

Sentencing Council meeting:
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SC(21)JUN05 – Terrorism
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1 ISSUE

1.1 This month the Council is invited to consider a draft approach to revising the Preparation of Terrorist Acts (Terrorism Act 2006, section 5) guideline and the Explosive Substance Act guideline (which is largely a replica of the preparation guideline) in light of the changes made to terrorism legislation in the Counter Terrorism and Sentencing Act 2021.

2 RECOMMENDATION

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

3 CONSIDERATION

Legislative Changes

3.1 The 2021 Act creates a new category of terrorism offence called a 'serious terrorism offence'. There is a schedule which sets out which offences this new provision applies to. It is separated into terrorism offences and other serious offences where there is a terrorist connection. Preparation of Terrorist Acts (Terrorism Act 2006, section 5) is included in the first part of the schedule and Explosive Substance offences (sections 2 and 3 Explosive Substance Act 1883) in the latter part.

3.2 Where an offender commits a serious terrorism offence a 'serious terrorism sentence' can be imposed (where the criteria are met), or an extended sentence (where the dangerousness criteria are met) which has a licence period of up to 10 years.

3.3 The 'serious terrorism sentence' comprises a period of imprisonment (or detention in a young offender institution for those aged 18-21) for a minimum period of 14 years, and an extension period to be served on licence (between 7 and 25 years). The sentence applies where:

- the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further serious terrorism offences or other specified offences,
- the court does not impose a sentence of custody for life, and
- the risk of multiple deaths condition is met. (That the serious terrorism offence or the combination of the offence and one or more offences associated with it was very likely to result in or contribute to (whether directly or indirectly) the deaths of at least two people as a result of an act of terrorism).

3.4 The court *must* impose a serious terrorism sentence unless the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender and justify not doing so.

3.5 In a case where the court imposes a life sentence (because the dangerousness criteria are met and a life sentence is justified), but a serious terrorism sentence would have been given but for the fact that a life sentence was imposed (i.e. the remaining criteria for a serious terrorism sentence were met), then this is called a ‘serious terrorism case’ and the minimum term of that life sentence must be 14 years unless exceptional circumstances apply.

Guideline Amendments

3.6 The current Preparation of Terrorist Acts guideline can be seen [here](#). The draft Preparation of Terrorist Acts guideline containing the proposals is attached at **Annex A**.

Sentencing Table and Guidance Above

3.7 At Step 2 of the current guideline there is some brief guidance above the sentencing table which explains why we have included life sentences on the face of the guideline:

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).

The court must also consider the provisions set out in sections [265](#) and [278](#) of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP SIX below).

3.8 The Council chose not to go into too much detail in this section as the pool of Judges dealing with these cases would be very familiar with the dangerousness provisions and it was not deemed necessary. The Council chose to include life sentences in the table as this was a fair reflection of the sentences that offenders would likely receive in the most serious cases. We had at one point considered just putting in the equivalent determinate sentences rather than make a presumption that the dangerousness criteria would be met and a life sentence justified, but it resulted in sentences in the region of 70- 80 years and it seemed undesirable to have such figures in the table.

3.9 In order to provide for the changes, I am proposing simply amending and expanding the text in the box above the sentence table. The proposed text (as seen in **Annex A** page 3) now includes information relevant to serious terrorism offences. It does not provide all of the detail that a Judge will need i.e. it does not set out the criteria that must be satisfied before imposing a serious terrorism sentence but it does include the relevant legislative references. To include all of the relevant criteria could lead to quite a lengthy guide, and in any event, it is better that judges interpret the legislation for themselves, that is not generally the function of the Council's guidelines.

3.10 This new expanded text also cross refers to a new STEP 3 of the guideline on minimum terms. It explains that some sentences may need adjustment if the criteria for a serious terrorism sentence are met, or if a life sentence of below 14 years is imposed in a serious terrorism case.

3.11 The benefit of simply adding this text is that the sentencing table below can remain largely as it is and ensures that sentencers base the sentence on the seriousness of the specific case in front of them following the usual analysis of culpability and harm.

3.12 The guideline has now been in force since April 2018, and whilst we have not yet evaluated it, there seem to be no indications from the cases we have looked at that the guideline is not working well.

When might a Judge need to make an adjustment to the sentence?

