

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

30 July 2021
SC(21)JUL02 – Terrorism
Maura McGowan
Vicky Hunt
0207 0715786

1 ISSUE

1.1 This month the Council is invited to consider a draft approach to revising the Membership of a Proscribed Organisation (Terrorism Act 2000, section 11), and the Support of a Proscribed Organisation (Terrorism Act 2000, section 12) guidelines to take into account the new statutory maximum sentences brought in by the Counter Terrorism and Sentencing Act 2021 which has increased the maximum from 10 to 14 years for both offences.

1.2 In addition, the Council is asked to look again at the Preparation of Terrorist Acts guideline (Terrorism Act 2006, section 5) following a meeting of the working group who have considered whether extra guidance is needed to ensure that Judges approach cases involving undercover police or security services, in a consistent manner.

2 RECOMMENDATION

2.1 It is recommended that the Council consider this paper and proposed approach.

3 CONSIDERATION

Rationale for the Increased Statutory Maximum Sentences

3.1 The attacks at Fishmongers' Hall on 29 November 2019 and in Streatham on 2 February 2020 were the main impetus for the Government to make changes to terrorism legislation. In the Government's impact assessment for the Bill they indicated their reasons for why intervention was necessary:

The [terrorist attacks] demonstrate the risk to public safety that we are facing from known terrorist offenders who are released having spent insufficient time in custody. The terrorism threat level in the UK remains "substantial" – meaning an attack is likely – and there have been 25 attacks foiled since March 2017. Government intervention to ensure that serious and dangerous terrorism offenders spend longer in custody and are monitored more effectively upon release is necessary to keep the public safe and requires primary legislation.

The policy objectives are to better protect the public from terrorism by strengthening the law which governs the sentencing, release, and monitoring of terrorism offenders. The intended effect of this will be that serious and dangerous terrorism offenders will spend longer in custody, which provides better protection for the public, more time in which to support the offender's disengagement and rehabilitation through the range of tailored interventions available while they are in prison, and ensures the length of sentence reflects the seriousness of the crime. It will also strengthen the ability of the Government and operational partners, including HM Prison & Probation Service (HMPPS) and the police, to monitor and manage the risk posed by terrorist offenders and individuals of terrorism concern outside of custody.

3.2 Specifically, in relation to the increased statutory maximum sentences the Government provided the following reasoning:

This means that where the courts see appropriate, they would be able to impose longer sentences. The preferred option gives the courts scope to impose longer custodial sentences where appropriate and brings the maximum penalties for these ... offences more closely into line with the penalties for other similar serious offences.

3.3 Having read through the debates it is not clear whether the will of parliament was that all sentences should attract a higher sentence, or whether there should be an increase just to the most serious cases. However, there are references in the above quotes to *serious and dangerous terrorism offenders*, which perhaps indicates those who currently receive the higher sentences.

3.4 One comment made by the Government during Commons Committee stage of the Bill also seems to suggest that the aim is to allow sentencers to give a higher sentence for the more serious examples of the offence:

It will, of course, remain a matter for the sentencing judge to decide on the appropriate sentence, but given how serious the offences are we feel it appropriate to give the court the ability to issue a sentence of up to 14 years if, on the basis of the evidence and the pre-sentence report, the judge sees fit.

3.5 In 2019 the Council worked on revising a number of guidelines where the statutory maximum had been increased by the Counter-Terrorism and Border Security Act 2019. The guidelines included:

- Failure to Disclose Information About Acts of Terrorism (Terrorism Act 2000, section 38B) - from five to ten years;

- s58 TACT 2000 Collection of Terrorist Information (Terrorism Act 2000, section 58) - from ten to 15 years; and
- ss1 and 2 TACT 2006 Encouragement of Terrorism (Terrorism Act 2006, sections 1 and 2) - from seven to 15 years.

