

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
--

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.