

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(18)MAR03 Terrorism Paper 1
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1 ISSUE

1.1 The Council is invited to consider a redraft of the Preparation for Terrorist Acts guideline, the Explosive Substances guideline and the Failure to Disclose Information About Acts of Terrorism guideline.

2 RECOMMENDATION

2.1 It is recommended that the Council consider the following proposals:

Preparation

- Amendments to the culpability factors to address the concerns raised by the Assistant Commissioner
- Removal of the factors relating to travelling or attempting to travel abroad for terrorist purposes
- Amendments to the harm factors which now separate out multiple deaths to ensure those cases reach the highest harm category
- Removal of the words intention/ reckless from the harm model
- Return to a traditional harm model but still including consideration of 'likelihood'

Explosive Substances

- Amendments to replicate the changes to the Preparation guideline (where appropriate)

Failing to Disclose

- A revision of the step 1 culpability factors to relate more closely to the importance of the information withheld.

3 CONSIDERATION

Preparation of Terrorist Acts

3.1 At the January Council meeting a number of issues were discussed regarding proposed additional culpability factors; whether the guideline should include reference to those offenders who travel or attempt to travel abroad to engage in terrorist activity; and proposed changes to the harm model. After lengthy discussion it was agreed that in order to make progress these issues should be discussed by a separately convened working group. This group met on 12 February and the issues were discussed, resulting in a new proposed draft which can be seen at **Annex A**.

Culpability Factors

3.2 In January the Council decided to add an additional culpability A factor to help ensure that 'unsophisticated' terrorist offences, similar to that seen at London Bridge, would receive the highest sentences.

Acting alone, or a leading role, in terrorist activity where preparations, although not complete or almost complete, are well advanced and very likely to succeed but for apprehension

3.3 This factor was added as a result of comments from Mark Rowley's office, expressing concern that the current draft might lead to the police risking public safety by waiting for the offender to be closer to completion of his preparations in order to receive the highest sentence.

3.4 At the working group meeting the members agreed to a rewording of this culpability A factor so that only one culpability A factor is now required (see Annex A). In addition, the working group discussed and agreed amendments to the other culpability factors to introduce the consideration of 'but for apprehension...' to all levels of culpability. The old factors can be seen below: -

A	<ul style="list-style-type: none">• Acting alone, or a leading role in terrorist activity where preparations are complete or almost complete• Acting alone, or a leading role, in terrorist activity where preparations, although not complete or almost complete, are well advanced and very likely to succeed but for apprehension
B	<ul style="list-style-type: none">• Acting alone, or a leading role, in terrorist activity where preparations are advanced but not complete or almost complete• Significant role in terrorist activity where preparations are complete or almost complete• Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)
C	<ul style="list-style-type: none">• Lesser role in terrorist activity where preparations are advanced but not complete or almost complete

	<ul style="list-style-type: none"> • Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B) • Offender travels or makes determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)
D	<ul style="list-style-type: none"> • Offender has engaged in very limited preparation of terrorist activity • Act(s) of lesser assistance or encouragement to other(s)

QUESTION 1: Does the Council agree with the proposed changes to the culpability factors (set out in Annex A), which now include ‘but for apprehension...’ at all levels of culpability?

3.5 At the January Council meeting the Council was asked to decide whether the following factors should remain in the guideline:

- Offender travels abroad to engage in terrorist activity
- Offender makes determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)

3.6 Some respondents to the consultation had suggested their removal as they felt the factors were very clearly aimed at Islamic terrorism, specifically those travelling to Syria.

3.7 Some Council members proposed removing the factors and letting such cases be sentenced according to the actions taken by the offender. In other words, the court would consider why the offender was travelling or attempting to travel abroad and how far they had come in their preparations. The Council did not reach a firm conclusion about this issue and left it for the Working Group to consider.

3.8 The Working Group concluded that the main risk of leaving these factors in is that it restricts all such cases to a specific culpability level when the range of activity that an offender may be involved in could be huge. In some cases, an offender might have travelled abroad and actively engaged in armed combat risking the lives of many. If a person had done the same in the UK they would be expected to fall into a far higher category. Whereas another offender might simply have engaged in training, or not even made it abroad.

3.9 The Working Group instead felt it better to allow the cases to be sentenced according to the activity that the offender engaged in.