3.6 Within those revisions the Council focused on the most serious offences and adjusted the sentences up accordingly. In the consultation paper the Council highlighted that the original guidelines had already increased sentences to reflect the seriousness of current terrorism offending:

The Council determined that, when considering these actions in the current climate, where a terrorist act can be planned in a very short time, using readily available items as weapons, combined with online extremist material on websites which normalise terrorist activity, and creates a climate where acts of terrorism can be committed by many rather than a few highly organised individuals, these offences are more serious than they have previously been perceived. The Council believes that its proposals take account of the need to punish, incapacitate and deter.

3.7 Within the final resource assessment for the first package of guidelines the Council said:

The intention is that the new guidelines will encourage consistency of approach to sentencing. For some of the offences, Council intends either to increase sentences from those currently imposed at courts, or for some of the very low volume offences, to set sentencing practice at a sufficiently high level to reflect the seriousness of the offences.

3.8 The Council may, therefore, wish to be cautious about further increasing sentences across all levels of the guidelines, and instead might wish to focus increases on the top levels of seriousness were there was no room to increase prior to the change to the statutory maxima.

3.9 At **Annex A** the Council can see a summary of some membership and support cases taken from transcripts.

3.10 At **Annex B** the Council can see the sentencing tables of a number of other terrorism offences with similar statutory maximum sentences, alongside the proposed sentencing table for the offences of membership and support.

Proscribed Organisations – Membership (Terrorism Act 2000, section 11)

3.11 The current guideline can be seen [here](#).

3.12 From 2010 to 2020 (inclusive) there have been 20 offenders sentenced for this offence. 19 of those offenders received an immediate custodial sentence. The mean average custodial sentence length (ACSL) was 4 years 11 months (median was 5 years 6 months), after any reduction for guilty plea.

3.13 The proposed changes can be seen below:

Harm	A	B	C
	Starting point* 10 years' custody	Starting point* 7 years' custody	Starting point* 3 years' custody
	Category range 8 - 13 years' custody	Category range 5-9 years' custody	Category range High level community order - 4 years' custody

*These sentence levels have been increased from the current levels

Question 1: Does the Council agree with the proposed sentences for the revised Membership guideline?

Proscribed Organisations – Support (Terrorism Act 2000, section 12)

3.14 The current guideline can be seen [here](#). However, this guideline has already been the subject of some amendments (related to factors, rather than sentence levels) that the Council consulted on in 2019. Following that consultation, the Council finalised the guideline but did not publish it due to the introduction of the Counter Terrorism and Sentencing Bill which meant that further changes would be needed. The post consultation version of this guideline, and the one that we are now seeking to further amend is at **Annex C**.

3.15 From 2010 to 2020 (inclusive) there have been 11 offenders sentenced for this offence. All 11 offenders were actually sentenced in 2016 and 2017 which was prior to the publication of the sentencing guideline. All offenders received an immediate custodial sentence. The mean ACSL was 4 years 5 months (median was 5 years), after any reduction for a guilty plea.

3.16 The proposed changes can be seen below:

	A	B	C
1	Starting point* 10 years' custody Category range 8-13 years custody	Starting point* 7 years' custody Category range 5-9 years custody	Starting point 3 years' custody Category range 2-4 years custody
2	Starting point* 8 years' custody Category range 7-9 years custody	Starting point 4 years' custody Category range 3-5 years custody	Starting point 2 years' custody Category range 1-3 years custody
3	Starting point* 6 years' custody Category range 5-7 years custody	Starting point 3 years' custody Category range 2-4 years custody	Starting point 1 years' custody Category range High level community order – 2 years custody

*These sentence levels have been increased from the current levels

Question 2: Does the Council agree with the proposed sentences for the revised Support guideline?

Preparation of Terrorist Acts (Terrorism Act 2006, section 5)

3.17 At the June Council meeting members discussed whether extra guidance is needed in the Preparation guideline (and the Explosive substances guideline) to ensure that Judges approach cases involving undercover police or security services, in a consistent manner. The Council asked for the matter to be adjourned to a working group meeting so that further and fuller discussions could take place. That meeting has now happened, and the members of the working group proposed the inclusion of some narrative – entitled 'notes for culpability and harm', which aims to explain the position and how Judges should approach sentencing.

3.18 This proposed wording can be seen in **Annex D** on page 2 of the guideline.

Question 3: Does the Council agree with the proposed wording within the Preparation of Terrorist Acts guideline?

