

Research into the effect of the draft drug offences guideline on sentencing practice: Appendices

Appendix A: Summary of offence scenarios used in Stage 1 of the research

Case study	Scenario
1	<p>Possession with intent to supply</p> <ul style="list-style-type: none"> • Police operation into commercial distribution of cocaine • Offender is driver of vehicle which is stopped on the motorway. 1 kilo of cocaine is found in the boot of the car • <i>No purity analysis conducted</i> • £1000 found in car which offender accepted was payment for being the courier. <p>Case study varied twice to include purity analysis: (1) 60% purity (600g); (2) 20% purity (200g)</p>
2	<p>Being concerned in the supply – street dealers</p> <ul style="list-style-type: none"> • Day 1 - offender supplies undercover officer with a wrap of heroin weighing 0.2g for £10 • Day 2 - offender brings officer to girlfriend who supplies officer with one wrap of heroin weighing 0.1g for £10 • Day 3 - offender supplies officer with wrap of heroin weighing 0.2g • Day 7 - undercover officer purchased 3 wraps from the offender weighing just over half a gram in total • No analysis undertaken – total weight of drugs purchased is therefore just over 1g
3	<p>Possession with intent to supply – street dealer</p> <ul style="list-style-type: none"> • Offender seen to approach a known drug user • As police officers identified themselves he ran off and was seen to discard items in a garden before he was arrested • These were recovered and found to be 9 foil wraps of heroin weighing a total of 1.46g • The man who had been approached was in possession of a £20 note and it appeared he would have purchased drugs had the deal not been interrupted • Offender's home searched where police found a set of scales with traces of heroin on them and 2 mobile phones and a deal list
4	<p>Possession with intent to supply drugs</p> <ul style="list-style-type: none"> • Undercover operation over 4 month period which brought the offender to the attention of the police • Offender's home searched and found 60g heroin (not tested for purity) along with weighing scales and a large quantity of small snap seal bags <p>Case study varied twice to vary the quantity of drug: (1) 470g heroin (not tested for purity); (2) 250g heroin (not tested for purity)</p>
5	<p>Importation of small amount for personal use</p> <ul style="list-style-type: none"> • Offender is stopped by customs officer on return flight from Amsterdam • During a search of his luggage, a wrap containing 0.2g cocaine is found in his toiletry bag • During interview the offender admits bringing it back from a stag weekend for his own use

Appendix B: SUPPLY: VERSION A [STARTING POINT LINKED TO QUANTITY]

STEP ONE: Determining the offence category

The court should determine the offender's culpability (role) and the harm caused (scale of operation) using the tables below. **The starting points are based on quantities** set out in the table.

Where the offence involves the undermining of a public office, for example by a law enforcement officer, the extent of the harm is equivalent to a substantial operation.

Role is determined by the weighing up of factors in the table below. Quantity is determined by weight of the product. Purity is not taken into account at step 1 and is dealt with at step 2.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs very significantly higher than the quantity upon which the starting point is based, sentences of 20 years and above may be appropriate, depending on the role of the offender.

Culpability indicated by offender's role – the characteristics likely to place an offender within each role include (these lists are illustrative not exhaustive):	Harm indicated by type of operation
<p>Leading:</p> <ul style="list-style-type: none"> Directing or controlling the buying and selling of drugs Substantial links to, and influence on, others involved in the chain Close links to original source of the drugs Expectation of substantial financial gain Uses business to aid and/or conceal illegal activity Supply by a prisoner 	<p><u>Extensive operation</u></p> <p>Starting points based on the following quantities: <i>Heroin, cocaine – 5kg</i> <i>Ecstasy – 10,000 tablets</i> <i>LSD – 250,000 squares</i> <i>Amphetamine – 20kg</i> <i>Cannabis – 200kg</i> <i>Ketamine – 5kg</i></p>
<p>Significant:</p> <ul style="list-style-type: none"> Operational role acting as a link in the chain and managing activities Engages others whether by pressure, influence, intimidation or reward Some, albeit limited, influence on those above them in the chain Primarily motivated by some financial gain or benefit in kind Some awareness and understanding of scale of operation Supply to prisoner (other than by a prison officer) for gain/without coercion 	<p><u>Substantial operation</u></p> <p>Starting points based on: <i>Heroin, cocaine – 1kg</i> <i>Ecstasy – 2,000 tablets</i> <i>LSD – 25,000 squares</i> <i>Amphetamine – 4kg</i> <i>Cannabis – 40kg</i> <i>Ketamine -1kg</i></p> <p><u>OR</u></p> <p><i>Undermining of public office irrespective of quantity involved</i></p>
<p>Subordinate:</p> <ul style="list-style-type: none"> Performs a limited function under direction Engaged by pressure, influence, intimidation or relatively small reward Involvement through naivety/exploitation by another Primary motivation for no or minimal financial gain Acting solely to fund/feed own addiction No influence on those above them in the chain Very little, if any, awareness or understanding of the scale of operation 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 	<p><u>Medium scale operation</u></p> <p>Starting points based on: <i>Heroin, cocaine – 150g</i> <i>Ecstasy – 300 tablets</i> <i>LSD – 2,500 squares</i> <i>Amphetamine – 750g</i> <i>Cannabis – 6kg</i> <i>Ketamine – 150g</i></p> <p><u>OR</u></p> <p><i>Retailing irrespective of quantity involved</i></p>
	<p><u>Small scale operation</u></p> <p>Starting points based on: <i>Heroin, cocaine – 5g</i> <i>Ecstasy – 20 tablets</i> <i>LSD – 170 squares</i> <i>Amphetamine – 20g</i> <i>Cannabis – 100g</i> <i>Ketamine – 5g</i></p>

