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.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

### Factors increasing seriousness

#### *Statutory aggravating factors:*

Previous convictions, having regard to a) nature of the offence to which the conviction relates and relevance to current offence; and b) time elapsed since the conviction (see box page 65 if third drug trafficking conviction)

Offence committed on bail

#### *Other aggravating factors include:*

Nature of any likely supply

Level of any profit element

Use of premises accompanied by unlawful access to electricity/other utility supply of others

Ongoing/large scale operation as evidenced by presence and nature of specialist equipment

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Attempts to conceal or dispose of evidence, where not separately charged

Presence of others, especially children and/or non-users

Presence of weapons, where not separately charged

High purity

Failure to comply with current court orders

Offence committed on licence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Established evidence of community impact

### Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress except where taken into account at step 1

Isolated incident

No previous convictions **or** no relevant/recent convictions

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps 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 whether there are any factors which indicate a reduction in sentence, 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) by the offender 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 *Guilty Plea* guideline.

**Where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act 2000, the discount for an early guilty plea must not exceed 20%.**

**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.

**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 other 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Permitting premises to be used

## Misuse of Drugs Act 1971 (section 8)

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### Class A

Maximum: 14 years' custody

Offence range: Community order – 4 years' custody

A Class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

### Class B

Maximum: 14 years' custody

Offence range: Fine – 18 months' custody

### Class C

Maximum: 14 years' custody

Offence range: Discharge – 26 weeks' custody

**STEP ONE****Determining the offence category**

The court should determine the culpability for the offence and the harm (extent of the activity and/or the quantity of drugs) using the table below.

Quantity is determined by weight of the product without any assumption as to purity

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

**Factors indicating harm (non-exhaustive)***Greater harm:*

Regular drug-related activity

Large quantity of drugs, for example:

- Heroin, cocaine – 5g or more
- Cannabis – 50g or more

*Lesser harm:*

Infrequent drug-related activity

Small quantity of drugs, for example:

- Heroin, cocaine – up to 4.9g
- Cannabis – up to 49.9g

**Factors indicating culpability (non-exhaustive)***Higher culpability:*

Permits premises to be used primarily for drug activity, for example crack house

Permits use in expectation of **substantial** financial gain

Uses legitimate business premises to aid and/or conceal illegal activity, for example public house/club

*Lower culpability:*

Permits use for **limited/no** financial gain

No active role in any supply taking place

Involvement through naivety

**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. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

In addition, for **Class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third Class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

**Class A**

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	2 years 6 months' custody	18 months' – 4 years' custody
Category 2	36 weeks' custody	High level community order – 18 months' custody
Category 3	Medium level community order	Low level community order – High level community order

**Class B**

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	1 year's custody	26 weeks' – 18 months' custody
Category 2	High level community order	Low level community order – 26 weeks' custody
Category 3	Band C fine	Band A fine – Low level community order

**Class C**

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	12 weeks' custody	High level community order – 26 weeks' custody*
Category 2	Low level community order	Band C fine – High level community order
Category 3	Band A fine	Discharge – Band C fine

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

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

### Factors increasing seriousness

#### Statutory aggravating factors:

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to the current offence; and b) time elapsed since the conviction (see box page 71 if third drug trafficking conviction)

Offence committed on bail

#### Other aggravating factors include:

Length of time over which premises used for drug activity

Volume of drug activity permitted

Premises adapted to facilitate drug activity

Location of premises, for example proximity to school

Attempts to conceal or dispose of evidence, where not separately charged

Presence of others, especially children and/or non-users

Presence of weapons, where not separately charged

Failure to comply with current court orders

Offence committed on licence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Established evidence of community impact

### Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress

Isolated incident

No previous convictions **or** no relevant/recent convictions

Offender's vulnerability exploited

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps 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 whether there are any factors which indicate a reduction in sentence, 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) by the offender 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 *Guilty Plea* guideline.