3.19 At the last meeting members were also invited to look at a new Step 3 (entitled, Minimum terms, Serious Terrorism Sentences and exceptional circumstances), within the Preparation guideline. Since that meeting I have made some minor changes in line with the comments received. I have separated some of the text into sections and addressed the repeated use of the words 'minimum term' which was causing confusion as the term has different meanings in different contexts.

Question 4: Does the Council agree with the wording in Step 3?

4 IMPACT AND RISKS

The Analysis and Research team have gathered up to date statistics on all guideline terrorist offences and will soon start preparing an initial Resource Assessment for the consultation.

Offender name and year sentenced	Offence	Details	Sentence
Yamin 2019	S11	Went to Syria in 2013 and joined Al Qaeda. Took part in a video recording which showed that he was part of an armed combat group engaged in fighting against Kurdish forces in northern Syria. He promoted the Al Qaeda cause in the video. The video recording demonstrates that the defendant had entrenched extremist views and fully supported and encouraged the use of violence to achieve the group's aims. Due to his own sight and hearing difficulties, the defendant, although armed with a gun, played a limited combat role. However, he was based near the front line of the fighting and provided active support and encouragement for those group members who were engaged in the actual fighting by driving ambulances, caring for Al Qaeda combatants, as well as what has been described as 'cooking and general maintenance' for the group. On 31 May 2014, shortly before ISIS, or IS, declared a new Caliphate over a large part of the Syrian and neighbouring regions, the defendant returned to this country, having become disillusioned with Al Qaeda and the nature and the course of the armed conflict in Syria. He was arrested on his return and interviewed at Heathrow Airport. Having turned his back on the extremist cause, the defendant returned home and, in due course, resumed his studies and has now completed his degree in civil engineering. Culpability B- active but not prominent member.	14 years for preparation of terrorist acts offence and 4 years concurrent for membership (after trial).
Ward 2019	S11	Pleaded guilty to being a member of the proscribed organisation, National Action. Joined in October 2016 when it was then not a proscribed organisation. In his application he said, "We are at war and it's time for me to fight". He said he was, "A hundred per cent committed", and, quote, "All I have to offer is my thirst for gratuitous violence". He told the leader, he considered himself fanatical. The organisation was proscribed on 16 December 2016 and shortly thereafter he left because he did not consider that National Action, was likely to meet his needs. He "needed to fight" and would "be better use somewhere else". By April he was back and making suggestions for a means of recruitment for further members of what he knew then was a terrorist organisation, suggestions for improved security and particularly training. He was very keen to encourage the others in the need for paramilitary training. He planned a camp and was keen that the organisation was active in its pursuit of its violent, racist objectives and calling	4 years (after trial)

		for the organisation to do something rather than simply talk about it. By May 2017 he was sending messages within the chat group saying, "Our main goal should be to cause conflicts between different groups of people and force society to collapse. We should become agitators". Arrested on 5 September 2018 he was in possession of extreme right-wing material and had two pistols, an air pistol, and a steel ball bearing gun and two air rifles. Culpability B- active but not prominent member.	
Jones, Jack, Cutter 2020	S11	<p>Prior to proscription, all three offenders were members of National Action. Following proscription, all 3 defied the ban and continued active membership.</p> <p>Before proscription JONES was the London regional organiser and heavily involved in the creation of propaganda and artwork for the organisation. After proscription, he was one of only a handful of prominent individuals included in two chat groups known as Inner and Sesh. He met with other prominent members in January 2017 and planned how National Action was going to operate underground. He also co-founded a group called NS131. That organisation was an online artwork platform, but on 28 September 2017 it was proscribed as being an alias of National Action. Furthermore, he designed some artwork for an organisation calling itself Scottish Door which in due course was proscribed as being another alias for National Action. He continued to organise training camps for recruits in which boxing and martial arts were taught and weapons were used, including knives. Over a period of several months he was involved in grooming a 16 year-old girl for membership in the organisation. He played a significant role in the continuity of the organisation. Within the definitive guideline his role was prominent.– culpability A. Although it was accepted that others were more central, and his role fell short of being a leader- thus moved down the range.</p> <p>JACK became a member of National Action in July 2016. On 9 July 2016 he was involved in placing inflammatory and racist stickers on the grounds of the Aston University. Subsequently, he was involved in a number of National Action demonstrations and meetings. Following proscription, he remained a committed member of the organisation and attended eight meetings involving its membership. That includes a meeting in Birmingham where senior members of the organisation set out plans for the group's continuance. Immediately after the ban he was</p>	<p>JONES 5 years 6 months (after trial)</p> <p>JACK, 4 years 6 months (after trial)</p> <p>CUTTER, 3 years (after trial)</p>

