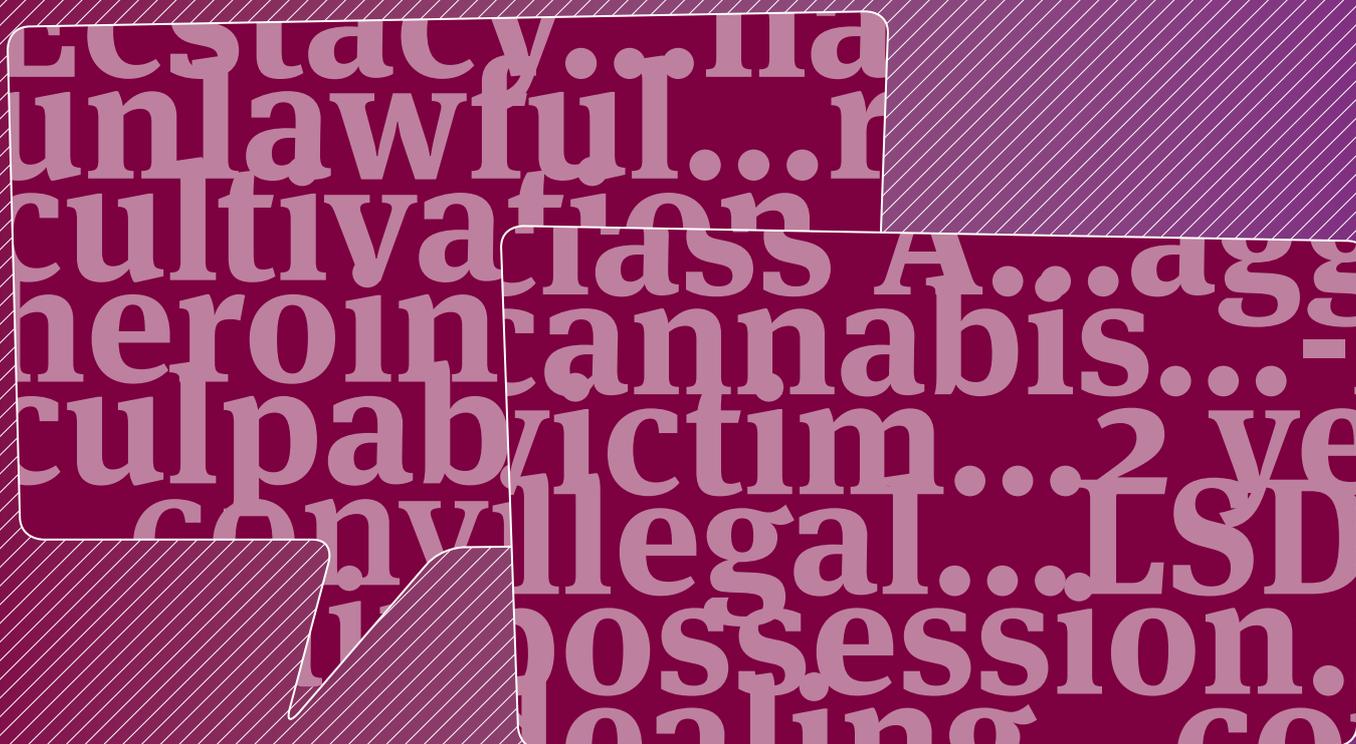


# Drug Offences Guideline

## Public Consultation



# Drug Offences Guideline

## Public Consultation

Published on 28 March 2011  
The consultation will end on 20 June 2011

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 public consultation is primarily aimed at members of the public who have an interest in the criminal justice system and sentencing.

### 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 longer professional 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 the independent body responsible for developing sentencing guidelines for sentencers to use when passing a sentence.

## Why drugs?

The Council is proposing a draft guideline for sentencing drug offences. There is currently no guideline in the Crown Court for these offences, and therefore the Council proposes that, following this consultation period, the definitive guideline on drug offences will become the main point of reference for sentencers when sentencing drug offences. The Council's aim is to promote consistency in sentencing. Therefore, throughout the development of the draft guideline it has aimed to ensure that all sentences for drug offences are relative to the seriousness of the offence, relative to sentences for other drug offences and proportionate within the wider sentencing framework.

## The public consultation paper

The Council has produced this public consultation paper in order to seek the views of members of the public who have an interest in the criminal justice system, sentencing or drug related issues.

As sentencing for drug offences is such a complex issue, this public consultation paper does not set out in detail all of the Council's proposals in relation to drug offences, nor does it include a full draft guideline. Instead, it sets

out a number of key issues on which the Council would particularly welcome your views. If you are interested in seeing and commenting on the proposals in full, you can do so by looking at the professional consultation paper, which can be found at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk).