**Where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act 2000, the discount for an early guilty plea must not exceed 20%.**

**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.

**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 other 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.





# Possession of a controlled drug

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

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### Class A

Maximum: 7 years' custody

Offence range: Fine – 3 years' custody

### Class B

Maximum: 5 years' custody

Offence range: Discharge – 51 weeks' custody

### Class C

Maximum: 2 years' custody

Offence range: Discharge – 26 weeks' custody

**STEP ONE****Determining the offence category**

The court should identify the offence category based on the factors set out in the table below.

Quantity is determined by weight of the product without any assumption as to purity.

**Category 1**

Possession of any quantity of drug in prison

**Category 2**

Large quantity, for example:

- Heroin, cocaine – 5g to 10g
- Ecstasy – 10 to 20 tablets
- LSD – 5 to 10 squares
- Amphetamine – 5g to 10g
- Cannabis – 25g to 50g
- Ketamine – 5g to 10g

**Category 3**

Small quantity, for example:

- Heroin, cocaine – 1g to 4.9g
- Ecstasy – 3 to 9 tablets
- LSD – 3 to 4 squares
- Amphetamine – 1g to 4.9g
- Cannabis – 10g to 24.9g
- Ketamine – 1g to 4.9g

**Category 4**

Very small quantity, for example:

- Heroin, cocaine – up to 0.9g
- Ecstasy – up to 2 tablets
- LSD – up to 2 squares
- Amphetamine – up to 0.9g
- Cannabis – up to 9.9g
- Ketamine – up to 0.9g

## 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. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

In cases where the quantity is greater than those in **category 2**, a sentence above the range may be justified.

#### Class A

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	1 year's custody	26 weeks' – 3 years' custody
Category 2	High level community order	Medium level community order – 51 weeks' custody
Category 3	Medium level community order	Low level community order – 26 weeks' custody
Category 4	Band C fine	Band A fine – Low level community order

#### Class B

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	26 weeks' custody	12 – 51 weeks' custody
Category 2	Band C fine	Band B fine – 12 weeks' custody
Category 3	Band B fine	Band A fine – Medium level community order
Category 4	Band A fine	Discharge – Low level community order

#### Class C

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	12 weeks' custody	6 – 26 weeks' custody
Category 2	Band C fine	Band A fine – Medium level community order
Category 3	Band B fine	Discharge – Low level community order
Category 4	Band A fine	Discharge – Band B fine

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since the conviction	Remorse
Offence committed on bail	Good character and/or exemplary conduct
<i>Other aggravating factors include:</i>	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Presence of others, especially children and/or non-users	Serious medical conditions requiring urgent, intensive or long-term treatment
Possession of drug in a school or licensed premises	Isolated incident
Failure to comply with current court orders	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed on licence	Mental disorder or learning disability
Attempts to conceal or dispose of evidence, where not separately charged	Sole or primary carer for dependent relatives
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Charged as importation of a very small amount	
Established evidence of community impact	

**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, 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) by the offender 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 *Guilty Plea* guideline.

**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.

**STEP SIX****Ancillary orders**

In all cases, the court should consider whether to make any 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Annex D:

## Fine bands and community orders

### Fine bands

In this guideline, fines are expressed as one of three fine bands (A, B or C).

Fine Band	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
<b>Band A</b>	50% of relevant weekly income	25–75% of relevant weekly income
<b>Band B</b>	100% of relevant weekly income	75–125% of relevant weekly income
<b>Band C</b>	150% of relevant weekly income	125–175% of relevant weekly income

### Community orders

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

Low	Medium	High
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work</li> <li>• Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks)</li> <li>• Exclusion requirement, without electronic monitoring, for a few months</li> <li>• Prohibited activity requirement</li> <li>• Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• Greater number of hours of unpaid work (e.g. 80–150 hours)</li> <li>• An activity requirement in the middle range (20 to 30 days)</li> <li>• Curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months)</li> <li>• Exclusion requirement, lasting in the region of 6 months</li> <li>• Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• 150–300 hours unpaid work</li> <li>• Activity requirement up to the maximum of 60 days</li> <li>• Curfew requirement up to 12 hours per day for 4–6 months</li> <li>• Exclusion order lasting in the region of 12 months</li> </ul>

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

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