		<p>involved in seeking to introduce one of his friends to the organisation. Subsequently, he put forward an idea to create propaganda on behalf of the continuing organisation. In April '17 he was arrested for stirring up racial hatred relating to the stickering at Aston University. But notwithstanding that he remained as a member of National Action and attended two further meetings of the organisation.</p> <p>Despite his dedication to the group it is accepted that he was never in organising or leadership roles- culpability B.</p> <p>Alice Cutter, became a member of National Action in late May or early June of 2016. Following proscription, she continued to express extreme anti-Semitic and racist and revolutionary views and aspirations. She also attended the meeting in Birmingham in which plans were set out by senior members for the group's continuance. She was a trusted confidant of Alex Deakin who was the organiser of the Midland chapter of the continuing group, providing him with encouragement and advice upon recruitment, training and security and spoke of her desire to recruit two women into the organisation.</p> <p>It was accepted that she never held any organising or leadership role - culpability B.</p>	
Anderson & Khan 2016	S12	<p>Set up a stall near Oxford Circus to distribute leaflets urging support for ISIS. 'It is clear that you were at that location that day to promote and invite support for ISIS/IS by engaging with and trying to persuade passers by and by handing out leaflets'. It was no coincidence that the pair chose to set the stall up on a day when there was a pro Gaza event in the vicinity that was likely to pass by the stall. 'The danger is that those invited and who succumb are often young people who then, once recruited, will be lured to Syria or Iraq and to a potential death.'</p>	2 years (after trial)
Kahar 2016	S12	<p>Sought to encourage his nephew, brother in law and friend to join IS sending documents and material to them to influence them via social media/ internet chat.</p>	3.5 years (after trial) increased as ULS to 4 years (consecutive to various other sentences for different terrorism)

			offences – total sentence 8 years)
Anjem Choudhary & Mohammed Rahman 2016	S12	Both joined in and became signatories to an oath of allegiance document affirming the legitimacy of the caliphate. Both then took part in lectures broadcast via the internet in which it was said that ISIS had established a legitimate caliphate and there was an obligation on every Muslim to obey the caliph (leader of the caliphate) and to fight those who differed from him. It was also said that apostates (those who renounce this belief) would face capital punishment. Both were highly regarded, influential men within a particular section of the Muslim community in the UK and abroad, followers looked to them for advice and guidance. The audiences were very large, and it is likely that a significant proportion were impressionable people looking for guidance as to how they should act. It was very likely that some of their followers would be influenced by the words to commit acts of violence. The offences were repeated and determined.	Each sentenced to 5 years 6 months (after trial)

Proscribed organisations – membership Terrorism Act 2000, s.11

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/proscribed-organisations-membership/>

Statutory Maximum: 14 years

Harm	A	B	C
	Starting point* 10 years' custody	Starting point* 7 years' custody	Starting point* 3 years' custody
	Category range 8 - 13 years' custody	Category range 5-9 years' custody	Category range High level community order - 4 years' custody

Proscribed organisations – support Terrorism Act 2000, s.12

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/proscribed-organisations-support/>

Statutory Maximum: 14 years

	A	B	C
1	Starting point* 10 years' custody Category range 8-13 years custody	Starting point* 7 years' custody Category range 5-9 years custody	Starting point 3 years' custody Category range 2-4 years custody
2	Starting point* 8 years' custody Category range 7-9 years custody	Starting point 4 years' custody Category range 3-5 years custody	Starting point 2 years' custody Category range 1-3 years custody
3	Starting point* 6 years' custody Category range 5-7 years custody	Starting point 3 years' custody Category range 2-4 years custody	Starting point 1 years' custody Category range High level community order – 2 years custody