This paper begins by setting out the offences that are covered by the Council's proposals. It then uses a model guideline to illustrate the way in which sentencers would use the guideline to come to a sentencing decision, as well as the main issues on which the Council is seeking views. A summary of the consultation questions can be found at Annex A and a glossary of terms used in this paper is at Annex B.

## Consultation process

This is a 12 week public consultation. Once the consultation exercise has been concluded, a definitive guideline will be published and sent to all courts.

Alongside this public consultation the Council has produced a longer professional version of the consultation paper, an online questionnaire and a consultation stage resource assessment, which sets out the potential impact of the changes in terms of cost and resources such as prison places or probation. It has also produced associated research documents and an equality impact assessment. These can be found at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk).

# Section one: The offences

**T**he draft guideline covers seven drug offences which are described briefly in this Section. However, some of these offences have similar elements which mean that they should be sentenced in a similar way. Where this is the case, the offences have been grouped together. This has resulted in five separate drug guidelines.

## **Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug**

This offence occurs when an offender is knowingly involved in bringing into or taking out of the UK an illegal drug. An offender can be involved at any level of the importation or export operation. These offences will be referred to as “importation offences” in this consultation paper.

## **Supplying or offering to supply a controlled drug / Possession of a controlled drug with the intent to supply it to another**

These offences occur when an offender supplies, or offers to supply, another person with an illegal drug, or when an offender is in possession of an illegal drug with the intent of supplying it to another. Supply also includes distribution of the drug and there is no need to prove that any payment or reward was received, nor that the offender intended to produce the drugs or had the drugs in his/her possession when he/she made the offer to supply. These offences will be referred to as “supply offences”.

## **Production of a controlled drug / Cultivation of cannabis plant**

The offence of production of a controlled drug occurs when an offender produces an illegal drug, or where an offender has in some way taken part in the production of an illegal drug. Production means manufacturing the drug, cultivating it or producing it by any other method. Production also includes converting one drug to another, for example producing “crack” cocaine from cocaine hydrochloride. The offence of cultivation of cannabis plant exists as a separate offence and occurs when an offender cultivates any kind of cannabis plant. It is a matter for the prosecution to decide with which offence a defendant should be charged, on the basis of the evidence available. These offences will be referred to as “production/cultivation offences”.

## **Permitting premises to be used**

This offence occurs when an offender who is the occupier of the premises, or involved in its management, knowingly allows it to be used for drug related activity. These offences will be referred to as “offences of permitting premises to be used”.

## **Possession of a controlled drug**

This offence occurs when an offender is in physical possession or in control of an illegal drug, but is not intending to supply it to anyone. The offender must have knowledge of possessing the item, even if he/she did not know it was an illegal drug. These offences will be referred to as “possession offences”.

## Section two: A sample guideline (supply offences)

**T**he drug offences that are covered by the Council’s proposals vary both in terms of their seriousness and in terms of the elements that should be considered by sentencers when they are deciding which sentence to pass. This means that different offences require slightly different approaches.

For the purposes of this public consultation, we have used a model guideline to explain the key elements of the sentencing process and to explore some of the main issues that are particular to drug offences, on which the Council seeks your views. The sample guideline that is used is that for supply offences, as this is a guideline which covers a number of levels of seriousness and therefore will be seen in both the Crown Court and in magistrates’ courts. Of course, this is only one of the five guidelines that have been proposed and it will therefore not cover all of the Council’s proposals. If you wish to see all the proposed guidelines and the differences between them, please refer to the professional consultation.

### Class of drug

Drugs are divided into Class A, Class B and Class C drugs, with the drugs in Class A considered to be those likely to cause the most harm. This classification system is set out in law in the Misuse of Drugs Act 1971.

- Drugs in Class A include heroin, cocaine, “crack” cocaine and ecstasy.
- Drugs in Class B include amphetamines and cannabis.
- Drugs in Class C include ketamine and tranquilisers.

In line with this classification system and the advice that was published by the Sentencing Advisory Panel (SAP) in 2010, the Council proposes that the draft guideline should be based on the class of the drug involved. This means that all drug offences would be sentenced according to the class of the drug that is involved in the offence and that there would be no difference in terms of sentencing between individual drugs within the same class. The Council is of the view that this would also be the best way of ensuring that the guideline can apply to any new drugs that are classified in future.

When sentencing according to the class of drug, there are two options:

- The SAP suggested considering Class B and Class C drugs in the same way during the sentencing process, but then reducing the sentence slightly in cases where the drug involved was Class C rather than Class B.
- The other option, which the Council is proposing, is that Class B and Class C drugs should be considered separately. This is because they have been classified separately according to the law and in some cases also have different statutory maximum penalties (for example possession, where the statutory maximum penalty for Class B is five years' custody whereas for Class C it is two years' custody). The Council believes that this would make it clearer and easier for defendants, for legal professionals and for the public to understand the range of sentences that each class of drug is likely to attract.