3.10 In addition, the Working Group discussed and agreed upon an additional factor for culpability C that might capture some of the less serious ‘travelling abroad’ cases, amongst others;

Offender acquires training or skills for the purpose of terrorist activity (where not falling into A or B)

QUESTION 2: Does the Council agree to remove the ‘travelling abroad’ factors, and to include a new factor into culpability C about acquiring training or skills for the purpose of terrorist activity?

Harm

3.11 At the January Council meeting a new harm model was proposed to take into account a number of different factors including the type of harm, whether the offender intended to cause the harm or was reckless as to whether the harm would be caused; and the likelihood of that harm being caused.

3.12 A number of Council members felt that the new draft model was too complex as it involved two steps. The Working Group felt that the model need only cover the type of harm and the likelihood of that harm being caused, thus the traditional model would work. Other Council members felt that issues such as intention or recklessness are relevant only to culpability and should not form a part of the harm assessment.

3.13 In changing the model to include just the type of harm, and the likelihood of harm being caused, the heading to the harm model has also been changed so that it says;

Harm is assessed based on the type of harm risked & the likelihood of causing that harm. When considering the likelihood of harm, the court should consider the viability of the plan.

QUESTION 3: Does the Council agree that the harm model should only include consideration of the type of harm caused/ risked and the likelihood of that harm being caused?

3.14 In addition, the Working Group discussed whether an offender who risks many deaths should be in a higher harm category than those offenders who intend or risk one or a small number of deaths. This is an issue that the Council had discussed before we went to consultation and it was previously agreed that any death should result in the highest harm category. The consultation draft, therefore, included the following harm factors: -

Category 1	<ul style="list-style-type: none">• Endangerment of life
Category 2	<ul style="list-style-type: none">• Widespread and serious damage to property or economic interests• Substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none">• Other cases where characteristics for categories 1 or 2 are not present

3.15 The Working Group reflected on this issue and concluded that multiple deaths should result in the highest possible sentence, and such a case should be differentiated from others. To that end the harm model in **Annex A** is now being proposed. The Working Group felt that in cases where a particularly prominent person (such as the Prime Minister, an MP or a member of the armed forces) is targeted there are likely to be sufficient aggravating features that the court could go to the top of the range of harm 2 or even outside of the range to reach an appropriate sentence.

3.16 In addition, when roadtesting the guideline with a number of terrorist Judges, several queried the fact that when assessing harm at step 1 the draft guideline treats the endangerment of life as the same, regardless of the scale of intended casualties and it is only at step 2, (where we had included a factor 'many lives endangered') that the difference was reflected. The Judges felt that the difference was more significant and should be dealt with in the initial assessment of seriousness.

QUESTION 4: Does the Council agree that the harm model should separate those intending to cause multiple deaths from those intending to cause a single or small number of deaths?

Sentencing

3.17 If the Council agree to the change proposed above, the sentencing table would also have to be changed so that those now falling into harm category 2 receive appropriate sentences. The original sentence table was drafted on the basis that only those falling into harm category 1 had endangered lives, and those falling into harm category 2 had either intended to cause widespread serious damage to property or economic interest, or had intended to cause substantial impact to civic infrastructure. Thus, the sentences for harm category 2 were significantly lower.

3.18 The proposed new sentences can be seen at **Annex A**. The old sentence table is replicated below: -

Ha rm	Culpability			
	A	B	C	D
1	<p>Starting point Life imprisonment - minimum term of 35 years</p> <p>Category range Life imprisonment - minimum term of 30 – 40 years</p>	<p>Starting point Life imprisonment - minimum term of 20 years</p> <p>Category range Life imprisonment with a minimum term 15 - 25 yrs.</p>	<p>Starting point Life imprisonment - minimum term of 15 years</p> <p>Category range Life imprisonment - minimum term 10 – 20 yrs.</p>	<p>Starting point 15 years' custody</p> <p>Category range 10-20 years</p>
2	<p>Starting point 25 years custody</p> <p>Category range 20 - 30 years custody</p>	<p>Starting point 20 years</p> <p>Category range 15- 25 years custody</p>	<p>Starting point 15 years' custody</p> <p>Category range 10- 20 years' custody</p>	<p>Starting point 8 years' custody</p> <p>Category range 6-10 years' custody</p>
3	<p>Starting point 16 years' custody</p> <p>Category range 12 – 20 years'</p>	<p>Starting point 12 years' custody</p> <p>Category range 8- 16 years' custody</p>	<p>Starting point 8 years' custody</p> <p>Category range 6 - 10 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category range 3 years – 6 years' custody</p>

QUESTION 5: Does the Council agree to the changes to the sentencing table (as can be seen at Annex A)?