SUPPLY

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. In cases where the offender is regarded as being at the very top of 'leading' role it may be justifiable for the court to depart from the guideline. The court should then consider further adjustment within the category range for aggravating or mitigating features (*please note this latter stage is not necessary for this exercise*).

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a Community Order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

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	LEADING ROLE	SIGNIFICANT ROLE	SUBORDINATE ROLE
Extensive operation	Starting point 14 years Category range 12 – 16 years	Starting point 10 years Category range 9 – 12 years	Starting point 8 years Category range 6 years 6 months – 9 years
Substantial operation <u>OR</u> Undermining of public office	Starting point 11 years Category range 9 - 13 years	Starting point 8 years Category range 6 years 6 months - 10 years	Starting point 5 years 6 months Category range 4 years – 6 years 6 months
Medium scale operation <u>OR</u> Retailing	Starting point 8 years 6 months Category range 6 years 6 months – 9 years	Starting point 5 years 6 months Category range 4 years 6 months – 6 years 6 months	Starting point 3 years 6 months Category range 2 years – 4 years 6 months
Small scale operation	Starting point 5 years 6 months Category range 4 years 6 months – 7 years 6 months	Starting point 3 years 6 months Category range 2 – 5 years	Starting point 18 months Category range High level Community Order – 3 years

SUPPLY: VERSION B [STARTING POINT NOT LINKED TO QUANTITY]

STEP ONE: Determining the offence category

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

Where the offence involves the undermining of a public office, for example by a law enforcement officer, the extent of the harm is equivalent to a substantial operation.

Role is determined by the balancing of factors in the table below. Quantity is determined by weight of the product. Purity is not taken into account at step 1 and is dealt with at step 2.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs very significantly higher than the quantity upon which the starting point is based, sentences of 20 years and above may be appropriate, depending on the role of the offender.

<i>Culpability demonstrated by offender's role – the characteristics likely to place an offender within each role include (these lists are illustrative not exhaustive):</i>	<i>Harm demonstrated by type of operation</i>	
<p>Leading:</p> <ul style="list-style-type: none"> Directing or organising the buying and selling of drugs Substantial links to, and influence on, others involved in the chain Close links to original source of the drugs Expectation of substantial financial gain Uses business to aid and/or conceal illegal activity Supply by a prisoner 	<p>Extensive operation involving several layers of offenders and substantial quantities for widespread distribution generating a high income.</p>	<p><i>Indicative quantities of product recovered:</i></p> <p>Heroin, cocaine – 5kg Ecstasy - 10,000 tablets LSD – 250,000 squares Amphetamine – 20kg Cannabis – 200kg Ketamine – 5kg</p>
<p>Significant:</p> <ul style="list-style-type: none"> Operational role acting as a link in the chain and managing activities Engages others whether by pressure, influence, intimidation or reward Some, albeit limited, influence on those above them in the chain Primarily motivated by some financial gain or benefit in kind Some awareness and understanding of scale of operation Supply to prisoner (other than by a prison officer) for gain/without coercion 	<p>Substantial operation involving significant quantities for broader distribution [either above or below the level of the offender].</p> <p>OR</p> <p>Undermining of public office</p>	<p><i>Indicative quantities of product recovered:</i></p> <p>Heroin, cocaine – 1kg Ecstasy – 2,000 tablets LSD – 25,000 squares Amphetamine – 4kg Cannabis – 40kg Ketamine - 1kg</p>
<p>Subordinate:</p> <ul style="list-style-type: none"> Performs a limited function under direction Engaged by pressure, influence, intimidation or relatively small reward Involvement through naivety/exploitation by another Primary motivation for no or minimal financial gain Acting solely to fund/feed own addiction No influence on those above them in the chain Very little, if any, awareness or understanding of the scale of operation 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 	<p>Medium scale operation involving distribution at same level as offender</p> <p>OR</p> <p>Retailing</p>	<p>Significant adverse community impact of offender's behaviour.</p> <p>(Quantity of product recovered less likely to indicate scale of harm for operations at this level)</p>
	<p>Small scale operation involving narrow distribution</p>	<p>Lesser adverse community impact of offender's behaviour</p> <p>(Quantity of product recovered less likely to indicate scale of harm for operations at this level)</p>

