

# Fees Bulletin No.1 of 2017

## Offence Class

Issue No1  
5<sup>th</sup> October 2017



### Graduated Fees Offence Codes

The Graduated Fees Scheme C has now been in place since 2012. When Scheme C was introduced the CPS adopted the list of offences that was being used by the Legal Aid Agency.

The offence code list does not contain every offence and over time has become out of date in that it does not feature newly introduced offences.

The GFS scheme has always had a mechanism for dealing with offences that are not featured on the offence code list. Under paragraph 53 of the Manual of Guidance:–

Any offence that is not contained on the list of offences will fall within offence class H, unless the advocate is able to show a higher offence category which is appropriate to the circumstances of the case.'

However, it has become apparent that there are now quite a large number of offences where paragraph 53 applies. To aid fees clerks, ensure consistency and the appropriate placing of offences in a category applicable to the criminality and seriousness of the offence, a review has been undertaken.

At this time it is not practical for us to revise and reissue the offence code list, so this Fees Bulletin has been issued as a guidance document in relation to some common offences that are not on the list. This will assist fees clerks in determining if an offence can be classified to an offence code other than H and which offence code that offence can be placed in.

The list that follows details a list of offences not on the offence code list and gives guidance as to the suggested offence code that it may be most appropriate to place the offence.

Please note the position remains that any offence not on the list is placed in offence code H. However, we can use discretion and move such offences into a higher category. In deciding to move an offence we will take into account the criminality, seriousness of the offence and likely sentence.

The list below, therefore, is advisory, and provided for guidance only. Advocates should be aware that they still have the opportunity to argue that the case be placed in a different category.

## **Drugs offences**

### **Psychoactive Substances 2016 offences**

In relation to offences under this act, the offences of production, supplying, importation, exportation or possession with intent to supply can be treated as Offence class C. These offences carry a maximum term of 7 years imprisonment. Any application from counsel to place these offences in a higher category should be resisted on the basis that possession of class C drugs with intent to supply or importation of the same is in offence class C.

There is a further offence of straight possession of a psychoactive substance in a custodial institution. This offence should be offence category H.

### **Revenge pornography**

DISCLOSING PRIVATE SEXUAL AND PHOTOGRAPHS AND FILMS CONTRARY TO S.33 (1) AND (9) OF THE CRIMINAL JUSTICE AND COURTS ACT 2015

This offence carries a maximum of 2 years imprisonment and should be offence class H.

### **Modern Slavery, trafficking and Forced labour**

The Modern Slavery Act 2015 contains offences of Slavery, servitude and forced or compulsory labor. These offences can be considered for offence class B.

HOLDING ANOTHER PERSON IN SLAVERY OR SERVITUDE CONTRARY TO SECTION 71(1) (A) AND (3) OF THE CORONERS AND JUSTICE ACT 2019/SECTIONS 1(1) (A) AND 5(1) OF THE MODERN SLAVERY ACT 2015

This offence can be considered as offence class B.

REQUIRING A PERSON TO PERFORM FORCED OR COMPULSORY LABOUR CONTRARY TO SECTION 71(1) (B) AND (3) OF THE CORONERS AND JUSTICE ACT 2009

This offence can be considered as offence class B.

CONSPIRACY TO TRAFFIC PERSONS FOR EXPLOITATION -CONTRARY TO SECTION 1(1) OF THE CRIMINAL LAW ACT 1977 AND SECTION 4(2) OF THE ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC) ACT 2004

This offence can be considered as offence class B.

### **Conveying items into Prison**

CONVEYING ITEMS INTO PRISON ACT 1952 (SECTION 40)

There are three lists A, B and C which determine how serious the offence is – List A includes drugs and explosives, List B includes mobile phones and cameras and List C is a collection of lesser items.

The item conveyed into prison is the key to establishing an offence category for these offences. List A offences of conveying a Class A drug into prison is similar to supplying a controlled drug, which is a category B offence, so it would usually be appropriate to allow such an allegation into category B. Similarly conveying a shotgun into prison would be allowed as offence class B, as there are other serious firearm offences in offence class B.

Conveying lesser items would probably remain as offence class H as the sentencing provisions for that offence would be akin to the miscellaneous other offences in class H.

### **Computer misuse offences**

UNAUTHORISED ACCESS TO COMPUTER S1 [1] COMPUTER MISUSE ACT 1990

This offence should remain as class H.

SECURE UNAUTHORISED ACCESS TO COMPUTER MATERIAL WITH INTENT. COMPUTER MISUSE ACT 1990 - S 1(1) AND S 3

– The sentence for this offence is 5 years imprisonment so offence class C can be considered for these offences.