3.13 If a serious terrorism sentence is to be imposed but the sentencing table would lead to a sentence of below 14 years then at Step 3, once the seriousness has been determined, the Judge may need to increase the sentence to the minimum. This is an easy adjustment to make and one that would clearly warrant a move only up to the minimum sentence.

3.14 There are not actually many sentences within the table that might require adjustment. The serious terrorism sentence criteria includes the multiple deaths condition,

this means that category 3 harm cases (all sentences in the bottom row of the sentencing table) are unlikely to ever be eligible for a serious terrorism sentence, and so no adjustment would be necessary.

3.15 The sentences highlighted pink in the sentencing table; **C2** (within the sentencing range), **D1** (within the sentencing range) and **D2** (starting point and sentencing range) may, however, meet the criteria for a serious terrorism sentence and if so, might need adjusting at step 3. However, there are just as likely to be cases that do not meet the criteria as they may not meet the first main test (that the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further serious terrorism offences or other specified offences) and in those cases it is surely helpful for the sentencer to be given a suitable starting point and range that is based on the offence seriousness.

3.16 The only other adjustment that might be needed would be in those instances where a life sentence is imposed, but the 'serious terrorism case' criteria is met (i.e this would have been a serious terrorism sentence but for the imposition of a life sentence). In these situations, the minimum term must be at least 14 years. There are currently two boxes, **C1** and **B2** (highlighted in yellow), where there are lower minimum terms within the range. For **B2** I would suggest that this is not a problem as there could be cases where a life sentence is imposed but the serious terrorism criteria are not met because of the multiple deaths condition. For example, an offender in a significant role was preparing for an attack against a single victim. The Judge may consider that life with a minimum term of less than 14 years is appropriate when taking into account mitigating circumstances. In this case no adjustment would be needed.

3.17 In the case of a **C1** offence it is harder to imagine a scenario whereby the serious terrorism sentence criteria would not have been met given that harm category 1 is 'multiple deaths risked and very likely to be caused', and the Council have already assumed that in the majority of cases the dangerousness criteria would be met. The Council may, therefore, consider amending the range for the minimum term to start at 14 years.

Question 1: Does the Council agree with the addition of the text and maintaining the existing sentencing table (subject to question 2 below)?

Question 2: Does the Council want to amend the sentences in C1 to ensure that the minimum term range does not go below 14 years?

Step 3 - Minimum Terms and Exceptional Circumstances (page 4 Annex A)

3.18 This is a new step added to ensure that any adjustments that are needed to the sentence are made at the correct stage, in order to comply with the legislation.

3.19 Large parts of the wording have been replicated from the recently published firearms guideline. The principles appear to fit well, and it demonstrates consistency across the Council's guidelines.

Question 3: Does the Council agree with the wording at Step 3?

Other Minor Changes

3.20 A couple of additional changes have been made to the guideline. The first is on the front page and is in red, it is simply a legislative reference to show that from the date of the commencement of the relevant section of the 2021 Act, this offence is a serious terrorism offence.

Question 4: Is the Council content with this additional reference?

3.21 The second change is the amendments to the reduction for a guilty plea wording at Step 5 in the case of a serious terrorism sentence.

Question 5: Is the Council content with this amendment?

Preparation of Terrorist Acts - Harm

3.22 The CPS has recently asked us to consider the parallels that exist in the offences under section 14 of the Sexual Offences Act 2003 (Arranging or facilitating the commission of a child sexual offence) and offences under section 5 of the Terrorist Act 2006 (Preparation of Terrorist Acts) specifically where undercover police/ security services are involved.

3.23 The issue concerns how harm is assessed in an inchoate offence where there could never be (or it is highly unlikely that there would be) any actual harm because of the police or security service involvement. An example of a sexual offence case (under s14 SOA 2003) would be one where there is no actual child victim but instead an undercover officer is pretending to be a child. A relevant terrorism case might involve the offender 'working with' what they perceive to be a like-minded person wanting to carry out an act of terrorism, but in fact they are a member of the security services.

3.24 The parallels, it is suggested, could be reflected in the way in which harm is assessed. The Council has recently published a consultation on a new approach to handling s14 SOA cases which states the following:

The level of harm should be determined by reference to the type of activity arranged or facilitated. Where the activity takes place, sentences commensurate with the applicable starting point and range will ordinarily be appropriate.