SUPPLY

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. In cases where the offender is regarded as being at the very top of 'leading' role it may be justifiable for the court to depart from the guideline. The court should then consider further adjustment within the category range for aggravating or mitigating features (*please note this latter stage is not necessary for this exercise*).

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a Community Order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

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	LEADING ROLE	SIGNIFICANT ROLE	SUBORDINATE ROLE
Extensive operation	Starting point 14 years Category range 12 – 16 years	Starting point 10 years Category range 9 – 12 years	Starting point 8 years Category range 6 years 6 months – 9 years
Substantial operation <u>OR</u> Undermining of public office	Starting point 11 years Category range 9 - 13 years	Starting point 8 years Category range 6 years 6 months - 10 years	Starting point 5 years 6 months Category range 4 years – 6 years 6 months
Medium scale operation <u>OR</u> Retailing	Starting point 8 years 6 months Category range 6 years 6 months – 9 years	Starting point 5 years 6 months Category range 4 years 6 months – 6 years 6 months	Starting point 3 years 6 months Category range 2 years – 4 years 6 months
Small scale operation	Starting point 5 years 6 months Category range 4 years 6 months – 7 years 6 months	Starting point 3 years 6 months Category range 2 – 5 years	Starting point 18 months Category range High level Community Order – 3 years

Appendix C: Offence scenarios used in Stage 3 research

SUPPLY CLASS A – Scenario 1

D is approached by an undercover officer, Pauline, who asks him for help in obtaining drugs. A phone call is unsuccessful so D accompanies Pauline to an address, goes inside with her money and comes out with one wrap of crack and one wrap of heroin each of about 300mg. It is not alleged that he made any money out of this transaction nor that he was someone who supplied drugs on the street or that he had a stock of drugs himself. He is not known by police to be part of any chain of supply. He pleads guilty at an early stage and is sentenced on the basis of being a heavy drug user who was helping out someone whom he perceived to be a user. He has numerous previous convictions for dishonesty and for possessing drugs but none for supplying drugs. The offence was committed on bail and whilst in breach of a 30 day suspended sentence for an offensive weapon offence.

SUPPLY CLASS A – Scenario 2

As part of a police undercover operation directed at a known drug dealing area, undercover officer, Paul, meets D in a centre for homeless people. They fall into conversation and D asks whether Paul is looking for heroin. As a result D makes two phone calls to a third party to arrange collection of heroin – D hands Paul one wrap of heroin weighing approximately 300mg in exchange for £10. He does precisely the same two days later. D's offending is brought about by a 3 year addiction to crack cocaine currently running at around £150 per day. He has numerous previous convictions for dishonesty, has had two failed Drug Rehabilitation Orders and the PSR states that he has a high risk of reoffending. He pleads guilty at an early stage to supplying on the two separate days.

SUPPLY CLASS A – Scenario 3

D is a prison service employee who has been working in an 'operational support grade' in a maximum security prison for three years. As a result of information, her locker is searched and 25g of heroin is found along with 4 mobile phones, receipts and inmates' names. She pleads guilty at an early stage to possession of class A drugs and misconduct in a public office in respect of which she is given a concurrent sentence. She is sentenced on the basis of being a vulnerable and naïve person who, over a three month period, has been persuaded by threats to supply one prisoner with class A drugs and then targeted by two other prisoners to supply them with mobile phones and cannabis, in respect of which criminality she was paid a total amount of about £600.

