

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

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SC(18)MAR07 Terrorism Paper 2
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1 ISSUE

The Council is invited to consider changes to the remaining six terrorism guidelines in this package and to sign off all guidelines.

2 RECOMMENDATION

It is recommended that the Council consider the following proposals:

- An additional harm factor in the Support guideline
- A reduction in sentence at the top of the range in the Funding guideline
- A change to the harm models for Possession and Collection
- A change to some of the language across the guidelines which is currently inconsistent
- An additional aggravating factor for the preparation guideline
- Additional guidance for sentencing children and young people

3 CONSIDERATION

Encouragement of Terrorism s1 & 2 TACT 2006 (**Annex D**) and Support for a Proscribed Organisation s12 TACT 2000 (**Annex E**)

3.1 These two guidelines cover offences which, looking at the cases, can be very similar in nature. The offences themselves involve different elements, for example the legislation covering the encouragement offences focuses heavily on whether the offender intended to encourage terrorism or whether he was reckless in doing so, and whether the material published or disseminated directly encouraged terrorism or simply glorified terrorism. In contrast the legislation for the offence of support is concerned with whether an offender has invited support for an organisation, furthered the activities of an organisation or arranged a meeting in support of an organisation. The main cross over, therefore, seems to be where an offender 'furthers the activities of an organisation' as this could be charged as either offence.

3.2 With this in mind, the Council may consider that some of the factors in one guideline might also work in the other. I propose that the support guideline should include a harm factor similar to that in encouragement:

Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life

3.3 The recent Court of Appeal case of Alamgir (heard by both Colman and Maura), was concerned with offences of support but the Court considered the above issue:

Before turning to the individual offenders, we indicate that our view is that because no immediate consequence was shown linking these speeches to some terrorist or violent act by a member of the audience, this case does not fall at the highest level. Nonetheless, given the nature of the audience addressed, we consider it likely that the speeches would have had the effect of increasing support for Isis and its aims within the audiences. This would place these cases at a mid-level in gravity before assessing individual culpability and personal circumstances.

3.4 The encouragement guideline includes this factor in both categories 1 and 2 of harm. Category 1 concerns activities endangering life and category 2 activities not endangering life. If the Council want to do the same in the support guideline it will require a change to the harm structure to give 3 levels of harm. The Council may feel that this is appropriate given that the statutory maximum for this offence is 10 years, whereas the encouragement offences have a lesser maximum of 7 years. If the Council agree the harm model for the support guideline would look like this:

Harm	
The court should consider the factors set out below to determine the level of harm.	
Category 1	<ul style="list-style-type: none"> • Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life • Significant support for the organisation gained or likely to be gained
Category 2	<ul style="list-style-type: none"> • Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life
Category 3	<ul style="list-style-type: none"> • All other cases

QUESTION 1: Does the Council want to include these factors in the harm model and move to 3 levels of harm?

3.5 If the Council agrees to change the harm model the sentencing table would also need to be amended. A proposed version is set out below:

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody Category range 6-9 years' custody	Starting point 5 years' custody Category range 4-6 years' custody	Starting point 3 years' custody Category range 2 - 4 years' custody
Category 2	Starting point 6 years' custody Category range 5 - 7 years' custody	Starting point 4 years' custody Category range 3 -5 years' custody	Starting point 2 years' custody Category range 1– 3 years' custody
Category 3	Starting point 5 years' custody Category range 4 - 6 years' custody	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 1 years' custody Category range 6 months' – 2 years' custody

QUESTION 2: Does the Council agree to the amended sentencing table above?

Funding Terrorism (Annex F)

3.6 The Justice Committee sent a letter of response to the terrorism consultation paper recently – this was forwarded to all members via email. The majority of the points raised were ones that the Council have already considered however they also queried why the sentences in two of the guidelines; Failure to Disclose Information and Funding, go up to the statutory maximum. As they point out, the Council usually leave an amount of headroom to enable a court to sentence exceptionally serious cases outside the range.

3.7 With regard to the Failure to Disclose Information guideline there is a clear reason in that the statutory maximum sentence is just 5 years and the conduct described by an A1 case is very serious justifying the maximum sentence. Leaving headroom in this guideline would mean that such cases would have to receive sentences lower than current sentencing practice.

3.8 However, the funding guideline does not share this justification as the statutory maximum is 14 years. If the Council wanted to amend the sentencing table in this guideline to give the court headroom for exceptional cases this could be achieved by amending the range in A1 to 10- 13 years.

QUESTION 3: Does the Council want to reduce the sentencing range in A1 to go up to 13 years?