No sexual activity need take place for a section 14 offence to be committed, including in instances where no child victim exists. In such cases the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by the police or others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, 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 the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features, in the usual way.

3.25 In the Preparation for Terrorist Acts guideline there is no specific reference to how to approach a case where the security services were involved. The harm model states the following:

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.

3.26 The Council discussed the addition of 'likelihood' at length during the initial drafting of the guideline. The main issue under consideration was whether the offender's plan was viable, taking into consideration matters such as their capability and the credibility of the plan. It was agreed that the addition of 'likelihood' was useful in ensuring that those offenders who intend to cause a major terrorist act but who were highly unlikely to ever be successful do not receive disproportionate sentences.

3.27 The Council did not discuss how the likelihood should be considered from the perspective of the involvement of the security services.

3.28 The way that the courts have approached such issues in terrorism has varied over time. This can be seen in the examples at **Annex C**.

3.29 The Council is invited to consider whether additional guidance is needed in the guideline to help Judges address these issues in a consistent manner, and if so, should it take a similar form to that in the Sexual Offences consultation paper that has recently been launched.

Question 6: Does the Council agree to the addition of guidance in the assessment of harm to direct Judges on how to deal with cases involving the security services?

3.30 If the Council were minded to agree, this could involve some additional wording under the Harm heading. I have proposed some wording in **Annex A** highlighted in yellow. Whilst the wording has been taken from that proposed in SOA cases, I have suggested some changes. The removed wording concerns how close the offender had come to carrying out the act, in terrorism cases this is something that is already covered under culpability; *'but for apprehension, the activity was (very) likely to have been carried out'*. I have also added in some wording to ensure that the viability of the plan is still taken into consideration even where the security services were involved.

Question 7: If the Council is in agreement with the addition of some wording, does the Council agree with the proposed wording at Annex A?

Amendments needed to other Guidelines

3.31 At the last Council meeting the Council agreed to some immediate changes to the Funding and Failure to Disclose Information guidelines to make clear that for convictions on or after 30 April 2021 these offences fall within the special sentence for certain offenders of particular concern provisions. This change was needed as the relevant provision in the new legislation had already come into force.

3.32 The remaining legislative changes that impact our guidelines are due to come into force from 29 June, making a number of guidelines out of date. It was proposed at the last meeting that I consider some wording to be put on each affected guideline to inform sentencers of this fact and to highlight the relevant provisions. The proposed amendments are set out below:

Section 5 TA 2006– Preparation of Terrorist Acts

Section 2-3 Explosive Substances Act 1883 – Explosive Substances (Terrorism Only)

Note for offences **committed** on or after **29 June 2021**:

This offence is a serious terrorism offence listed in Part 1 of Schedule 17A for the purposes of sections 268B and 282B (serious terrorism sentence) and section 323 (minimum term order: other life sentences) of the Sentencing Code.

Where the criteria for a serious terrorism sentence are met a **minimum custodial sentence of 14 years** must be imposed unless exceptional circumstances apply.

In a serious terrorism case (s323(4) Sentencing Code) the **minimum term must be at least 14 years** unless exceptional circumstances apply.

These provisions have not yet been reflected in this guideline.

Section 11 TA 2000 – Membership of a Proscribed Organisation

Note for offences **committed** on or after **29 June 2021**:

The maximum sentence is increased to **14 years** (section 26 (1)(a) and (2) Counter Terrorism and Sentencing Act 2021). **This increase has not yet been reflected in the sentence levels in this guideline.**

Section 12 TA 2000 – Support for a Proscribed Organisation

Note for offences **committed** on or after **29 June 2021**:

The maximum sentence is increased to **14 years** (section 26 (1)(b) and (2) Counter Terrorism and Sentencing Act 2021). **This increase has not yet been reflected in the sentence levels in this guideline.**

Question 8: Does the Council agree to the above proposed changes?

3.33 The other main change in the legislation is the change to the ‘terrorist connection’ provisions which enable any non-terrorist offence with a statutory maximum of more than two years to be deemed to have a ‘terrorist connection’, whereas currently this provision only applies to offences included in a schedule.

3.34 The Council provided some guidance on the ‘terrorist connection’ provisions within the first package of terrorism guidelines (**Annex B**). The general guideline also links to this guidance.