Explosive Substances

3.19 The Explosive Substances guideline (**Annex B**) has been amended to reflect the changes made to the Preparation guideline.

Failure to Disclose Information

3.20 **Annex C** shows the proposed new culpability factors as tracked changes to the consultation draft.

3.21 In January the Council discussed the consultation version of the guideline and decided that the culpability factors were not right as they simply reflected the offence rather than indicating a level of culpability. The Council was keen to capture other factors at culpability and harm so that offenders are sentenced according to the extent of the offender's knowledge; how significant the material was; and the nature and seriousness of the connected terrorist activity.

3.22 Section 38B provides that where a person has information which he knows or believes might be of material assistance in either preventing the commission by another person of an act of terrorism, or in securing the apprehension, prosecution or conviction of another person,

in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism he commits an offence if he does not disclose the information as soon as reasonably practicable.

3.23 The Working Group therefore agreed that the extent of the offender's knowledge will already have been considered as a relevant factor in the conviction, given that the offender must have had knowledge that the information was useful, or of material assistance in order to be convicted. The Working Group concluded that the significance of the information withheld should be the main consideration when deciding the appropriate level of culpability.

3.24 The harm factors already refer to the nature and seriousness of the connected terrorist act so that if the act is likely to endanger life or impact on economic interests or civic infrastructure then the case falls into category 1.

3.25 As the new culpability model includes three levels rather than two, the sentencing table has had to be changed.

QUESTION 6: Does the Council agree with the proposed culpability factors?

QUESTION 7: Does the Council agree with the proposed sentence levels?

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Preparation of Terrorist Acts

Terrorism Act 2006 (section 5)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This guideline applies only to offenders aged 18 and older
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STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**. The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> • Acting alone, or in a leading role, in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
B	<ul style="list-style-type: none"> • Acting alone, or in a leading role, in terrorist activity where preparations were well advanced and, but for apprehension, the activity was likely to have been carried out • Significant role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out • Offender has coordinated others to take part in terrorist activity, whether in the UK or abroad (where not falling within A)
C	<ul style="list-style-type: none"> • Leading role in terrorist activity where preparations were not far advanced • Significant role in terrorist activity where preparations were well advanced and, but for apprehension, the activity was likely to have been carried out • Lesser role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out • Offender acquires training or skills for purpose of terrorist activity (where not falling within A or B) • Acts of significant assistance or encouragement of other(s) (where not falling within A or B)
D	<ul style="list-style-type: none"> • Offender has engaged in very limited preparation for terrorist activity • Act(s) of lesser assistance or encouragement of other(s) • Other cases not falling within A, B or C

Harm

Harm is assessed based on the type of harm risked & the likelihood of that harm being caused.

When considering the likelihood of harm, the court should consider the viability of the plan

Category 1	<ul style="list-style-type: none"> • Multiple deaths risked and highly likely to be caused
Category 2	<ul style="list-style-type: none"> • Multiple deaths risked but not highly likely to be caused • Any death risked and highly likely to be caused
Category 3	<ul style="list-style-type: none"> • Any death risked but not highly likely to be caused • Risk of widespread or serious damage to property or economic interests • Risk of a substantial impact upon civic infrastructure • Any other cases

STEP TWO – 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 on the next page.

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).

The court must also consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term of 35 years Category range Life imprisonment - minimum term of 30 – 40 years	Starting point Life imprisonment - minimum term of 25 years Category range Life imprisonment with a minimum term 20 - 30 yrs.	Starting point Life imprisonment - minimum term of 15 years Category range Life imprisonment - minimum term 10 – 20 yrs.	Starting point 15 years' custody Category range 10-20 years
2	Starting point Life imprisonment - minimum term of 25 years Category range Life imprisonment with a minimum term 20 - 30 yrs.	Starting point Life imprisonment - minimum term of 15 years Category range Life imprisonment - minimum term 10 – 20 yrs.	Starting point 15 years' custody Category range 10- 20 years' custody	Starting point 8 years' custody Category range 6-10 years' custody
3	Starting point 16 years' custody Category range 12 – 20 years'	Starting point 12 years' custody Category range 8- 16 years' custody	Starting point 8 years' custody Category range 6 - 10 years' custody	Starting point 4 years' custody Category range 3 years – 6 years' custody

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Preparation was with a view to engage in combat with UK armed forces
- Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one
- Failed to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