SUPPLY CLASS A – Scenario 4

D is arrested during an undercover operation and was charged with one offence of conspiracy to supply heroin and a second offence of conspiracy to supply cocaine. Four months ago D was observed by officers approaching a known heroin addict. As the officers approached D put something in his mouth and swallowed it. At this point D was not charged. Recently the officers obtained a phone number and on examination of the phone it is found that 579 calls were made from D's accomplice to D and 100 from D to his accomplice. The officers contacted this phone on three separate occasions and on each occasion D answered the phone and directed the officers where to go. The officers met D who supplied the drugs and was given cash for the purchases, which were a number of wraps of heroin and cocaine on each occasion. The length of time between the telephone order for the drugs and the supply indicates that the drugs are stored somewhere requiring a visit to collect the customer's order. D is also seen to drive a car in an area known to be used for the supply of class A drugs. A police officer sees him throw several small packages out of the window.

D has one conviction a couple of years ago for aggravated vehicle taking (the aggravation being dangerous driving) for which he was made subject to a Community Order which he breached within two months. He pleads guilty at an early stage and is sentenced on the basis of an involvement in a sophisticated commercial operation.

SUPPLY CLASS A – Scenario 5

A covert operation was conducted at a pub car park. One evening D was seen to meet two men. A bag was handed to D. One of the men was seen at the boot of D's Range Rover. D then drove off. He was stopped on the motorway by police officers who found 257g of cocaine which was 37% pure (which amounts to 95g at 100% purity) in the boot of D's car. D was charged with conspiracy to supply cocaine.

D claims that he was owed money and that he had gone to the pub expecting to meet a man who would give him some money. Instead, D claims, the man gave him a sample of drugs to carry back to his home town to which D agreed. This formed the basis of D's plea. There were several inconsistencies with D's account to police, including the amount of money he was allegedly owed and the time of the meeting. A Newton hearing was conducted and D's basis of plea was rejected. It is established that D collected cocaine to supply to others and was therefore given limited credit for his plea.

SUPPLY CLASS B – Scenario 1

Police officers observe D in an inner city estate removing what turns out to be 7 wraps containing 29.9g of cannabis. D runs off and is later arrested. His house is searched and in his bedroom a block of cannabis weighing 423g worth some £1,800 is found. There is also paraphernalia for cutting it up, some scales, cling film and a grinder. There is also a quantity of cash and some incriminating text messages on his mobile phone. He pleads guilty at an early stage to two counts of possession with intent to supply and is sentenced on the basis that he is a street dealer of cannabis on a commercial basis. D has previous convictions of possession with intent to supply, a number of those convictions involved class A drugs.

SUPPLY CLASS B – Scenario 2

D is observed driving along the motorway by a patrolling police officer who indicates to D to pull over. D accelerates away but eventually pulls over. The police officer carries out a search of the car and finds 2 suitcases containing 10kg of skunk cannabis. D is to be paid £200 for delivering the cases. He is aware that he is delivering it to a supplier. He pleads guilty at an early stage and is sentenced on the basis of being a courier who has a previous conviction for supplying cannabis in 2006.

SUPPLY CLASS B – Scenario 3

D has been employed as a Health Care Officer at a Category B prison for seven years. During his lunch break he goes to the staff car park at the prison to retrieve a carrier bag of items from his car. He returns to the prison whereupon he is stopped and searched. The bag is found to contain 123g of cannabis resin which he intended to give to a prisoner with whom he had formed an emotional attachment. The street value was about £500 but its value inside prison was about £1,500. It is accepted that he had never acted in this way before and had done so on this occasion without any expectation of gain. He pleads guilty at an early stage.

IMPORTATION CLASS A – Scenario 1

D arrives on a flight from Ghana at Heathrow Airport and is intercepted. Her bag is searched and 997g of cocaine (787g at 100% purity) is found in the base of her bag. She confirms that she has packed the bag herself and not been given anything to bring to the United Kingdom by anyone else. She says that she travelled to the UK to visit her sister and that her nephew had given her the bag and that it contained clothes to give to a friend in England. She was told that this friend would meet her at the airport and take her to her sister's house. Her account was not accepted at trial and she is convicted of knowingly importing the cocaine.

This was D's first trip outside Africa. D is four months pregnant and has two other children living with her husband in Ghana.

IMPORTATION CLASS A – Scenario 2

D boards a flight from Lagos to Frankfurt. He then flies from Frankfurt into London City Airport, where he is stopped by Customs and Excise officers. Before he is body-searched, D admits that he is carrying heroin. He is found to be carrying four brown taped packages which have been strapped to his stomach. The packages contain 3.97 kg of heroin at 79% purity (3.13kg at 100% purity). D offers a defence that he acted under duress but this was found to be false by Customs officers who flew to Nigeria to investigate. D has no previous convictions. D pleads late in the day and is given little credit for the guilty plea. He is sentenced on the basis of being a trusted courier.