It is proposed that this page should be changed to include the following:

Note for offences **committed** on or after **29 June 2021**:

Any offence which is punishable on indictment with imprisonment for more than 2 years and is not specified in Schedule A1 of the Sentencing Code may be deemed to have a terrorist connection.

3.35 The Council may wish to revisit this page more fully as part of this package of amendments. The Council could consider changing the guidance and may also consider, for example, specifically including ‘terrorist connection’ as an aggravating factor on the face of some non -terrorist guidelines where it is most likely to arise.

Question 9: Does the Council agree to the change to the guidance on ‘terrorist connection’ offences?

4 IMPACT AND RISKS

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

With regard to ethnicity statistics, the data we currently use (self-identified ethnicity) is rather limited as a large proportion of cases (up to 100% for some offences) are unreported/ unknown ethnicity. The other readily available source of ethnicity data (perceived ethnicity, i.e. ethnicity as perceived by the police officer handling the case) has a similarly large proportion of ‘unknowns’. We are currently exploring other avenues we might pursue to obtain more comprehensive data in this area.

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Preparation of terrorist acts Terrorism Act 2006, s.5

Step 1 – Determining the offence category

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.

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

- **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.

In cases that involve undercover police or others, to the extent that actual harm was never likely to be caused, 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 apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by the police or others from conducting the intended terrorist activity at a late stage, or where but for the police or others 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 the case that a more severe sentence is imposed in a case where very serious terrorist activity was intended but did not take place than in a case where relatively less serious terrorist activity did take place.

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).

The court must also consider 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.

**If a serious terrorism sentence is imposed the minimum custodial term is 14 years unless exceptional circumstances apply. See s268B (adult offenders aged under 21) or s282B (adult offenders aged 21 and over) of the 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 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 not doing so.**

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 a minimum custodial sentence of 14 years applies **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.**

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term, 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 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 minimum term 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 then the court **must impose either a shorter minimum term/ custodial sentence or an alternative sentence**. Note: a guilty plea reduction applies in the normal way if the minimum term 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, 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 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](#).

Terrorism offences

Effective from: 27 April 2018

Sentencing for offences not covered by offence specific terrorism guidelines but with a terrorist connection, section 69 of the Sentencing Code.

Where a court is considering the seriousness of an offence specified in [Schedule 1 of the Sentencing Code](#), and it appears that the offence has or may have a terrorist connection, the court must determine whether that is the case. To make this determination the court may hear evidence, and must take account of any representations made by the parties.

If the court determines that the offence has a terrorist connection it must treat that fact as a statutory aggravating factor and state in open court that the offence was so aggravated.

Notification requirements apply to these offences.

Offences not covered by Schedule 1 of the Sentencing Code

Where a court is considering the seriousness of an offence not specified in [Schedule 1 of the Sentencing Code](#), and it appears that the offence has or may have a terrorist connection, the court should determine whether that is the case by hearing evidence where necessary. If the court determines that the offence has a terrorist connection it may treat that fact as a non-statutory aggravating factor where it appears relevant and appropriate to do so.

Notification requirements do not apply to these offences.

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R v Naa'imur Zakariyah Rahman (sentenced 31 August 2018)Facts

The offender was found guilty of one count contrary to s.5(1) (a) and (3) of the Terrorism Act 2006. The offender was arrested walking east along Crowthorne Road in North Kensington carrying a padlocked blue holdall bag containing (as he believed) a rucksack which had been fitted with a pressure cooker improvised explosive device, a puffa jacket which had been modified as an explosive suicide vest, a pepper spray device and a set of plastic gloves. His plan had involved blowing up the security gates of Downing Street; killing or disabling police officers posted at the security gates at the Whitehall end of Downing Street by explosion or knife wounds (or incapacitating them with pepper spray); and then entering No. 10 Downing Street itself and making a determined attack with a knife and explosives on those inside, with the ultimate target being the Prime Minister herself.

Unbeknown to Rahman, the devices were inert and simply made to look real and his 3 contacts that he believed to be members of IS were law enforcement operatives ("LEOs") all working for the security services.