Collection of Terrorist Information s58 TACT 00 (Annex H)

3.9 At the January Council meeting I proposed a new harm model for the Collection guideline which included the likelihood of harm. The model was a new structure, like that initially proposed for Preparation. Whilst the Council did not like the model they did agree to include consideration of likelihood. The reason for its inclusion is that this offence does not require an offender to have terrorist motivations. Therefore, there will be cases where offenders have collected terrorist material for no purpose other than curiosity and, without likelihood being included such offenders could potentially receive very high and disproportionate sentences. There are no new proposals for change to this guideline.

Harm Models across all guidelines

3.10 The harm models across the package of guidelines vary to reflect the differences between the offences. However, there are some differences that might appear inconsistent.

3.11 The Preparation (**Annex A**), Explosives (**Annex B**), Encouragement (**Annex D**), Support (**Annex E**) and Funding (**Annex F**) guidelines all treat endangerment of life as a more serious factor in terms of harm than widespread and serious damage to property, economic interests or substantial impact upon civic infrastructure.

3.12 The Failure to Disclose Information (**Annex C**), Possession (**Annex G**) and Collection (**Annex H**) guidelines all include widespread and serious damage to property etc as a harm 1 category alongside endangerment of life. For the Failure to Disclose guideline this is perhaps explained by the low statutory maximum. Any greater break down of the harm factors in this guideline could result in very low sentences for activity that is very serious. However, the Possession guideline has a statutory maximum of 15 years, the next highest after Preparation and Explosive Substances. The Collection guideline currently has a statutory maximum of 10 years (the same as Support). The Council might, therefore, want to consider amending the current harm models in the possession and collection guidelines.

Proposed Harm Model - Collection (s58)

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked .	
Category 1	<ul style="list-style-type: none">Material provides instruction for specific terrorist activity endangering life and the likelihood of harm is high
Category 2	<ul style="list-style-type: none">Material provides instruction for specific terrorist activity endangering life but the likelihood of harm is lowMaterial provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none">All other cases

QUESTION 4: Does the Council want to amend the harm model for Collection?

Proposed Harm Model - Possession (s57):

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked .	
Category 1	<ul style="list-style-type: none"> Article(s) had potential to facilitate an offence endangering life
Category 2	<ul style="list-style-type: none"> Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> All other cases

3.13 The Council could also consider amending the Possession guideline to include the likelihood of endangering life within the harm model, as we have in both the Preparation and Collection guidelines:

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked .	
Category 1	<ul style="list-style-type: none"> Article(s) had potential to facilitate an offence endangering life and the likelihood of harm is high
Category 2	<ul style="list-style-type: none"> Article(s) had potential to facilitate an offence endangering life but the likelihood of harm is low Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> All other cases

As these changes include the addition of a third harm level, the sentencing table would also have to change:

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody Category range 9-14 years' custody	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 4 years' custody Category range 3-6 years' custody
Category 2	Starting point 8 years' custody Category range 7-9 years' custody	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
Category 3	Starting point 6 years' custody Category range 4-7 years' custody	Starting point 4 years' custody Category range 2-5 years' custody	Starting point 2 years' custody Category range 1-3years' custody

QUESTION 5: Does the Council want to amend the harm model for the Possession guideline, and if so which model is preferred (with or without likelihood)?

QUESTION 6: If the model is changed does the Council agree to the proposed sentence table?

Consistency of Language

3.14 There is currently some inconsistency of language across the package of guidelines when referring to loss of life within the harm factors:

Preparation guideline	Multiple deaths/ any deaths risked
Explosive Substances guideline	
Encouragement guideline	Activities endangering life
Support guideline	Activities endangering life Activities intended to cause endangerment to life
Funding guideline	Activity which involved risk to life

QUESTION 7: Does the Council want to use consistent language throughout the package and if so which term above is preferred?

Additional matters

3.15 One respondent to the consultation suggested that an additional aggravating factor could be 'offender targets children'. The consultee specifically had in mind the Manchester Arena terrorist incident where the offender must have been aware that the audience at the music concert were likely to be children.

QUESTION 8: Does the Council want to add 'offender targets children' to the aggravating factors in the Preparation guideline?

3.16 The Youth Justice Board suggest that there should be greater signposting to the youth guidelines to assist sentencers sentencing those under 18. Currently each draft includes the wording; 'This guideline applies only to offenders aged 18 and older'. In addition we could include this wording:

When sentencing children or young people under the age of 18 the court should refer to the *Overarching Principles for Sentencing Children and Young People* guideline. This guideline provides guidance on the individual approach to sentencing children and young people, the

relevance of a person's age and level of maturity and the relevant welfare considerations that should be taken into account.

QUESTION 9: Does the Council want to add the additional wording to all of the terrorism guidelines?

3.17 The membership guideline can be seen at **Annex I**, there are no proposed changes to this guideline.

QUESTION 10: Is the Council content to sign off the full package of nine guidelines?

Publication of the Guidelines

3.18 As the Council heard at the last meeting, there will be changes to the legislation upon which these guidelines are based. It seems likely that the Government will announce their proposals around Easter.