STEP SEVEN**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 overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP EIGHT**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP NINE**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN**Consideration for time spent on bail (tagged curfew)**

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

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Explosive Substances (Terrorism only)

Causing explosion likely to endanger life or property - Explosive Substances Act 1883 (section 2)

Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property - Explosive Substances Act 1883 (section 3)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

Triable only on indictment
Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This guideline applies only to offenders aged 18 and older
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STEP ONE	
Determining the offence category	
<p>The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category, the court should assess culpability and harm.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p>Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.</p>	
Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> • Offender caused an explosion or used, developed or was in possession of a viable explosive device • Acting alone, or in a leading role, in terrorist activity involving explosives, where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
B	<ul style="list-style-type: none"> • Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device • Acting alone, or in a leading role, in terrorist activity involving explosives where preparations were well advanced and, but for apprehension, the activity was likely to have been carried out • Significant role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
C	<ul style="list-style-type: none"> • Leading role in terrorist activity involving explosives where preparations were not far advanced • Significant role in terrorist activity involving explosives where preparations were well advanced and, but for apprehension, the activity was likely to have been carried out • Lesser role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out • Act(s) of significant assistance or encouragement of other(s) involved in causing, developing or possessing an explosive device (where not falling within A or B)
D	<ul style="list-style-type: none"> • Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device • Offender has engaged in very limited preparation of terrorist activity involving explosives • Act(s) of lesser assistance or encouragement of other(s) • Other cases not falling within A,B or C

Harm

Harm is assessed based on the type of harm risked & the likelihood of that harm being caused.

When considering the likelihood of harm, the court should consider the viability of the plan

Category 1	<ul style="list-style-type: none"> • Multiple deaths risked and highly likely to be caused
Category 2	<ul style="list-style-type: none"> • Multiple deaths risked but not highly likely to be caused • Any death risked and highly likely to be caused
Category 3	<ul style="list-style-type: none"> • Any death risked but not highly likely to be caused • Risk of widespread or serious damage to property or economic interests • Risk of a substantial impact upon civic infrastructure • Any other cases

STEP TWO – 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 on the next page.

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).

The court must also consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term of 35 years Category range Life imprisonment - minimum term of 30 – 40 years	Starting point Life imprisonment - minimum term of 25 years Category range Life imprisonment - minimum term 20 – 30 years	Starting point Life imprisonment - minimum term of 15 years Category range Life imprisonment - minimum term 10 – 20 years	Starting point 15 years' custody Category range 10-20 years custody
2	Starting point Life imprisonment - minimum term of 25 years Category range Life imprisonment with a minimum term 20 – 30 years	Starting point Life imprisonment - minimum term of 15 years Category range Life imprisonment - minimum term 10 – 20 years	Starting point 15 years' custody Category range 10- 20 years' custody	Starting point 8 years' custody Category range 6-10 years' custody
3	Starting point 16 years' custody Category range 12 – 20 years' custody	Starting point 12 years' custody Category range 8- 16 years' custody	Starting point 8 years' custody Category range 6 - 10 years' custody	Starting point 4 years' custody Category range 3 years – 6 years' custody

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 an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Failed to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

STEP SEVEN**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 overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP EIGHT**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP NINE**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN**Consideration for time spent on bail (tagged curfew)**

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

Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

Triable either way
Maximum: 5 years' custody

Offence range: 6 months' – 5 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Failed to pass on information which could have prevented an act of terrorism
B	<ul style="list-style-type: none"> Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism

New culpability factors:

Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Information was highly significant
B	<ul style="list-style-type: none"> Cases whose characteristics fall between A and C
C	<ul style="list-style-type: none"> Information was of low significance

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> Information related to terrorist activity endangering life Information related to terrorist activity intended to cause widespread or serious damage to property, economic interest or substantial impact upon civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

STEP TWO
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 on the next page.

Harm	Culpability	
	A	B
Category 1	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
Category 2	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 2 years' custody Category range High Community Order-3 years' custody

New sentence table:

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody Category range 3 - 5 years' custody	Starting point 3 years' custody Category range 2 - 4 years' custody	Starting point 2 years' custody Category range 6 months - 3 years' custody
Category 2	Starting point 3 years' custody Category range 2 - 4 years' custody	Starting point 2 years' custody Category range 6 months - 3 years' custody	Starting point 18 months' custody Category range High Community Order - 2 years' custody

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 an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability,

sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Many lives endangered
- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character
- Offender involved through coercion, intimidation or exploitation
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

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 overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP SIX

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail (tagged curfew)

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

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