

Sentencing Council

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

21 May 2021
SC(21)MAY04 – Terrorism
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1 ISSUE

1.1 In March 2020 the Council paused all work on the terrorism project as a result of a new Bill that was about to be introduced which would make amendments to the terrorism offences covered by our guidelines. That Bill, the Counter – Terrorism and Sentencing Bill, has now completed its passage through parliament and received Royal Assent on 29 April. This paper, therefore, provides a reminder of the work that has so far been completed, summarises the relevant content of the new Act and how that will impact our guidelines, and asks the Council questions about what steps to take next.

2 RECOMMENDATION

2.1 It is recommended that the Council consider this paper and make a decision on the next steps.

3 CONSIDERATION

The Original Guidelines

3.1 In March 2018 the Council published the first package of terrorism guidelines. They came into force in April 2018 and covered the following offences:

- [Preparation of Terrorist Acts \(Terrorism Act 2006, section 5\)](#)
- [Explosive Substances \(Terrorism Only\) \(Explosive Substances Act 1883, section 2 and section 3\)](#)
- [Encouragement of Terrorism \(Terrorism Act 2006, sections 1 and 2\)](#)
- [Proscribed Organisations – Membership \(Terrorism Act 2000, section 11\)](#)
- [Proscribed Organisations – Support \(Terrorism Act 2000, section 12\)](#)
- [Funding Terrorism \(Terrorism Act 2000, sections 15 - 18\)](#)
- [Failure to Disclose Information about Acts \(Terrorism Act 2000, section 38B\)](#)
- [Possession for Terrorist Purposes \(Terrorism Act 2000, section 57\)](#)
- [Collection of Terrorist Information \(Terrorism Act 2000, section 58\)](#)

New Legislation

3.2 On 12 February 2019, less than a year after the new guidelines came into effect, the Counter Terrorism and Border Security Act 2019 received Royal Assent. This Act made significant changes to terrorist legislation some of which impacted the guidelines listed above. The Council therefore sought to amend the relevant guidelines to ensure that they took account of the new legislation.

Consultation

3.3 In October 2019 the Council published a consultation paper seeking views on amendments to some of the guidelines to reflect the new legislation. The changes were as follows:

- Changes to the culpability factors within the Proscribed Organisations – Support (Terrorism Act 2000, section 12) guideline to provide for a new offence (section 12A), of expressing an opinion or belief supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.
- Minor changes to the wording in the culpability factors of the Collection of Terrorist Information (Terrorism Act 2000, section 58) to account for changes in legislation which ensure that offenders who stream terrorist material (as opposed to downloading or physically being in possession of it) would be captured by the offence.

3.4 In addition, changes were proposed to the sentence levels within the following guidelines to reflect an increase to the statutory maximum sentences:

- Collection of Terrorist Information (Terrorism Act 2000, section 58). From 10 years to 15 years.
- Encouragement of Terrorism (Terrorism Act 2006, sections 1 and 2). From 7 years to 15 years.
- Failure to Disclose Information About Acts of Terrorism (Terrorism Act 2000, section 38B). From 5 years to 10 years.

3.5 Finally, an additional aggravating and mitigating factor was added to the funding guideline, not as a result of a change in legislation but as a result of case law. The new factors were aimed at addressing the extent to which an offender knew or suspected that the funds would or may be used for terrorist purposes.

3.6 The Terrorism (revised guidelines) consultation closed on 3 December 2019. 13 responses were received. The Council considered the issues from consultation in December 2019 and again in March 2020, agreeing to the final package of revised guidelines.

Further Legislation

3.7 During the work to revise the guidelines it became known that there was, once again, a piece of terrorism legislation in the pipeline that would impact the guidelines. In March 2020, after agreeing the revised package of guidelines the Council chose to pause the publication of those guidelines to await the outcome of this new legislation.

3.8 In May 2020 the Counter – Terrorism and Sentencing Bill was introduced. At the end of April, the Bill received Royal Assent and became an Act. The main provisions of this Act which impact our guidelines are:

- A new definition of a ‘serious terrorism offence’ for the purposes of sentencing an offender to a serious terrorism sentence (see below), or an extended sentence (which has no possibility of early release and a licence period of up to 10 years). The ‘serious terrorism offence’ only applies to certain offences which are set out in a schedule. It includes some terrorist offences and some other serious offences where they have a terrorist connection. Included in the schedule are the guideline offences; Preparation of Terrorist Acts (Terrorism Act 2006, section 5), and Explosive Substances Offences (Explosive Substances Act 1883, sections 2 and 3).

The new ‘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’. [NB where a life sentence *is* imposed the Act requires that the minimum term must be at least 14 years unless the exceptional circumstances provisions set out below apply].

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. **This provision comes into force on the 29 June 2021.**

- An increase in the statutory maximum sentence for the guideline offences of membership of a proscribed organisation (from 10 years to 14 years), and support of a proscribed organisation (from 10 years to 14 years). **This provision comes into force on the 29 June 2021.**
- The list of offences which attract special custodial sentences for offenders of particular concern (SOPC) has been extended. A SOPC is a sentence that must be imposed for certain offences, where the court does not impose an extended sentence or a life sentence. The sentence which must be imposed is comprised of the appropriate custodial term plus a further period of 1 year during which the

offender is subject to licence (the total of both parts must not exceed the statutory maximum sentence).