3.19 The Council had intended to publish these guidelines on 22 March to come into force on 27 April. It is impossible to say how quickly the Government could get a Bill through Parliament and how long after that before the changes would come into force, but it is likely to take some time.

3.20 If the Council goes ahead with their intended plans the courts would have the benefit of up to date guidelines that they could be using for many months before any changes come about. Whilst there may be reputational risks in publishing guidelines that will become out of date relatively soon after publication, there are also reputational risks in advertising the fact that we are working to produce guidelines in a short time period, with a reduced consultation period, only to then stall the publication of them.

3.21 The Council was very clear about the fact that we knew the Government was likely to legislate, indeed the Home Secretary announced the proposed change to one guideline just before we consulted, which gave us the opportunity to consult on a proposed alternative sentence table.

3.22 If we go ahead and publish as intended, our work will not go to waste and we could make clear in our communications, and our response document, that we recognise there will be changes to legislation but the Council consider it vital for the courts to have guidelines as soon as possible. In addition, we would endeavour to make any necessary amendments to the guidelines as soon as possible after any changes to legislation are made. Once the Government announce their plans work can begin to draft up amendments to these guidelines.

The Council may still have to consult as the changes are likely to be wider than those announced prior to our consultation, but it could be that a short, targeted consultation would suffice, and this could take place shortly after the changes become law. In which case amended guidelines could be published very soon after any legislative changes come into force.

QUESTION 11: Is the Council in agreement that we should publish these guidelines and bring them into force according to our timetable?

4 IMPACT

4.1 The Analysis and Research team will be completing work on a final resource assessment after this Council meeting and will circulate this to Council members within the next few weeks, before the guidelines are published.

5 RISK

5.1 As outlined above (paragraph 3.20), there are some risks with either going ahead or delaying the publication of this package of guidelines, but we are confident that we could manage those risks.

5.2 There are also risks associated with the assessment of the impact of these guidelines. Most terrorist offences are low volume which makes assessing current sentencing practice difficult, even the Preparation offence, which is one of the higher volume offences, is difficult as the cases vary hugely. An assessment of the impact of the guideline will be conducted once the guideline has been in place for a period of time, and if any issues are identified then the Council will have an opportunity to review the guideline.

Encouragement of Terrorism

Encouragement of terrorism

Terrorism Act 2006 (section 1)

Dissemination of terrorist publications

Terrorism Act 2006 (section 2)

Triable either way

Maximum: 7 years' custody

Offence range: 6 months' custody – 6 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.

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"> Offender in position of trust, authority or influence and abuses their position to encourage others Intended to encourage others to engage in any form of terrorist activity Intended to provide assistance to others to engage in terrorist activity
B	<ul style="list-style-type: none"> Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/ disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)
C	<ul style="list-style-type: none"> Other cases where characteristics for categories A or B are not present

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"> Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life Statement or publication provides instruction for specific terrorist activity endangering life
Category 2	<ul style="list-style-type: none"> Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life Statement or publication provides non-specific content encouraging support for terrorist activity endangering life Statement or publication provides instruction for specific terrorist activity not endangering life
Category 3	<ul style="list-style-type: none"> Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life Other cases where characteristics for categories 1 or 2 are not present

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	C
Category 1	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 3 years' custody
	Category range 4 -6 years' custody	Category range 3-5 years' custody	Category range 2-4 years' custody
Category 2	Starting point 4 years' custody	Starting point 3 years' custody	Starting point 2 years' custody
	Category range 3-5 years' custody	Category range 2-4 years' custody	Category range 1-3 years' custody
Category 3	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 years' custody
	Category range 2-4 years' custody	Category range 1-3 years' custody	Category range 6 months' custody – 2 years

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:

- Specifically targeted audience (if not considered at step 1)
- Vulnerable/ impressionable audience (if not considered at step 1)
- Communication with known extremists
- Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/ or avoid or impede detection
- Significant volume of terrorist publications published or disseminated
- Used multiple social media platforms to reach a wider audience
- Offender attempted to disguise their identity to prevent detection
- Failure to respond to warnings
- Failure to comply with 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**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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Proscribed Organisations

Support

Terrorism Act 2000 (section 12)

Triable either way

Maximum: 10 years' custody

Offence range: 6 months' custody – 9 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.

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"> • Offender in position of trust, authority or influence and abuses their position • Persistent efforts to gain widespread or significant support for organisation • Encourages activities intended to cause endangerment to life
B	<ul style="list-style-type: none"> • Arranged or played a significant part in the arrangement of a meeting/ event aimed at gaining significant support for organisation • Intended to gain widespread or significant support for organisation • Encourages activities intended to cause widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure
C	<ul style="list-style-type: none"> • Lesser cases where characteristics for categories A or B are not present

Harm

The court should consider the factors set out below to determine the level of harm.