Funding terrorism Terrorism Act 2000, s.15 - s.18

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/funding-terrorism/>

Statutory Maximum: 14 years

	A	B	C
1	Starting point 12 years' custody Category range 10-13 years custody	Starting point 9 years' custody Category range 8-10 years custody	Starting point 7 years' custody Category range 6-8 years custody
2	Starting point 9 years' custody Category range 8-10 years custody	Starting point 7 years' custody Category range 6-8 years custody	Starting point 4 years' custody Category range 2-5 years custody
3	Starting point 7 years' custody Category range 6-8 years custody	Starting point 4 years' custody Category range 2-5 years custody	Starting point 2 years' custody Category range High level community order – 3 years custody

Collection of terrorist information Terrorism Act 2000, s.58

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/collection-of-terrorist-information/>

NB. The Council revised this guideline in 2019 to reflect the stat max increasing from 10 to 15 years. However, that guideline has not yet been published, and so is not in force.

Statutory Maximum: 15 years

	A	B	C
1	Starting point 10 years' custody Category range 8 - 14 years custody	Starting point 7 years' custody Category range 5-9 years custody	Starting point 3 years' custody Category range 1-5 years custody
2	Starting point 7 years' custody Category range 5-9 years custody	Starting point 4 years' custody Category range 3 - 5 years custody	Starting point 1 year 6 months custody Category range 6 months - 3 years custody
3	Starting point 5 years' custody Category range 3-6 years custody	Starting point 3 years' custody Category range 2 - 5 years custody	Starting point 1 years' custody Category range High level community order – 2 years custody

Encouragement of terrorism Terrorism Act 2006, s.1 and s.2

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/encouragement-of-terrorism/>

NB. The Council revised this guideline in 2019 to reflect the stat max increasing from 7 to 15 years. However, that guideline has not yet been published, and so is not in force.

Statutory Maximum: 15 years

	A	B	C
1	Starting point 10 years' custody Category range 7 - 14 years custody	Starting point 7 years' custody Category range 4-9 years custody	Starting point 3 years' custody Category range 2-4 years custody
2	Starting point 7 years' custody Category range 4-9 years custody	Starting point 4 years' custody Category range 3-5 years custody	Starting point 2 years' custody Category range 1-3 years custody
3	Starting point 4 years' custody Category range 3-5 years custody	Starting point 2 years' custody Category range 1-3 years custody	Starting point 1 years' custody Category range High level community order – 2 years custody

Possession for terrorist purposes Terrorism Act 2000, s.57

[Possession for terrorist purposes – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/offences/crown-court/item/possession-for-terrorist-purposes/)

Statutory Maximum: 15 years

	A	B	C
1	Starting point 12 years' custody Category range 9 - 14 years custody	Starting point 7 years' custody Category range 6-9 years custody	Starting point 4 years' custody Category range 3-6 years custody
2	Starting point 8 years' custody Category range 7-9 years custody	Starting point 6 years' custody Category range 4-7 years custody	Starting point 3 years' custody Category range 2-4 years custody
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 1-3 years custody

Blank page

Proscribed Organisations

Support

Terrorism Act 2000 (section 12)

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**:

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

Step 1 – 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

- Intentional offence - 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

- Reckless offence - Offender in position of trust, authority or influence and abuses their position
- 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
- Other reckless offences

Harm

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

Category 1

- 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

- Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life

Category 3

- All other cases

Step 2 - 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.

	A	B	C
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
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
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 High level 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:

- Used multiple social media platforms to reach a wider audience (where not taken into account at Step One)
- Offender has terrorist connections and/ or motivations
- 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 has no terrorist connections and/ or motivations
- Unaware that organisation was proscribed
- Clear evidence of a change of mind set prior to arrest
- 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 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty plea

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

Step 6 – Required special sentence for certain offenders of particular concern

Where the court does not impose 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. (sections [265](#) and [278](#) of the Sentencing Code).