Q1

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

### The proposed process for supply offences

The drug guidelines proposed by the Council follow a step by step decision making process, which is illustrated using the guideline for supply offences as an example.

#### Step 1: Determining the offence category

The court should determine the offence category by assessing culpability for the offence (offender's role) and the harm (quantity).

The first step that sentencers will have to take when sentencing an offender for a drug offence is to decide which offence category the particular offence falls into. The offence category reflects the degree of seriousness within one type of offence. It has the most significant bearing on the sentence length and/or type that is imposed, as it sets the range of sentences within which an offender is sentenced (the "category range").

The law sets out that, when considering the seriousness of an offence, the court should consider the harm which was caused, might have been caused or was intended to be caused by an offender, as well as considering the offender's culpability (that is, how blameworthy the offender is in committing an offence).

However, the SAP suggested that, for drug offences, the quantity of the drug and the role played by the offender are likely to be the two most significant factors of an offence. Therefore, role and quantity should be the key elements used to determine the seriousness of an offence and therefore the offence category.

The Council agrees with this approach, and believes that the **quantity** of drug could broadly reflect the harm that the offender has caused or intends to be caused by committing the offence. For example, 5kg of cocaine could be supplied to quite a large number of people, or could be used to produce a larger amount by cutting (mixing) with other substances. This has the potential to cause a lot of harm to quite a number of people. Five tablets of ecstasy, however, is a quantity which is much more likely to be for personal use and is therefore unlikely to cause the same level of harm.

The Council also believes that the **role** played by the offender reflects, to a large extent, his/her culpability. For example, an offender who plays a leading role in an offence, such as organising the importation of a drug to the UK, is more culpable than an offender who is playing a lesser role (for example, someone who has been pressurised by others to swallow a drug and travel into the UK with it to pay off a debt).

For certain drug offences, which will be discussed later in this consultation paper, these two elements are not the most appropriate to use. However, role and quantity are the two key elements considered at step 1 for supply, as well as for importation and production/cultivation offences (for the latter, the scale of operation is also taken into account).

To determine the offence category for supply offences, sentencers must decide which combination of role and quantity most applies to the offender by using the tables below.

Offender's role – this list is <b>NOT</b> exhaustive but examples include:	Quantity of drugs
<p><b>Leading:</b></p> <ul style="list-style-type: none"> <li>• Top tier organisational role in own/another's operation, for example funds/arranges purchases from importer</li> <li>• Uses business to aid and conceal illegal activity</li> <li>• Expectation of <b>substantial</b> financial gain</li> <li>• Direct supply to drug users for gain, for example street dealer</li> <li>• 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</li> <li>• Abuses a position of trust or responsibility, for example law enforcement/prison officer</li> <li>• Supply <b>by</b> prisoner</li> </ul>	<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><b>Significant:</b></p> <ul style="list-style-type: none"> <li>• Mid-tier organisational role in an operation which is not their own, for example acts as link in the chain</li> <li>• Engages others in illegal activity whether by pressure, influence, intimidation or reward</li> <li>• Limited/no influence on those above them in the organisational chain</li> <li>• Expectation of <b>some</b> gain, either financial or benefit in kind</li> <li>• Supply <b>to</b> prisoner (other than by prison officer)</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><b>Subordinate:</b></p> <ul style="list-style-type: none"> <li>• Performs a limited function under direction, in operation which is not their own, for example runners</li> <li>• Engaged by pressure, influence, intimidation or relatively small reward</li> <li>• No expectation of gain, for example introducers</li> <li>• No influence on those above them in the chain</li> <li>• 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</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>

For example:

A commercial street dealer, who keeps a stock of drugs which he regularly supplies to drug users and who expects to make a significant profit from this would be classed as playing a **leading role**. This offender was caught supplying 3g of cocaine. According to the tables above, this would be classed as a **very small amount**.

With this information, the judge can determine the offence category that this offender falls into: **leading role/very small quantity**. This now allows the judge to move on to the second step of the process.

## Step 2: Starting point and category range

The court should determine a sentence within the category range set out below. Starting points apply to **all** offences within the corresponding category.

Having determined which offence category an offender falls into at step 1, the court is now asked to identify the relevant starting point and calculate a provisional sentence for the offender within the category range.

The **offence range** is the range of sentences appropriate for a particular offence. The top of the offence range is not, in most cases, the legal maximum penalty for the offence. This is to allow the court to retain the ability to give sentences close to this maximum penalty for the most serious instances of the offence. These instances will not reflect the average case and will therefore fall outside the remit of the guideline.