The newly extended list applies to a much wider range of offences including two further guideline offences; failure to disclose information (Terrorism Act 2000, s38B) and funding terrorism (Terrorism Act 2000, ss15-18). **This provision came into force on 30 April 2020.**

- In addition, the SOPC provisions would apply to *any* non-terrorist offence which carries a statutory maximum sentence of more than two years and is deemed to have a 'terrorist connection'. [NB These changes bring a wide number of offences into the SOPC regime, removing the possibility of them being eligible for a standard determinate sentence.] **This provision comes into force on 29 June 2020.**
- *Any* offence (with a statutory maximum sentence of more than two years) can now be deemed by the court to have a 'terrorist connection' and that fact must then be treated as a statutory aggravating factor. **This provision comes into force on 29 June 2020.**
- The introduction of SOPC for under 18s committing relevant terrorism offences. This essentially replaces DTOs and standard determinate sentences for terrorism offences. The Council has never produced a terrorism youth guideline so this is not of direct relevance, but it is a significant development and would be relevant should the Council wish to consider a youth terrorism guideline in the future. **This provision came into force on 30 April 2020.**

Next Steps

3.9 The extension to the list of offences which attract the SOPC provisions has already come into force meaning that both the Failure to disclose information and Funding guidelines need to be updated. The Council may consider that this change could be made immediately. It is not a change which we would need to consult on as it is a specific change in legislation that must be complied with and all that is needed in the guideline is a factual statement to say that these provisions now apply.

3.10 All of our other terrorism guidelines already contain such information as they all already come within the SOPC regime. The information on those guidelines simply includes the following box of text on the front page of the guideline:

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.

3.11 Then within the steps at the end of the guideline the following information is included:

Step 5 – 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).

3.12 For the Failure to Disclose and Funding guidelines the information on the first page would need to say, ‘Note for convictions on or after 30th April 2021...’.

Question 1: Is the Council content for us to make such changes to the Failure to Disclose Information and Funding guidelines?

Publication of the 2019 revised guidelines

3.13 The 2019 revised guidelines have yet to be published and so have been outstanding for a considerable time. This means that the following terrorism guidelines are out of date and have been since February 2019 when the Counter Terrorism and Border Security Act 2019 came into force:

- Proscribed Organisations – Support (Terrorism Act 2000, section 12)
- Collection of Terrorist Information (Terrorism Act 2000, section 58)
- Encouragement of Terrorism (Terrorism Act 2006, sections 1 and 2)
- Failure to Disclose Information about Acts (Terrorism Act 2000, section 38B)

3.14 The Council is invited to consider the following options for the publication of those 2019 guidelines:

Option 1

3.15 Publish them as soon as possible alongside a consultation response document. Looking at our work plan and taking into consideration the other forthcoming publications, the best date would be mid-July.

3.16 This step would protect the reputation of the Council from criticism over the lengthy delay. It is also worth remembering that when the Council published the first package of guidelines it did so in just over one year, an accelerated timetable, on the basis that they were very important and that the Courts should not be without guidelines. This prolonged period of delay does not seem to fit with that original rationale to rush through the

publication. Whilst the new legislation was outstanding there was a clear reason for delay but that has now arguably fallen away.

3.17 The only concern around publishing the 2019 revisions straight away is that the Proscribed Organisations- Support (Terrorism Act 2000, section 12) guideline which was revised in 2019 will need to be revised again because of the 2021 legislation. The 2021 legislation impacts on the following guidelines:

- Preparation of Terrorist Acts (Terrorism Act 2006, section 5)
- Explosive Substances (Terrorism Only) (Explosive Substances Act 1883, section 2 and section 3)
- Proscribed Organisations – Membership (Terrorism Act 2000, section 11)
- **Proscribed Organisations – Support (Terrorism Act 2000, section 12)**
- Funding Terrorism (Terrorism Act 2000, sections 15 – 18)
- Failure to Disclose Information about Acts (Terrorism Act 2000, section 38B)

3.18 The 2021 changes to the Proscribed Organisations - Support guideline will require changes to the sentence levels to reflect a change to the statutory maximum sentence. Clearly this is a significant change and it may cause confusion to publish the 2019 version now and then a further guideline in the future. If the Council, choose to publish the 2019 consultation guidelines before concluding the amendments for the 2021 revisions it may be necessary to exclude this guideline from the 2019 package.

Option 2

3.19 The Council could publish the 2019 revised guidelines (and consultation response document) at the same time as publishing the consultation for the 2021 revised guidelines. This would probably be in the Autumn. This option gives the Council time to consider the new 2021 legislation and the implications that it has for the full package of guidelines before publishing the 2019 revisions. The Council did pause the publication in order to consider the content of the legislation.

3.20 However, the communications team advise that publishing definitive guidelines and draft consultation guidelines at the same time could lead to some confusing messaging. It would also mean extending what has already been a significant delay in the publication of the 2019 revision package.

Option 3

3.21 The Council could keep the 2019 guidelines on hold and just publish one full package of revised guidelines (incorporating both the 2019 and 2021 revisions) once the 2021 revisions have been made and consulted on. This is likely to take some time, at the most optimistic they could be published in May 2022.

Question 2: Which option does the Council prefer for the publication of the 2019 revisions?

Question 3: If either option 1 or 2 is selected, does the Council want to exclude the Support (s12 Terrorism Act 2000) guideline from the package?

4 IMPACT AND RISKS

As discussed above, there are impacts and risks associated with the decision to publish the 2019 guidelines immediately or delay. The main concern is that four of the guidelines have been out of date for over two years. The Council is therefore at risk of being criticised if they are not published shortly. However, the Council will also need to consider the complications of publishing multiple packages of revised guidelines.

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