

**Paper number:**  
**Lead official:**

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**SC(19)MAY08 – Terrorism**  
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## **1 ISSUE**

1.1 The Counter-Terrorism and Border Security Act 2019 has increased the maximum sentences for some terrorism offences in the Terrorism Act 2000 (TACT 2000) and Terrorism Act 2006 (TACT 2006) which are covered by sentencing guidelines. It has also slightly changed the elements of some of those offences and brought others in scope for 'Extended Determinate Sentences' and 'Sentences for Offenders of Particular Concern'.

1.2 The Council will need to consider the impact of the changes on the guidelines, propose changes, consult on the proposed changes and issue updated guidelines.

1.3 In the interim the Council may wish to consider adding a note to the affected guidelines to alert users to the legislative changes.

## **2 RECOMMENDATION**

2.1 That the Council should:

- Agree the scope of the changes to be considered in detail at a later meeting (currently planned for June/July); and
- Agree in the interim to add a note to guidelines that are affected by the legislative changes.

## **3 CONSIDERATION**

*The legislation and the guidelines*

3.1 The Counter-Terrorism and Border Security Act 2019 act which came into force on 12 April 2019, can be seen here:

<https://www.legislation.gov.uk/ukpga/2019/3/contents/enacted>

3.2 The guidelines can be seen here:

<https://www.sentencingcouncil.org.uk/crown-court?s&collection=terrorism-offences>

3.3 They cover offences contrary to:

Explosive Substances Act 1883, s.3  
Explosive Substances Act 1883, s.2

Terrorism Act 2000, s.11  
 Terrorism Act 2000, s.12  
 Terrorism Act 2000, s.15, s.16, s.17, s.18  
 Terrorism Act 2000, s.38B  
 Terrorism Act 2000, s.57  
 Terrorism Act 2000, s.58

Terrorism Act 2006, s.1, s.2  
 Terrorism Act 2006, s.5

*Changes to offences covered by guidelines*

3.4 Maximum sentences have increased as follows:

Offence	Previous Maximum	New Maximum
TACT 2000, s.38B (information about acts of terrorism)	5 years	10 years
TACT 2000, s.58 (collection of terrorist information)	10 years	15 years
TACT 2006 s.1 (encouragement of terrorism) s.2 (dissemination of terrorist publications)	7 Years	15 years

3.5 The elements of some the offences have changed in ways that may need to be reflected in the factors in the guidelines.

3.6 There is a new subsection 1A to section 12 TACT 2000 (Proscribed organisations – support).

(1A) A person commits an offence if the person—  
 (a) expresses an opinion or belief that is supportive of a proscribed organisation, and  
 (b) in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.

3.7 The wording of the culpability factors in this guideline reflect the language in the (unamended) statute. It seems likely that using the guideline as currently worded (absent any other factors being present) convictions based on the new subsection would come under culpability C:

**A**

- 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**

- 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**

- Lesser cases where characteristics for categories A or B are not present

3.8 There are new subsections (1)(c) and (1A) to section 58 TACT 2000 (Collection of terrorist information) so that it will read:

(1) A person commits an offence if–

(a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) he possesses a document or record containing information of that kind or

(c) the person views, or otherwise accesses, by means of the internet a document or record containing information of that kind.

(1A) The cases in which a person collects or makes a record for the purposes of subsection (1)(a) include (but are not limited to) those in which the person does so by means of the internet (whether by downloading the record or otherwise).

3.9 The culpability factors (set out below) closely reflect the original wording of the statute and so the Council may wish to consider adding wording such as 'or accessed by means of the internet':

**A**

- Offender collected, made a record of, or was in possession of information for use in a specific terrorist act

**B**

- 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**

- 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

3.10 There are changes to the wording of sections 1 and 2 of TACT 2006 (encouragement of terrorism) which now refer to a 'reasonable person' rather than 'some or all members of the public'. This change of wording is unlikely to necessitate a revision to the wording in the guideline.

3.11 The new legislation also brings further offences in scope for extended determinate sentences and sentences for offenders of particular concern:

**Section 11 TACT 2000** (proscribed organisations – membership)

Now an offence for which 'a special custodial sentence for **offenders of particular concern**' may be imposed under section 236A CJA 2003

**Section 12 TACT 2000** (Proscribed organisations - support) new subsection 1A  
Now a **'specified terrorism offence'** Sch 15 CJA 2003 and subject to extended sentence s226A CJA 2003.

Now an offence for which 'a special custodial sentence for **offenders of particular concern**' may be imposed under section 236A CJA 2003

**Section 58 TACT 2000** (Collection of terrorist information)

Now a **'specified terrorism offence'** Sch 15 CJA 2003 and subject to extended sentence s226A CJA 2003.