The **category range** is the range of sentences appropriate for an offender who falls within that particular category.

The **starting point** is the point from which the court starts to calculate the provisional sentence. The starting point applies to all offenders, in all cases, irrespective of the plea entered and of any previous convictions.

The court is provided with a table setting out the category ranges and starting points for the offence being sentenced. Within each drug guideline, there is a separate table for each class of drug. Below is the table for supply of a Class A drug. This particular table can be used in our example of the supply of cocaine.

CLASS A	Leading role	Significant role	Subordinate role
<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

In our example, at step 1 the court decided that the offender in question should fall into the **leading role/very small quantity** offence category. Using the table on the previous page, this would mean that the starting point for the offence would be five years six months' custody, and the category range would be from four years six months' to seven years' custody.

This means that the judge begins with a provisional sentence of five years six months' custody. He/she must then take into consideration any aggravating or mitigating

factors – that is, any factors relating to the offence or the offender that have not already been considered at step 1 which may increase or decrease the level of seriousness. In some cases, having considered these factors, it may be appropriate for the court to move outside the identified category range.

The table below lists the aggravating and mitigating factors that can be taken into account by the court at step 2. The list is not intended to be exhaustive.

#### 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

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

In the case of our offender, therefore, the judge would look at this list in order to see whether any of the factors apply to the case that would mean moving either upwards or downwards from the starting point of five years six months' custody. This will provide the judge with a new provisional sentence.

For example, if the offender tried to conceal the evidence when arrested (which is an aggravating factor), the judge can decide to take this into account and increase the sentence from five years six months. The sentence can be increased up to a level of seven years' custody, as this is the top of the category range (unless the case is particularly serious, in which case the judge may consider departing from the range). The level of increase or decrease is decided by the judge, and largely will depend on how many factors are present and the weight attached to those factors. If there are mitigating factors present, the sentence may go down, following the same principle.

The aggravating and mitigating factors listed in the table on page 10 are for supply offences. Some of these also apply to other offences, whereas others are offence specific and apply only to supply offences. Several of the factors that apply to all offences have already been consulted on as part of the Council's recent consultation on assault. These include factors such as the mitigating factor "No previous convictions" or the aggravating factor "Offence committed on licence". Other factors were included as a result of detailed discussion with relevant organisations during the consultation period. An example of this is the mitigating factor "Sole primary carer for dependent relatives" which has been included as it was considered that a custodial sentence could affect the relative rather than the offender him/herself, and that where possible this impact should be taken into account.

The following table sets out other aggravating and mitigating factors that may be considered for particular drug offences. The Council is interested to hear your views as to whether the

tables (below and on page 10) capture the most important aggravating and mitigating factors for drug offences.

### Factors increasing seriousness (aggravating factors)

#### *Importation offences only:*

Sophisticated nature of concealment/attempts to avoid detection

Professional who assists in concealing illegal activity

Use of others, especially children

#### *Production/cultivation offences only:*

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

Nature of any likely supply

Level of any profit element

#### *Permitting premises offences only:*

Length of time over which premises used for drug related activity

Volume of drug activity permitted

Premises adapted to facilitate drug activity

Location of premises, for example proximity to school

#### *Possession offences only:*

Possession of a drug in a school or licensed premises

### Factors reducing seriousness or reflecting personal mitigation

#### *Importation offences only:*

Lack of sophistication as to nature of concealment

Q2

Do you agree with these aggravating and mitigating factors? If not, please specify which you would add or remove and why.

Once the provisional sentence has been determined, the court then follows the remaining steps of the process as set out overleaf, in order to reach the final sentence.

**Step 3: Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

By law, an offender may receive a discounted sentence as a result of assistance given (or offered to be given) to the prosecutor or investigator of an offence.<sup>1</sup>

**Step 4: Reduction for guilty pleas**

The court needs to take account of any potential reduction for a guilty plea in accordance with statutory provisions and the guilty plea guideline.<sup>2</sup>

**Step 5: Totality principle**

Many offenders are sentenced for a number of offences at the same time. When a court is sentencing an offender for more than one offence, it needs to decide whether the total sentence is just and proportionate. This is known as the “totality” principle. The Sentencing Council has a duty to prepare guidelines about the application of the totality principle and will consider whether to incorporate the totality guideline into guidelines (including on drug offences) in the future.<sup>3</sup>

**Step 6: Confiscation and ancillary orders**

The court should consider whether it would be appropriate to impose an order in addition to the sentence imposed, such as a confiscation order which would allow the court to seize assets held by an offender. These supplementary orders are known as “ancillary” orders, and are aimed at recovering the proceeds of crime, redressing the harm caused by an offender or at preventing future re-offending or repeat victimisation.