UNAUTHORISED MODIFICATION OF COMPUTER MATERIAL S3 [1] COMPUTER MISUSE ACT 1990

The sentence for these offences is 10 Years imprisonment. This is the most serious of these offences so offence class B can be considered.

### **Driving offences**

CAUSING DEATH BY CARELESS DRIVING, contrary to section 2B of the Road Traffic Act 1988

This offence can be considered as category B, the same as Death by Dangerous driving.

CAUSING SERIOUS INJURY BY DANGEROUS DRIVING, Contrary to Section 1A road Traffic Act 1988

This offence can be considered as Category C.

### **Misconduct in Public Office.**

Misconduct in public office is an offence at common law and triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

This is an offence that is quite wide ranging in terms of what can be charged in relation to the misconduct alleged. In relation to the appropriate offence class that can be considered, it will be necessary to look at the type of misconduct that is charged.

For example, if dishonesty is a key element of the offence, then offence classes F, G or K could be considered.

Intentional infliction of bodily harm, imprisonment, or other injury upon a person; Offence classes B or C could be considered depending on the level of injury and intent.

Offence class I could also be considered if there are allegations similar to perverting the course of justice.

### **Sexual offences**

CONSPIRACY TO MANAGE/ASSIST IN MANAGEMENT OF BROTHEL S1 [1] OF CRIMINAL LAW ACT 1977  
This offence can be considered as offence class D.

INDECENT ASSAULT ON A CHILD S14 (1) AND S15 (1) SEXUAL OFFENCES ACT 1956 .

Indecent assault on a man or a woman (s14, 15) are offences that appear on the list as offence class D. However, in the 2003 act the similar offence, Sexual assault is still category D, but if the allegation involves a child it is category J. Applications from counsel to pay the 1956 act offences involving children as category J can be considered to deal with this anomaly.

POSSESSING AN EXTREME PORNOGRAPHIC IMAGE CONTRARY TO SECTION 63 OF THE CRIMINAL JUSTICE AND IMMIGRATION ACT 2008  
This offence should remain as offence class H.

FAILURE TO COMPLY WITH NOTIFICATION REQUIREMENTS, contrary to section 91(1) (a) and (2) of the Sexual Offences Act 2003  
This offence carries a maximum of 5 years imprisonment. Offence class C could be considered.

### **Dangerous dogs**

S3 [1] OF DANGEROUS DOGS ACT 1991  
These allegations involve a fatality and the maximum sentence is 14 Years imprisonment, therefore class B would be appropriate.

### **Fraud offences**

The following offences should be F, G or K dependent on value:  
Dishonestly failing to notify a change in circumstances knowing it would affect entitlement to benefit  
Unauthorised sale of Trademarked Goods  
Conspiracy to cheat the revenue  
Fraudulent Trading  
Insider Dealing  
Bankrupt failing to account for loss of a substantial part of property  
Consenting to or conniving in the commission of an offence by a body corporate,  
Being knowingly concerned in the fraudulent evasion of duty payable on the importation of goods  
Being knowingly concerned in fraudulent activity  
Being knowingly concerned in the fraudulent evasion of income tax

Dishonestly making a false statement for the purpose of obtaining benefit for yourself or another  
Conspiracy to Corrupt

### **Other Fraud**

CONSPIRACY TO CONCEAL CRIMINAL PROPERTY

The offence of concealing Criminal property is a POCA offence, so this offence should be class B.

### **Ill treatment offences**

ILL TREATMENT OR WILFUL NEGLECT BY CARE WORKER S20[1][2] OF CRIMINAL JUSTICE AND COURTS ACT 2015

This offence carries a maximum of 5 years imprisonment, so class C can be considered.

ILL-TREATMENT OF A PERSON WHO LACKS CAPACITY, contrary to section 44 of the Mental Capacity Act 2005

Offence class C can be considered, the same as the ill treatment offence above.

### **Other offences**

CONTROLLING OR COERCIVE BEHAVIOUR IN AN INTIMATE OR FAMILY RELATIONSHIP, contrary to section 76 (1) and (11) of the Serious Crime Act 2015

This offence should remain as offence class H.

POSSESSION OF AN IDENTITY DOCUMENT WITH IMPROPER INTENTION, contrary to section 4(1) and (2) of the Identity Documents Act 2010

These offences should be paid as offence class F. This act replaced the 2006 act, which is listed on the offence code list.

BREACH FORCED MARRIAGE PROTECTION ORDER S63 [1] [5] OF THE FAMILY LAW ACT 1996

Offence class C can be considered for this offence.

The following offences should remain as offence class H:

Data Protection Act offences

Health & Safety at work Act 1974 S3

Any queries regarding the content of this bulletin, then please contact your case auditor

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**Court Business Unit**