Step 7 – 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 [Totality](#) guideline.

Step 8 – Ancillary orders

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

- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – 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 and [section 325 of the Sentencing Code](#).

Blank page

Preparation of terrorist acts Terrorism Act 2006, s.5

Triable only on indictment

Maximum: Life imprisonment

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

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

For offences committed on or after 29 June 2021, this is a serious terrorism offence listed in Part 1 of Schedule 17A for the purposes of sections 268B and 282B (serious terrorism sentence), section 323 (minimum term order: other life sentences), and section 268(4)(b)(iii) and 281(4)(b)(iii) (increase in extension period for serious terrorism offenders) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older.

Step 1 – 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.

Notes for culpability and harm

In some cases, Law Enforcement Authorities (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. Irrespective of this, the court should approach the assessment of the offender's culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA's involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this is to be treated the same as apprehending the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then applying a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be that a more severe sentence is imposed where very serious terrorist activity was intended but did not take place than where relatively less serious terrorist activity did take place.

Culpability demonstrated by one or more of the following:**A**

- **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

- **Acting alone**, or in a **leading** role, in terrorist activity where preparations were 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

- **Leading** role in terrorist activity where preparations were not far advanced
- **Significant** role in terrorist activity where preparations were 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

- 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 and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan.

See the notes for culpability and harm at the start of this section before proceeding

Category 1

- Multiple deaths risked and very likely to be caused

Category 2

- Multiple deaths risked but not very likely to be caused
- Any death risked and very likely to be caused

Category 3

- Any death risked but not very 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 2 - Starting point and category range

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 section 308 of the Sentencing Code to make the appropriate determination. (See STEP 6 below). The court must also consider the provisions set out in s323 (3) of the Sentencing Code (minimum term order for serious terrorism offenders).(See STEP 3 below).

Where the dangerousness provisions are met but a life sentence is not justified, the court should consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria contained in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see STEP 3 below).

Where the dangerousness provisions are not met the court must apply the provisions set out in sections 265 and 278 of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP 7 below).

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

* For serious terrorism cases the minimum term must be at least 14 years' unless exceptional circumstances apply. See s323 (3) of the Sentencing Code.

** Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years (s282C Sentencing Code).

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
- 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
- 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 3 – Minimum terms, Serious Terrorism Sentences and exceptional circumstances

Life Sentence Minimum Terms

For serious terrorism cases the life sentence minimum term must be at least 14 years' **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify a lesser period.**

A "serious terrorism case" is a case where, but for the fact that the court passes a life sentence, the court would be required by section 268B(2) or 282B(2) to impose a serious terrorism sentence (s323 (3) of the Sentencing Code).

Serious Terrorism Sentence - Minimum Custodial Sentence

Where the criteria for a serious terrorism sentence are met, as set out in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code, then the court must impose the sentence **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.**

Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years" (s282C Sentencing Code).

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence where the other tests are met, the court must have regard to:

- the particular circumstances of the offence **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances

Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see Criminal Practice Directions VII: Sentencing B.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence would result in an arbitrary and disproportionate sentence.

The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the provisions by too readily accepting exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum term (in the case of a life sentence) then the court must impose a shorter minimum.

If there are exceptional circumstances that justify not imposing a Serious Terrorism Sentence, then the court must impose an alternative sentence.

Note: a guilty plea reduction applies in the normal way if a Serious Terrorism Sentence is not imposed (see step 5 – Reduction for guilty pleas).

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 5 – Reduction for guilty plea

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Where a **serious terrorism sentence** has been imposed, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the statutory minimum.

Step 6 – Dangerousness

The court should consider:

1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))

2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.

3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

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 7 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life or an extended sentence, or a Serious Terrorism 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 (sections [265](#) and [278](#) of the Sentencing Code).

Step 8 – 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 [Totality](#) guideline.

Step 9 – Ancillary orders

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

- [Ancillary orders – Crown Court Compendium](#)

Step 10 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 11 – 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 and [section 325 of the Sentencing Code](#).