**Step 7: Reasons**

At this step of the process, the court should give reasons for the sentence being passed, and explain its effect.<sup>4</sup>

**Step 8: Consideration of remand time**

Sentencers should 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. 73 and 74 Serious Organised Crime and Police Act 2005

<sup>2</sup> s. 144 Criminal Justice Act 2003

<sup>3</sup> s. 120(3)(b) *ibid*

<sup>4</sup> s. 174 *ibid*

## Section three: Particular considerations

**T**he process used in the previous Section for supply offences was specifically tailored to this kind of offence. Certain considerations have had to be taken into account for some of the other offences, resulting in slight variations in approach. These considerations are discussed in detail in this Section.

### Permitting premises to be used

The offence of permitting premises to be used needs to be considered in a slightly different way to the draft guideline on supply offences that was explained in Section two. The reason for this difference is that the Council is of the view that it is not only the quantity of drugs, but also the extent of the drug related activity that is being allowed to take place on the premises that should help to determine the harm that has or may be caused by the offence. For example, if the premises was being used by a large number of people on a daily basis (such as a “crack” house) then the harm caused arguably is greater than if one person had invited some friends in order to share a jointly purchased drug, where this was not a regular occurrence. The Council also believes that the role that an offender played in the offence was not the only element to be taken into account when deciding how culpable the offender was in committing the offence.

Therefore, the Council has adopted the broader concepts of harm and culpability for this offence, as these are able to cover more elements of the offence than just role and quantity.

### Possession

Possession is another offence which needs to be considered in a slightly different way to the other offences. For these offences, the quantity of drug is likely to be the most significant factor, whereas the role of the offender would not vary significantly. Therefore, the Council proposes that the seriousness of the offence is determined by quantity. The exception to this is the possession of a drug in prison, which is explained in more detail below.

Q3

Do you agree with the different approaches taken for determining the seriousness of the offence for each of the drug guidelines?

### Possession of a drug in prison

The Council agrees with the SAP’s advice that possession of a drug in prison by any person (whether by a prisoner, a prison officer or any other person in the prison estate) makes an offence more serious. This is because the supply of drugs in prison is a serious problem – it counteracts the work being done in prison to help those with a drug addiction, and fuels corruption in prison, where drugs are seen as a powerful “currency”.

This is why the most serious offence category for offences of possession makes no reference to quantity but simply has a single factor –

“possession of any quantity of drug in prison” – that results in an offender being included in this category. This is intended to reflect the serious nature of this particular type of offence.

Q4

Do you agree that someone possessing any quantity of drug in a prison should receive a more severe sentence?

### Quantity

The decision making process outlined in Section two of this consultation paper specified the quantities that were used when sentencing for supply offences. The quantities for all of the offences covered by the Council’s proposals are set out in the professional consultation paper.

For the purposes of this public consultation, we have set out (in the two tables that follow) the levels of quantity for importation offences and possession offences. We have chosen these as representative samples showing the upper and lower end of drug offences, and would be interested in your views as to whether we have proposed the right levels of quantity.

Q5

Do you agree with the quantities that are set out here?

### Quantity of drugs (importation offences)

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

**Quantity of drugs (possession offences)****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

**Purity**

Where quantity is used to determine seriousness at step 1, a question arises: should this quantity be based on the amount of pure drug or on the weight of the whole product (which may include substances that are not the drug, called cutting agents)? The Council has discussed a number of different approaches, and would welcome views on whether you think that it has proposed the best approach. The options are:

- To assume that the quantity of product recovered is equivalent to the drug at 100% purity. This could result in more offenders requesting analysis of the drug they are found with in order to prove that it is not 100% pure. This could cause delays and increased expense to the legal aid fund or to prosecution/law enforcement budgets.
- To assume an average purity for each drug. This would allow upward or downward movement at step 1 if analysis was available and it proved that the purity was higher or lower than the average. The problem with this would be that purity levels fluctuate over time. Therefore, the average included in the guideline would only be correct for a limited time. Sentencers would also have practical difficulties accessing the most up-to-date information.
- To take a quantity below which 100% purity would be assumed and above which analysis would generally be available. However, the lower quantities are unlikely to be 100% pure, which means that people just either side of the quantity cut-off may end up receiving a greater or lesser sentence just on the basis of a few grams (for example, if the cut-off was 500g, an offender with 490g assumed at 100% could receive a greater sentence than someone with 510g but where it was tested at only 40% purity).
- To use differing approaches for purity depending on the offences and the class of drug. However, this may be confusing and could risk disproportionate sentencing.

The Council proposes the following option:

- To make no assumption as to purity at step 1 and to base quantity on the weight of the whole product. At step 2, analysis could be taken into account if the drug is of particularly high purity (as this may indicate proximity of the offender to the source of the drug), and this has been included as an aggravating factor. This differs from the approach courts take in some cases and therefore could have an unintended impact on sentencing practice, although it is only one part of the wider sentencing decision.