Sentencing

I am sure that, at all material times, Rahman believed the devices to be real and capable of the most serious harm: (i) he was told and believed that the rucksack bomb would be capable of causing casualties on a scale comparable to those caused at the Manchester Arena bombing, to police officers, bystanders and tourists in and around the entrance to Downing Street; (ii) he was told and believed that the suicide vest within his jacket would be capable of creating a lethal area of 10 metres to his front, with some degree of lethality to his rear; and (iii) both devices were expertly constructed to be indistinguishable from the real thing. (3) In light of the capabilities of the improvised explosive devices, any attack on Downing Street would have been very likely to have caused multiple deaths. It was a viable operation.

Mr Bajwa QC submitted that there was little or no risk of what he called 'actual' harm and accordingly this was a Category 3 case. He relied upon the wording in the Guideline that: "Harm is assessed based on the type of harm risked and the likelihood of that harm being caused" and "When considering the likelihood of harm, the court should consider the viability of any plan." He submitted that the Guideline is directed only to the actual risk and likelihood of the contemplated or intended harm being realised; and, in the present case, notwithstanding Rahman's beliefs and plans at the time, there was no actual likelihood of

any harm being caused and the plan was not viable given (i) his only accomplices were LEOs, (ii) the provision to the defendant of a dummy explosive device in his jacket and rucksack and (iii) the security precautions taken throughout the investigation, in particular on the day of the defendant's arrest; and, accordingly, there was no risk to the public from the conduct of Rahman in relation to Count 1. He submitted that this case falls within harm category 3 on the basis that it fits the description of: "Any death risked but not very likely to be caused" or "Any other cases".

I reject Mr Bajwa QC's submissions and his narrow construction of the Guideline. His reference to "actual" risk represents a gloss on the Guideline. The fact that Rahman was supplied with dummy improvised explosive devices and pepper spray which were inert is irrelevant to the legal analysis of the level of 'harm'. **It is the harm intended by the offender that is relevant, i.e. the level of harm that the defendant intended to cause judged from his perspective as to what he knew or believed at the time. If Mr Bajwa QC's narrow construction is correct, it would logically disentitle the courts from imposing appropriate sentences in cases where covert operations by the security services interdict terrorist operations before harm was caused (which, by definition, is every s.5 case). This cannot be correct and, in my view, was plainly not the intention of the authors of the Guideline.**

R v Boular (Safaa) [2019] EWCA Crim 798 (Appeal heard 16 April 2019)

In 2016, SB (then aged 16) began to communicate with persons seeking to recruit her to the cause of ISIS. She formed a plan to travel to Syria and marry one of the recruiters, X. That plan was thwarted when SB was stopped at a UK airport. SB continued to communicate with her intended husband, engaging with him and others in the online planning of a terrorist attack in the UK. Unbeknown to her and her intended husband, others who purported to be planning this attack with them were, in fact, members of the Security Services.

It was decided that SB (together with her accomplices) would carry out an attack using semi-automatic firearms and/or grenades at the British Museum in London.

The judge placed both SB's offences within Category 2B, finding that SB had played a leading role where multiple deaths were risked but not very likely to be caused. On appeal against sentence, SB challenged the guideline categorisation of the offences:

Sentencing

The culpability factors reflect how determined the offender was to carry out that intention and how close the offender came to doing so. The inclusion in the guideline of the phrase "but for

apprehension” confirms that approach. The fact that Security Services were monitoring the activities of the offender and aimed to prevent the commission of the offence does not reduce the culpability of the offender. The involvement of the Security Services may, however, be relevant to harm.

We do not accept the submission of [...] the prosecution, that in circumstances such as the present case, the participation of the Security Service in planning the attack comes within the phrase “but for apprehension”. We do, however, accept the submission as to the proper approach to the harm factors which, we observe, are preceded in the guideline by the words: “When considering the likelihood of harm, the court should consider the viability of any plan.” In our view, the reference to “risk” focuses on what was intended: that is, the consequences if the plan had succeeded. The reference to “likelihood of occurrence” requires the court to consider how likely it was that the plan would actually succeed. The answer to that question will depend, of course, on all the facts and circumstances of the case.

Here, the judge was entitled to find that multiple deaths were risked. That, after all, is what the applicant planned and intended. But, as the judge found, it was not a plan which was very likely to succeed. The judge, therefore, rightly assessed the harm as falling within Category 2. We do not accept Mr Bennathan’s submission that, in the circumstances of this case, the involvement of the Security Services made it necessary for the sentencing judge to put the offence into Category 3. That would equate a plan to cause multiple deaths (properly falling within Category 2 in the circumstances of this case) with a plan to cause a single death, for which (amongst other things) Category 3 provides.