IMPORTATION CLASS A – Scenario 3

D is stopped at Waterloo international terminal. She has arrived there on a Eurostar train from Nice. After routine questioning, she is told that she is going to be searched. D says that she has something on her but she does not know what it is. She is arrested. She is subsequently searched and three packets are found: one around her waist and two around her thigh. The packages contain over 3kg of cocaine. During this process she tells investigating officials: "They told me it was weed".

However, the judge rejected this account (she refused to give evidence at a Newton) and was sentenced on one count of importation of a class A drug on the basis that she knew she was bringing cocaine into the country.

When she is interviewed she says that she had met a woman in a club in Greenwich and been invited by her to Birmingham. For this purpose she gave that woman her mobile telephone number. The woman called her about a week later and picked her up in London, together with her two year old son, and drove them both up to Birmingham. D said that when they got to Birmingham she was met by two Jamaicans who kidnapped her child. They told her to go to Nice and bring back weed. For this she would be paid £1,000. D was driven to Waterloo and given a ticket to Nice. She boarded the train and when she arrived in Nice she was met by a man she did not know. He took her to a hotel whereupon the packages found by the investigating officers were strapped to her.

She is 22 years old, she has made provisional arrangements for her aunt to continue looking after her young child and there will clearly be a lengthy separation because of the likely sentence. She is concerned about the impact on her child. D pleads guilty at an early stage.

IMPORTATION CLASS B – Scenario 1

A heavy goods vehicle arrives at Harwich by ferry from the Netherlands. The vehicle is ostensibly carrying a consignment of flowers. The vehicle is directed by D's associates to a farm. D directed the vehicle where to park at the farm and assisted others in moving pallets of boxes from the vehicle to two vans. The two vans together contained four metric tonnes of cannabis resin. Police find evidence that D had been in phone contact with the driver of the heavy goods vehicle on the day before and on the day of its arrival from the Netherlands. D pleads guilty at an early stage.

IMPORTATION CLASS B – Scenario 2

A DHL parcel is intercepted in Belgium. It is addressed to the UK. The drugs (3.1kg of amphetamine at 95% purity) are removed and Customs make a controlled delivery. There is no answer at the address so they leave a card. D's co-accused picks up the parcel from the depot and takes it to a van outside. D, who is in the van, drives him away at speed. Customs officers followed but lost them. A short time later the van was found and stopped. Both occupants were arrested. There was no trace of the parcel. D has a degree of mental handicap and convictions for theft and burglary but nothing for drugs. He is to be sentenced on the basis that he was, if not at the heart of the enterprise, very near to it, knowing that he was involving himself in the importation of a substantial quantity of the drug and intending to make substantial gain.

IMPORTATION CLASS B – Scenario 3

Customs officers intercept two cars, one driven by D1 and one by D2. Both deny connection to each other but D1 produced the registration document for his car in the name of D2. 10kg of cannabis is found in D1's car along with a CS gas canister. A CS gas canister is found in D2's car. Both cars are fitted with CB radios. Further enquiries establish the connection between D1 and D2: that only one week earlier D1 and D2 with the same cars had been on a similar trip. Both cars had checked in within one minute of each other and travelled on the same ferry and both had travelled back together on the same ferry the following day.

D1 and D2, who are both of good character, are charged with one count of conspiring to import cannabis and plead guilty at an early stage. They are sentenced on the basis that their previous trip established an association between the two defendants but not that they had been involved in a second importation; that D1 was a courier and was less involved than D2 who was accompanying him as a minder who was higher up the scale of involvement. Both are treated as having no previous convictions.

PRODUCTION/CULTIVATION CLASS B – Scenario 1

Police officers execute a search warrant at an address in Southampton. D is upstairs. 204 substantial cannabis plants are found which could produce 13.7kg of cannabis. It is a sophisticated cannabis factory which is both efficient and highly productive. D is an illegal immigrant and has been brought to the premises from Liverpool. His job is to tend the plants. D pleads guilty at an early stage.

PRODUCTION/CULTIVATION CLASS B – Scenario 2

D's garage and loft is searched and is found to contain a cannabis cultivation set up involving lamps, fans, air filters and humidity sensors. There are 49 plants in the two different growing rooms, at different stages of development, with an estimated yield of just over 1kg and some 73g of sensimilla is found harvested and drying. The production is principally for D's own use but he has a circle of friends who are cannabis users, to whom he would be likely to supply any excess beyond his own needs, "on a social basis", if he had a good crop.

D has 12 previous convictions for offences mostly of dishonesty, which include a single offence of simple possession of cannabis. D pleads guilty at an early stage.