Q6

Do you think that the Council is taking the right approach in terms of purity?

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

For possession offences (especially those involving cannabis), the claim is often made that the drug was used to help with a medical condition. The Council considered whether this should be included as a mitigating factor for possession offences, but has identified two issues with this. Firstly, the evidence as to whether cannabis relieves medical conditions is mixed. Secondly, including this as a factor would mean that concrete medical evidence would be required to be presented at court, which could result in delays to the criminal justice system if proceedings had to be adjourned in order for the medical evidence to be obtained. The Council would be keen to hear your views on this.

Q7

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

## Section four: Impacts

**H**aving explained the proposals and the considerations of the Council in developing these, this Section now turns to look at how the proposals might work in practice, both in terms of sentences and impacts on wider groups of people.

### Sentences

In order to illustrate how the draft guideline could work in practice, several scenarios have been selected for each offence which outline the sentencing ranges that particular types of offenders would be likely to receive under the Council's proposals. We would be interested in your views as to whether you think that these sentences are at the right levels.

The Council's proposals include starting points and category ranges for each of the offences covered in the draft guideline. If you would like to see these, they are attached at Annex A, along with a supplementary question that you can answer if you wish to do so.

### Importation

#### Main organiser

This is an offender who is central to the organisation of the importation and stands to make the greatest profits. He/she may, for example, provide the money for the purchase of the drugs and use a fake business to conceal their drug dealing and its proceeds. Under the draft guideline, an offender who funded the purchase of 8kg of cocaine (Class A) from Colombia and used others to make the

necessary arrangements would be regarded as leading role with a very large quantity with a starting point of fourteen years and a range of sentences of between twelve and sixteen years' custody.

#### Mid-tier organiser

This is an offender who undertakes work on behalf of the main organisers. The offender may, for example, arrange the transport where the importation is being conducted by way of concealment in a freight lorry in order to avoid detection. He/she is likely to obtain significant payment for the role. Under the draft guideline, an offender who liaised with the foreign seller of 2kg of heroin (Class A) and arranged for its collection and disguise in a shipment of tulips would be regarded as a significant role with a large quantity. This would mean a starting point of eight years' custody with a range of possible sentences spanning seven years six months' custody to nine years' custody.

#### Drug "mule"

This is an offender who, under the direction of someone else, carries a quantity of drugs across the border either in their luggage or on their person (normally by swallowing it or carrying it in their bodily cavities). Such an offender is often engaged by pressure or intimidation and is likely to be paid only a small fee, if at all, for carrying the drug. An offender importing a Class A drug by swallowing can usually carry anything up to 1kg of produce; those who use luggage to complete the importation can carry varying

amounts. Under the draft guideline, an offender who swallows 783g of cocaine (Class A) would be regarded as subordinate role with a large quantity and have a sentence starting point of six years six months' custody with a range of six years' to seven years six months' custody.

## Supply

### Main organiser

This is an offender who sells drugs for profit. He/she is unlikely to be a drug user but is likely to be a professional criminal. There will be evidence of ongoing supply of drugs, for example a list of names of customers, scales for weighing the drugs and large amounts of cash may be recovered by the police on arrest. Under the draft guideline, an offender of this type who supplies 1kg of cocaine (Class A) for profit will be regarded as a leading role with a large quantity. The sentence starting point is eleven years' custody with a range of nine years' custody to thirteen years' custody.

### Street dealer

This is an offender who regularly sells small quantities of drugs to drug users. These offenders are likely to be drug users themselves. They sell on the streets to other drug users who are probably unknown to them. Under the draft guideline, an offender who sells two wraps of heroin (Class A; approximately 1g of heroin) would be treated as a leading role with a very small quantity. The starting point for his/her sentence is five years and six months' custody with a range of four years six months' to seven years' custody.

### Supply not for profit

This is an offender who supplies drugs to others, probably friends, but with no profit involved (since a supply takes place where there is a transfer of the drugs from one person to another). Those involved are likely to be occasional drug users rather than drug addicts. Under the draft guideline, an offender who has combined his/her money with three friends to buy 1kg of cannabis (Class B) and shares it with

them would be treated as a subordinate role with a medium quantity. The sentence starting point is twelve weeks' custody with a range of a high level community order to 26 weeks' custody.

## Production/cultivation of cannabis

### Commercial grower

This is an offender who is involved in growing a significant number of cannabis plants in order to sell the drug for profit. It requires financial investment in specialist equipment such as water systems (hydroponics) and intensive lighting. Under the draft guideline, an offender who buys the specialist equipment and uses a warehouse to grow a hundred plants would be regarded as a leading role with a large quantity. The starting point for this offender is five years' custody and the range is four to six years' custody.