R v Fatah Abdullah (sentenced 26 June 2020)

Facts

The offender pleaded guilty to two offences; Count 1, engaging in conduct in preparation for giving effect to an intention to assist others to commit terrorist acts in that with the intention of assisting Omar Babek and Ahmed Hussein to commit acts of terrorism in the Federal Republic of Germany, in that you 1. Purchased 8,000 plus matches, explosive precursors, fireworks, a one metre electric ignitor fuse, miscellaneous fuses, saltpetre powder, digital scales and a remote-controlled detonator. 2. Searched the internet for guides on how to make explosives, how to operate a remote detonation system and for components for making an improvised explosive device. 3. Tested a remote detonation system. Count two, inciting terrorism overseas in that you incited others to commit acts of terrorism in Germany which, if committed

in England and Wales would have constituted the offence of murder, namely, to drive a car into a crowd, to attack people with a meat cleaver and to cause an explosion.

Sentencing

The prosecution suggests category 1B because multiple deaths were intended and were very likely to be caused, and yours was a significant role, where preparations were so close to completion that but for apprehension the activity was likely to be carried out and or because you co-ordinated others to take part in the terrorist activity.

On your behalf it is suggested that the correct category is 2C because, although multiple deaths were intended, they were not very likely to be caused. Preparations were not so close to completion that but for apprehension the activity was likely to be carried out. And you carried out acts of significant assistance and encouragement of others, rather than conducting yourself by way of co-ordinating others.

Applying the guideline in accordance with recent authority, I have no doubt, in your case, that harm falls into category two because it is relevant in relation to harm, to take into account that the German authorities had Hussein and Babek under active surveillance and that thus, multiple deaths were not very likely to be caused by Hussein and Babek.

R v Safiyya Amira Shaikh (sentenced 3 July 2020)

The offender pleaded guilty to preparing to commit acts of terrorism in that she made contact with a person she believed to be able to assist in preparing explosives (this person was in fact an Undercover Officer – UCO), researched methods and decided on a plan to carry out a terrorist act. The offender travelled to Central London and stayed at a hotel in order to conduct reconnaissance. She selected the hotel as a target for an explosive device and attended St Pauls cathedral to scope it for security and for the best place to plant a second explosive device. The offender met a person (another UCO) and supplied her with two bags with the intention and belief that explosive devices would be fitted into the two bags, she prepared the words of a pledge of allegiance to Daesh, also known as the Islamic State.

Sentencing

The first issue ...is as to the correct categorization of the offence. The prosecution submitted that yours was a Category B1 offence with a starting point of life imprisonment, and a minimum term of 25 years' imprisonment. Whereas it was submitted on your behalf, by reliance on your claim in interview, that you had had doubts, that was why you had not attended the second meeting with the UCO and that you would not have gone through with any attack and it was

thus a Category C2 offence with a starting point of 15 years' imprisonment.

However, in your case, I had already reached the sure conclusion on all the original evidence that your claim of doubts to the police and others was a lie, that your intention had been and remained throughout strong, and that the correct categorisation of the offence in count one was B2 given that it involved, as to culpability, you acting in a leading role in terrorist activities where preparations were advanced, and, but for apprehension, the activity was likely to have been carried out and, as to harm, multiple deaths were risked, but because of the nature of the involvement of the authorities, and their consequent ability to prevent you from doing anything, were not likely to be caused. Thus, as already touched on, the starting point is one of life imprisonment at a minimum term of 15 years.

R v Mohiussunnath Chowdhury (sentenced 9 Jul 2020)

Facts

On 10 February 2020, Mohiussunnath Chowdhury was convicted of engaging in preparations for acts of terrorism over a six-month period in 2019, contrary to section 5 of the Terrorism Act 2006 (count 1).

Sentencing

In respect of harm, the section 5 offence falls within category 1: multiple deaths risked and very likely to be caused if your intention to commit the terrorist acts you planned had been carried out.

In the sentencing remarks, the Judge referred to law enforcement operatives, noting the defendant's 'indoctrination or encouragement of others, including the UCOs' and 'communication with other extremists (i.e. communications with the UCOs, whom you believed to be of a similar mindset)' as aggravating factors.

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