

Possession with intent to supply

This is a **simplified version** of the guideline Supplying or offering to supply a controlled drug/Possession of a controlled drug with intent to supply. You can see the full version of the guideline on the Sentencing Council website.

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

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 313 of the Sentencing Code, in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

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

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band B fine – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band A – 8 years' custody

This guideline applies to all offenders aged 18 and older, who are sentenced on or after the effective date of this guideline, regardless of the date of the offence. The maximum sentence that applies to an offence is the maximum that applied at the date of the offence.

This offence is subject to statutory minimum sentencing provisions. See Step 3 for further details.

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

Step 1 – Determine the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, **or where the level of the offender's role is affected by the scale of the operation**, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

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

Leading role:

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

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone

- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/ or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

Harm

In assessing harm, quantity is determined by the weight of the product. Where the offence is supply directly to users (including street dealing or supply in custodial institutions), the quantity of product is less indicative of the harm caused and therefore the starting point is not solely based on quantity. The court should consider all offences involving supplying directly to users as at least category 3 harm, and make an adjustment from the starting point within that category considering the quantity of drugs in the particular case.

Indicative quantities of the most common drugs, upon which the starting point is to be based) are given in the table below. Where a drug (such as fentanyl or its agonists) is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1

- Heroin, cocaine – 5kg
- Ecstasy – 7,000 tablets*
- MDMA – 5kg
- LSD – 250,000 squares
- Amphetamine – 20kg
- Cannabis – 200kg
- Ketamine – 5kg

- Synthetic cannabinoid receptor agonists (for example 'spice') – very large quantity indicative of an industrial scale operation

Category 2

- Heroin, cocaine – 1kg
- Ecstasy – 1,300 tablets*
- MDMA – 1kg
- LSD – 25,000 squares
- Amphetamine – 4kg
- Cannabis – 40kg
- Ketamine – 1kg
- Synthetic cannabinoid receptor agonists (for example 'spice') – large quantity indicative of a commercial operation

Category 3

Selling directly to users

OR

Supply of drugs in a custodial institution

OR

- Heroin, cocaine – 150g
- Ecstasy – 200 tablets*
- MDMA – 150g
- LSD – 2,500 squares
- Amphetamine – 750g
- Cannabis – 6kg
- Ketamine – 150g
- Synthetic cannabinoid receptor agonists (for example 'spice') – smaller quantity between categories 2 and 4

Category 4

- Heroin, cocaine – 5g
- Ecstasy – 13 tablets*

- MDMA – 5g
- LSD – 170 squares
- Amphetamine – 20g
- Cannabis – 100g
- Ketamine – 5g
- Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity

Note – where the offence is selling directly to users or supply in a custodial institution the starting point is not based on quantity – go to category 3

*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet.

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender’s role.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black, Asian and Other ethnicity offenders receive an immediate custodial sentence than White offenders and that for Asian offenders custodial sentence lengths have on average been longer than for White offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 152 to 167 of the Equal Treatment Bench Book.

CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years’ custody	Starting point 10 years’ custody	Starting point 7 years’ custody

	Category range 12 – 16 years’ custody	Category range 9 – 12 years’ custody	Category range 6 – 9 years’ custody
Category 2	Starting point 11 years’ custody	Starting point 8 years’ custody	Starting point 5 years’ custody
	Category range 9 – 13 years’ custody	Category range 6 years 6 months’ – 10 years’ custody	Category range 3 years 6 months’ – 7 years’ custody
Category 3	Starting point 8 years 6 months’ custody	Starting point 4 years 6 months’ custody	Starting point 3 years’ custody
	Category range 6 years 6 months’ – 10 years’ custody	Category range 3 years 6 months’ – 7 years’ custody	Category range 2 – 4 years 6 months’ custody
Category 4	Starting point 5 years 6 months’ custody	Starting point 3 years 6 months’ custody	Starting point 18 months’ custody
	Category range 4 years 6 months’ – 7 years 6 months’ custody	Category range 2 – 5 years’ custody	Category range High level community order – 3 years’ custody

CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years’ custody	Starting point 5 years 6 months’ custody	Starting point 3 years’ custody
	Category range 7 – 10 years’ custody	Category range 5 – 7 years’ custody	Category range 2 years 6 months’ – 5 years’ custody
Category 2	Starting point 6 years’ custody	Starting point 4 years’ custody	Starting point 1 year’s custody

	Category range 4 years 6 months' – 8 years' custody	Category range 2 years 6 months' – 5 years' custody	Category range 26 weeks' – 3 years' custody
Category 3	Starting point 4 years' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 2 years 6 months' – 5 years' custody	Category range 26 weeks' – 3 years' custody	Category range Low level community order – 26 weeks' custody
Category 4	Starting point 18 months' custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 3 years' custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Medium level community order

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody	Category range 12 weeks' – 18 months' custody

Category 3	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 1 – 3 years' custody	Category range 12 weeks' – 18 months' custody	Category range Low level community order – 12 weeks' custody
Category 4	Starting point 26 weeks' custody	Starting point High level community order	Starting point Low level community order
	Category range High level community order – 18 months' custody	Category range Low level community order – 12 weeks' custody	Category range Band A fine – Medium level community order

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

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of drug offending should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that drug offending is prevalent in their area, and is causing particular harm in that community; and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.
- Offence committed on bail

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Offender supplies or offers to supply a drug to a person under the age of 18
- Exercising control over the home of another person for drug-related activity
- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offending took place in prison (unless already taken into consideration at step 1)
- Offender was supplying or involved in the supply of drugs into prison
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of drug to which offender addicted
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- No previous convictions or no relevant or recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)
- 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 (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Pregnancy, childbirth and post-natal care
- Offender's vulnerability was exploited
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

Step 3 – Minimum Terms

For class A cases, section 313 of the Sentencing Code provides that a court should impose an appropriate custodial sentence of at least seven years for a third class **A** trafficking offence except:

- (If the offence was committed on or after 28 June 2022) **where the court is of the opinion that there are exceptional circumstances which (a) relate to any of the offences or to the offender; and (b) justify not doing so; or**
- (If the offence was committed before 28 June 2022) **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.**

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 5 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 313 of the Sentencing Code (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

Step 6 – 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 7 – Confiscation and ancillary orders

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Where, but for the prosecutor's application under s.70, the magistrates' court would have committed the offender for sentence to the Crown Court anyway it must say so. Otherwise the powers of sentence of the Crown Court will be limited to those of the magistrates' court.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

The court should also consider whether to make ancillary orders.

Step 8 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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