### Gardener

These offenders are employed by the owners or organisers of the production to look after the plants whilst they are growing. They will be physically present with the plants and act under direction from others higher up the chain. They will generally be responsible for watering the plants and ensuring that the specialist lighting equipment is kept on for the lengthy periods needed. They will be paid a small fee or given a benefit in kind (for example free accommodation) for carrying out their role. Under the draft guideline, an offender who acts as a gardener in an operation that produces a hundred plants would be regarded as a subordinate role with a large quantity. The starting point is one year's custody and the range is a high level community order to two years' custody.

### Producing for own use

This is an offender who grows three or four cannabis plants for his/her own use. They do not sell or give the cannabis to anyone else. Under the draft guideline, an offender who grows four cannabis plants (Class B) for his/her own use

will be regarded as a subordinate role with a very small quantity. The starting point for this offender is a Band C fine and the range is a discharge to a low level community order.

### Permitting premises to be used

A person who commits this offence allows others to use their premises to take drugs.

Under the draft guideline, an offender (him/herself a drug user) who allows a large number of other drug users to come to his/her flat to smoke “crack” cocaine (Class A) on a daily basis will be treated as an offender who falls into Category 1 (greater harm because the drug related activity is daily; higher culpability because it is being used primarily for drug activity). This category has a starting point of two years and six months’ custody with a range of eighteen months’ to four years’ custody.

Where the extent of the drug use is not so great, and the culpability of the offender is relatively low (for example, if the offender makes no financial gain from allowing his/her premises to be used) the equivalent starting point for a Class A drug would be a medium level community order with a range of possible sentences ranging from a low level to a high level community order.

### Possession

This is an offender who is found to be in physical possession or control of drugs. Where there is any evidence that the drugs were to be given to others, the offender is likely to be charged with supply of drugs.

Under the draft guideline, an offender who is found in possession of four wraps of heroin (Class A: approximately 2g of heroin) will fall within Category 3. The starting point for this is a medium level community order with a range of a low level community order to twenty-six weeks’ custody.

An offender who is found in possession of 2g cannabis would fall into Category 4, which has a range of a discharge to a low level community order and a starting point of a Band A fine.

Q8

Do you agree with these sentencing ranges for the types of offenders set out here?

### Victims

By law, the Council must take into account the impact that sentencing decisions might have on victims.<sup>5</sup> However, it is not always easy to identify a specific victim for drug offences in the same way that it is, for example, for a case of assault.

The Council realises that drug offending may have an impact on a particular community or area if, for example, the supply of drugs is very common. It has tried to reflect this problem in the draft guideline by including in step 2 of the decision making process for certain offences the factor “established evidence of community impact” as a factor increasing the seriousness of an offence. This means that, if it can be proven that the offence has had a negative impact on a particular community (for example by a community impact statement), this would be considered as increasing the seriousness of that particular offence, which may result in an increased sentence for the offender.

The Council 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.

Q9

Are there any other ways in which you think the Council can take into account the impact on victims?

<sup>5</sup> s. 120(11)(c) Coroners and Justice Act 2009

### Equality and diversity

The Council has produced an initial equality impact assessment which aims to identify any impact that its proposals might have on particular groups of people (for example, ethnic minorities). It has also contacted a number of organisations with an interest in this area, and would welcome any views as to whether you think that possible impacts have been considered sufficiently.

**Q10**

Is there any other way in which equality and diversity should be considered as part of the proposals?

### Public confidence

As well as producing sentencing guidelines, the Council has a key role to play in promoting public confidence in sentencing. It realises that the key purpose of a guideline is to aid sentencers in reaching a decision about how to sentence an offender, and to promote consistency in sentencing. However, the Council's aim was to ensure that the draft guideline would also make the sentencing process clearer for the public to understand. If the proposed rationale for the category ranges and starting points is clear then public confidence in sentencing may also be increased.

**Q11**

Are there any other points that you would like to make?

# Annex A: Summary of consultation questions

- Q1 Do you agree with the Council's approach of separating Classes B and C?
- Q2 Do you agree with these aggravating and mitigating factors? If not, please specify which you would add or remove and why.
- Q3 Do you agree with the different approaches taken for determining the seriousness of the offence for each of the drug guidelines?
- Q4 Do you agree that someone possession any quantity of drug in a prison should receive a more severe sentence?
- Q5 Do you agree with the quantities that are set out here?
- Q6 Do you think that the Council is taking the right approach in terms of purity?
- 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 these sentencing ranges for the types of offenders set out here?
- Q9 Are there any other ways in which you think the Council can take into account the impact on victims?