Now an offence for which 'a special custodial sentence for **offenders of particular concern**' may be imposed under section 236A CJA 2003

**Section 1 TACT 2006** (encouragement of terrorism)

**Section 2 TACT 2006** (dissemination of terrorist publications)

Both now a **'specified terrorism offence'** Sch 15 CJA 2003 and subject to extended sentence s226A CJA 2003.

Both now an offence for which 'a special custodial sentence for **offenders of particular concern**' may be imposed under section 236A CJA 2003

**Section 5 TACT 2006** (Preparation of terrorist acts)

Now a **'specified terrorism offence'** Sch 15 CJA 2003 (was already listed in Sch 15)

3.12 A 'specified terrorism offence' is subject to a maximum extension period of eight years (as opposed five years for a specified violent offence).

3.13 There are also changes to the details of the automatic notification requirements (Sections 41 – 53 of the Counter-Terrorism Act 2008) and to the list of offences in Schedule 2 of the Counter-Terrorism Act 2008 (offences with a terrorist connection) but these changes are at a level of detail that do not impact on the guidelines.

3.14 The legislative changes outlined at paras 3.4 to 3.11 above will require a review of the affected terrorism guidelines and in due course consultation on the revised draft guidelines. The Council may feel that it would be appropriate to expedite this work and that a short, targeted consultation period would be suitable.

**Question 1: Does the Council agree that the terrorism guidelines should be reviewed to take account of the legislative changes noted at paragraphs 3.4 to 3.11 above?**

**Question 2: Does the Council wish to expedite this review?**

3.15 Even if work is expedited, any amendments to the terrorism guidelines will not be in force for several months and so in the interim it would be helpful to provide a note on the affected guidelines to alert users to the legislative changes. Proposed wording is provided below.

3.16

### **Proscribed organisations - membership**

Terrorism Act 2000, s.11

**Effective from:** 27 April 2018

Triable either way

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

Note for offences **committed** on or after **12 April 2019:**

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

Note for offences **sentenced** on or after **12 April 2019:**

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.

This guideline applies only to offenders aged 18 and older

3.17

### **Proscribed organisations - support**

Terrorism Act 2000, s.12

**Effective from:** 27 April 2018

Triable either way

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

Note for offences **committed** on or after **12 April 2019:**

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

Note for offences **sentenced** on or after **12 April 2019:**

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.

This guideline applies only to offenders aged 18 and older

3.18

### **Collection of terrorist information**

Terrorism Act 2000, s.58

**Effective from:** 27 April 2018

Triable either way  
Maximum: 10 years' custody  
Offence range: High level community order – 9 years' custody

Note for offences **committed** on or after **12 April 2019**:

The maximum sentence is increased to **15 years** (section 7(3) Counter-Terrorism and Border Security Act 2019). The increase has not yet been reflected in the sentence levels in this guideline.

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

Note for offences **sentenced** on or after **12 April 2019**:

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.

This guideline applies only to offenders aged 18 and older

3.19

### **Failure to disclose information about acts of terrorism**

Terrorism Act 2000, s.38B

**Effective from:** 27 April 2018

Triable either way  
Maximum: 5 years' custody  
Offence range: High level community order – 4 years 6 months' custody

Note for offences **committed** on or after **12 April 2019**:

The maximum sentence is increased to **10 years** (section 7(2) Counter-Terrorism and Border Security Act 2019). The increase has not yet been reflected in the sentence levels in this guideline.

This guideline applies only to offenders aged 18 and older

3.20

### **Encouragement of terrorism**

Terrorism Act 2006, s.1, Terrorism Act 2006, s.2

**Effective from:** 27 April 2018

**Encouragement of terrorism**, Terrorism Act 2006, s.1  
**Dissemination of terrorist publications**, Terrorism Act 2006, s.2

Triable either way  
Maximum: 7 years' custody  
Offence range: High level community order – 6 years' custody

Note for offences **committed** on or after **12 April 2019**:

The maximum sentence is increased to **15 years** (section 7(6) and (7) Counter-Terrorism and Border Security Act 2019). The increase has not yet been reflected in the sentence levels in this guideline.

These are specified terrorism offences for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) of the Criminal Justice Act 2003.

Note for offences **sentenced** on or after **12 April 2019**:

These are offences 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.

This guideline applies only to offenders aged 18 and older

3.21

## **Preparation of terrorist acts**

Terrorism Act 2006, s.5

**Effective from:** 27 April 2018

Triable only on indictment

Maximum: Life imprisonment

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

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.

Note for offences **committed on or after 12 April 2019**:

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

For offences **committed before 12 April 2019**:

This is a specified offence for the purposes of section 226A (extended sentence for certain violent, 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.

This guideline applies only to offenders aged 18 and older.

**Question 3: Does the Council agree to add the notes as set out at 3.16 to 3.21 above to the guidelines?**

#### **4 RISKS**

4.1 The Council has already indicated that it will update the Terrorism guidelines to reflect the legislative changes, and so there may be an expectation that this work will be undertaken immediately.