

A Sentencing Guideline for Drugs offences within the ECSC

Within the ECSC, on the nine member states and territories there are different drugs offences, and there are often different maximum sentences. For the purposes of this guideline, the expression 'drugs offence' will be used to cover all types of trafficking, cultivation, and possession with an intent to supply, import or export, whether as conspiracy or a substantive offence.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders¹ whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

¹ For persons below 18, see the **Practice Direction on Sentencing Guidelines**, no. of 2019.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

It is permissible to go outside the guideline in cases of conspiracy or multiple offending².

² See the **Practice Direction**, *supra*, para 3 of sentencing principles.

Constructing the Sentence

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A drugs case requires an assessment of the quantity by weight of the drug involved (assuming 100% purity, with adjustment permitted for lower purity and/or higher strength, if known), and the role played by a defendant.

To establish the starting point for the offence within the relevant range, there are three stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on quantity.

Categories arising from quantity are as follows:

QUANTITY - category 1

Cocaine - 20 kg or more

Cannabis - 400 kg or more

QUANTITY - category 2

Cocaine - 5-20 kg

Cannabis – 50-400 kg

QUANTITY - category 3

Cocaine – 100g–5 kg

Cannabis – 1-50 kg

QUANTITY - category 4

Cocaine – up to 100 g

Cannabis – up to 1 kg

SECOND STAGE

The second stage is to determine the role played by the defendant with reference to the non-exhaustive lists of factors below. It is open to a court to find that a defendant falls between two roles.

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 gain
- Uses business as cover
- Abuses a position of trust

SIGNIFICANT ROLE

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward, especially if those involved are children
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation
- Selling drugs to school children or in prison

LESSER ROLE

- Performs a limited function under direction
- Involved by pressure, coercion, intimidation
- Involvement through youth, naivety/exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If trafficking drugs solely for personal use (considering reasonableness of account in all the circumstances)

THIRD STAGE

Having determined the quantity and role find the starting point by consulting the grid below – applicable for both cocaine and cannabis.

Maximum sentence is 'x'³.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

QUANTITY	Leading Role - A	Significant Role - B	Lesser Role - C
Category 1	SP 65% x Range 50-80% x	SP 50% x Range 35-65% x	SP 35% x Range 20-50% x
Category 2	SP 50% x Range 35-65% x	SP 35% x Range 20-50% x	SP 20% x Range 10-30% x
Category 3	SP 35% x Range 20-50% x	SP 20% x Range 10-30% x	SP 10% x Non-custodial - 20% x
Category 4	Non-custodial (high level)	Non-custodial (medium level)	Non-custodial (low level)

³ Where the maximum sentence is life imprisonment, 'x' is 30 years.

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Sophisticated nature of concealment and/or attempts to avoid detection
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger, for example drugs cut with harmful substances
- Presence of weapon

MITIGATING FACTORS of offence

- Lack of sophistication as to nature of concealment
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Dealing to support own habit

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for drug offences
- Recent or relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Remorse
- If an addict, offender is taking steps towards rehabilitation
- Where appropriate, primary carer for dependent family members
- Age and/or lack of maturity
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will reduce if the plea is later, down to one-tenth for a plea on the day of trial.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁴

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable. Drugs and paraphernalia should be forfeited and destroyed. In addition, consideration should be given to the confiscation of vehicles, boats and other property used in the commission of the offence. It may be appropriate to commence an investigation into the proceeds of crime and/or civil recovery of assets.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁴ See **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.