Q10

Is there any other way in which equality and diversity should be considered as part of the proposals?

Q11

Are there any other points that you would like to make?

Q12

(This is an optional question – see page 32.)  
Do you agree with the proposed offence ranges, category ranges and starting points for all the offences?

# Annex B: Glossary

**Aggravating factor**

A feature of the offence which indicates an increased seriousness.

**Category range**

Within the offence range, the range of sentences proposed that may be appropriate for a court to impose on an offender in a case which falls within the category.

**Culpability**

This means the extent to which an offender is to blame for committing an offence. In some cases this is reflected by the role of the offender.

**Harm**

The harm that has been caused, or was intended to be caused, by an offender when committing an offence. For certain drug offences, this is determined by the quantity of drug involved in an offence.

**Mitigating factor**

A feature which indicates a decreased seriousness.

**Offence category**

The different categories of case which illustrate varying degrees of seriousness within one type of offence.

**Offence range**

The range of sentences proposed that may be appropriate for a court to impose on an offender convicted of that offence.

**Seriousness**

The seriousness of an offence is determined by the two overarching elements of harm and culpability. The precise nature of these two elements vary between the drug offences.

**Starting point**

The position within category ranges from which the court starts to calculate the provisional sentence. It is proposed that they apply to all offenders, in all cases.

**Statutory**

As set out in law: statutory factors are those which the court must take into account; statutory maximum penalties are those which cannot be exceeded.

# Annex C: Background

## The Sentencing Council

**T**he 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 also has a key role to play in promoting public awareness and confidence in sentencing.

In producing this draft guideline on drug offences, the Council has had regard to the purposes of sentencing which are defined as:<sup>6</sup>

- 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.

The Council has also had regard to the following matters set out in statute:

- 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.<sup>7</sup>

### Existing guidelines

There are no existing Crown Court sentencing guidelines for drug offences. Until now sentencing has been based on guideline cases issued by the Court of Appeal.

Guidance for magistrates when sentencing for drug offences is provided in the *Magistrates' Court Sentencing Guidelines*. This covers the following offences:

- Drugs (Class A) – fail to attend/remain for initial assessment (triable only summarily)
- Drugs (Class A) – fail/refuse to provide a sample (triable only summarily)
- Drugs (Class A) – possession (triable either way)
- Drugs (Class A) – produce, supply, possess with intent to supply (triable either way)
- Drugs (Class B and C) – possession (triable either way)
- Drugs (Class B and C) – supply, possess with intent to supply (triable either way)
- Drugs – cultivation of cannabis (triable either way)

<sup>6</sup> s. 142 Criminal Justice Act 2003

<sup>7</sup> s. 120 (11) Coroners and Justice Act 2009

Following consultation, the definitive guideline on drug offences that is issued will replace the *Magistrates' Court Sentencing Guidelines* for the relevant offences.

### **Applicability of the guideline**

The definitive guideline will apply to all the offences that it covers irrespective of the date of these offences. It will apply to the Crown Court as well as to the magistrates' courts, to all offenders over the age of 18. In sentencing under-18s, courts should have regard to *Overarching Principles – Sentencing Youths*, published by the SGC in November 2009.

# Annex D:

## Ranges and starting points

This annex sets out the ranges and starting points for the offences covered by the draft guideline.

### Importation

#### Statutory maximum: life imprisonment

CLASS A	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

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

CLASS B	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

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

CLASS C	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	N/A	Refer to guideline for supply or possession, depending on intent, only <b>after</b> role has been identified in importation	

## Supply/possession with intent to supply

## Statutory maximum: life imprisonment

CLASS A	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	<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

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

CLASS B	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	<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

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

CLASS C	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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'	<b>Category range</b> High level community order – 26 weeks' custody
Small quantity	<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
Very small quantity	<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/cultivation of cannabis plant

## Statutory maximum: life imprisonment

CLASS A	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	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

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

CLASS B	Leading role	Significant role	Subordinate role
Very large quantity/industrial commercial operation	<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
Large quantity/significant commercial operation	<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
Medium quantity/medium scale domestic operation involving about 15 plants or more	<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
Small quantity/small scale domestic operation in general range of about 9 – 15 plants	<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
Very small quantity/very small domestic operation involving no more than about 8 plants	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

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

CLASS C	Leading role	Significant role	Subordinate role
Very large quantity	<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
Large quantity	<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
Medium quantity	<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
Small quantity	<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
Very small quantity	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

### 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

### 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

### 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

### 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

### 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

### 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 C fine – Medium level community order
Category 3	Band B fine	Band B fine – Low level community order
Category 4	Band A fine	Discharge – Band A fine

Q12

(This is an optional question.)  
Do you agree with the proposed offence ranges, category ranges and starting points for all the offences?

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