Category 1	<ul style="list-style-type: none"> • Significant support for the organisation gained or likely to be gained
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	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5-9 years' custody	Category range 3-6 years' custody	Category range 1-4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 years' custody
	Category range 3 - 6 years' custody	Category range 2-5 years' custody	Category range 6 months – 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:

- Vulnerable/ impressionable audience
- 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 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**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.

Funding Terrorism

Fundraising

Terrorism Act 2000 (section 15)

Use and Possession

Terrorism Act 2000 (section 16)

Funding Arrangements

Terrorism Act 2000 (section 17)

Money Laundering

Terrorism Act 2000 (section 18)

Triable either way

Maximum: 14 years' custody

Offence range: 1 – 14 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.

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"> • A significant role where offending is part of a group activity • Involvement of others through pressure or influence • Abuse of position of power, trust or responsibility • Sophisticated nature of offence/ significant planning • Activities took place over a sustained period of time
B	<ul style="list-style-type: none"> • Cases whose characteristics fall between A and C
C	<ul style="list-style-type: none"> • Performed limited function under direction • Very little or no planning

Harm

The court should consider the factors set out below to determine the level of harm.

Category 1	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a significant contribution to furthering terrorism • Use or provision of money or property to fund or assist activity which involved risk to life
Category 2	<ul style="list-style-type: none"> • Use or provision of money or property to fund or assist activity which involved risk of widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure • All other cases whose characteristics fall between 1 and 3
Category 3	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a minor contribution to furthering terrorism

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	C
Category 1	Starting point 12 years' custody	Starting point 9 years' custody	Starting point 7 years' custody
	Category range 10 - 14 years' custody	Category range 8 - 10 years' custody	Category range 6 - 8 years' custody
Category 2	Starting point 9 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 - 10 years' custody	Category range 6 - 8 years' custody	Category range 2 - 5 years' custody
Category 3	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 6 - 8 years' custody	Category range 2 - 5 years' custody	Category range 1 - 3 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 (*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:

- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Indoctrinated or encouraged others
- Use or provision of false or fraudulent identification
- Misrepresenting nature of organisation

- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision

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
- 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.

Possession for Terrorist Purposes

Terrorism Act 2000 (section 57)

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 either way
Maximum: 15 years' custody

Offence range: 1 – 14 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.

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"> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism
B	<ul style="list-style-type: none"> • Cases falling between A and C
C	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender has engaged in very limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity

Harm

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

Category 1	<ul style="list-style-type: none"> • Article(s) had potential to facilitate an offence causing loss of life, serious injury or a substantial impact to the economy or 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	C
Category 1	Starting point 10 years' custody	Starting point 7years' custody	Starting point 4 years' custody
	Category range 8-14 years' custody	Category range 5-9 years' custody	Category range 2-6 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4-8 years' custody	Category range 2-6 years' custody	Category range 1-3years' 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:

- Article has the potential to endanger many lives
- Length of time over which offending was committed
- 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
- 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 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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Collection of Terrorist Information

Terrorism Act 2000 (section 58)

Triable either way
Maximum: 10 years' custody

Offence range: High Community Order – 9 years' custody

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 collected, made a record of, or was in possession of information for use in a specific terrorist act
B	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations Offender repeatedly accessed extremist material (where not falling within A)
C	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations
Harm	
<p>The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked.</p>	
Category 1	<ul style="list-style-type: none"> Material provides instruction for specific terrorist activity endangering life and the likelihood of harm is high Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, economic interest or substantial impact upon civic infrastructure and the likelihood of harm is high
Category 2	<ul style="list-style-type: none"> Material provides instruction for specific terrorist activity endangering life but the likelihood of harm is low Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure but the likelihood of harm is low
Category 3	<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	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5-9 years' custody	Category range 3-6 years' custody	Category range 1-4 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 18 months' custody
	Category range 4-8 years' custody	Category range 3-5 years' custody	Category range 6 months' - 3 years' custody
Category 3	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1-year custody
	Category range 3 - 6 years' custody	Category range 2-5 years' 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:

- Significant volume of terrorist publications
- Length of time over which offending was committed
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- 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 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

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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Proscribed Organisations

Membership

Terrorism Act 2000 (section 11)

Triable either way

Maximum: 10 years' custody

Offence range: 6 months' custody – 9 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.

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"> Prominent member of organisation
B	<ul style="list-style-type: none"> Active (but not prominent) member of organisation
C	<ul style="list-style-type: none"> All other cases

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.

There is no variation in the level of harm caused. Membership of any organisation which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism is inherently harmful.

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	C
	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5-9 years' custody	Category range 3-7 years' custody	Category range 6 months' custody -4 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:

- 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

- Unaware that organisation was proscribed
- 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

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.