

Final Resource Assessment

Terrorism Offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

The Sentencing Council has previously produced guidelines covering 14 offences related to terrorism. This initial set of guidelines were consulted on in 2017 and then published in March 2018 to come into effect on 27 April 2018.² Less than a year after these new guidelines came into force, terrorism legislation was changed through the Counter-Terrorism and Border Security Act 2019 (the '2019 Act').³ This Act made significant changes to the legislation, some of which impacted upon the existing guidelines, for example by changing the statutory maximum for several offences.

In October 2019, the Council launched a consultation on a revised set of guidelines covering the subset of nine terrorism offences affected by the Act, taking into account these legislative changes, in addition to some other amendments reflecting changes to case law. However, before revised definitive guidelines could be published, the Council was made aware of further changes to terrorism legislation which would potentially have an impact on the guidelines. The Council made the decision not to publish guidelines which might soon be superseded, so guideline development was paused in March 2020.

The Counter-Terrorism and Sentencing Act 2021 (the '2021 Act')⁴ received Royal Assent on 29 April 2021 and affected a slightly different subset of terrorism offences to those consulted on in 2019. This second set of revised guidelines were subsequently consulted on in October 2021.

The package of revised definitive guidelines now being published covers the second set of revised draft guidelines consulted on in 2021, along with the original revised draft guidelines which were part of the 2019 consultation.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² <https://www.sentencingcouncil.org.uk/publications/item/terrorism-offences-definitive-guideline/>

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

⁴ <https://www.legislation.gov.uk/ukpga/2021/11/contents>

The aim of these revised guidelines is to ensure sentencers have relevant and up-to-date guidance for this very serious type of offending, which is in line with the intention of Parliament when it increased the maximum penalties for some of these offences, whilst also ensuring consistency of approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Collection of terrorist information (Terrorism Act 2000, section 58);
- Encouragement of terrorism (Terrorism Act 2006, section 1);
- Dissemination of terrorist publications (Terrorism Act 2006, section 2);
- Failure to disclose information about acts of terrorism (Terrorism Act 2000, section 38B);
- Membership of a proscribed organisation (Terrorism Act 2000, section 11);
- Support for a proscribed organisation (Terrorism Act 2000, section 12);
- Fundraising (Terrorism Act 2000, section 15);
- Use and possession (Terrorism Act 2000, section 16);
- Funding arrangements (Terrorism Act 2000, section 17);
- Money laundering (Terrorism Act 2000, section 18);
- Preparation of terrorist acts (Terrorism Act 2006, section 5); and
- Causing explosion likely to endanger life or property/ Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property ('Explosive substances offences') (Explosive Substances Act 1883, sections 2 and 3).

The guideline for the offence of possession for terrorist purposes (Terrorism Act 2000, section 57), which is also covered by the existing terrorism guidelines, has not been revised and, consequently, is not covered in this resource assessment.

These revised terrorism guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the revised guidelines will reflect the latest changes to terrorism legislation and also provide additional guidance for situations concerning the involvement of law enforcement authorities or intelligence organisations.⁵ The guidelines are intended to encourage consistency of sentencing and ensure that the

⁵ Relevant for the Preparation of terrorist acts and Explosive substances offences guidelines.

most serious offenders receive appropriate sentences, acknowledging the latest legislation.

In order to develop successful guidelines, knowledge of recent sentencing was required. Sources of evidence have included the analysis of sentencing transcripts of 33 cases relating to the 2021 consultation offences and 41 cases relating to the offences in scope of the 2019 consultation, as well as references to case law, news articles and sentencing data from the Court Proceedings Database.^{6,7} Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that should encourage consistency of sentencing and reflect the serious nature of the offending.

Some small-scale research has also been conducted with a group of sentencers using the Preparation of terrorist acts guideline (Terrorism Act 2006, section 5) to check that the guideline will work as anticipated in practice.⁸

Detailed sentencing statistics for terrorism offences covered by the revised guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>.

The offences covered by the revised terrorism guidelines are mostly low volume, with around 150 adult offenders⁹ sentenced in total across all the relevant offences over the period 2018 to 2020 (the period since the current guidelines have been in force). However, this figure should be treated with caution; between 2018 and 2020, 29 per cent of these offenders were sentenced for the offences of causing explosion likely to endanger life or property/ attempt to cause explosion, or making or keeping explosive with intent to endanger life or property ('explosive substances offences'). This figure includes all adult offenders sentenced under this legislation as it is not possible to separate out cases relating to terrorism in the data and, from transcript analysis undertaken on these offences,¹⁰ we can conclude that a high proportion will not be related to terrorism. Therefore, the true number of terrorist offenders sentenced between 2018 and 2020 for the offences covered by the definitive guidelines is likely to be significantly lower.

⁶ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about these sentencing data can be found in the accompanying data tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>.

⁷ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

⁸ Research was conducted with 11 judges ticketed for terrorism offences.

⁹ Offenders aged 18 or over at the time of conviction.

¹⁰ Of the 20 cases sentenced in 2019, reading through the transcript of the judge's sentencing remarks indicates that all 20 were non-terrorism related offences.

The majority of offenders (91 per cent over the period 2018 to 2020) were sentenced to immediate custody.¹¹ Average custodial sentence lengths vary across the different offences, due to their different statutory maximum sentences.

Collection of terrorist information (Terrorism Act 2000, section 58)

Between 2018 and 2020, around 30 adult offenders¹² were sentenced for this offence and 91 per cent were sentenced to immediate custody. In 2020 the average custodial sentence length (ACSL) was 4 years 8 months and all offenders received a sentence length of 10 years or less.¹³

Encouragement of terrorism (Terrorism Act 2006, sections 1 and 2)

During the period 2018 to 2020, around 30 adult offenders were sentenced for these offences and 96 per cent were sentenced to immediate custody. In 2020 all offenders received a sentence length of 6 years or less.¹⁴

Failure to disclose information about acts of terrorism (Terrorism Act 2000, section 38B)

Fewer than five offenders were sentenced for this offence between 2018 and 2020, and all offenders received a custodial sentence (either immediate or suspended).¹⁵

Membership of a proscribed organisation (Terrorism Act 2000, section 11)

Between 2018 and 2020, around 20 adult offenders were sentenced for membership of a proscribed organisation and 94 per cent received an immediate custodial sentence. The ACSL over this period was 5 years and all offenders received a sentence length of 8 years or less.¹⁶

¹¹ Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these proportions should be treated with caution.

¹² The volumes of offenders presented in this report have been rounded to the nearest 10 offenders. Therefore, figures may not appear to sum to totals.

¹³ The statutory maximum sentence for this offence increased from 10 to 15 years' custody under the Counter-Terrorism and Border Security Act 2019, which came into force on 12 April 2019. Statistics on sentence lengths are therefore provided for 2020 only.

¹⁴ The statutory maximum sentence for this offence increased from 7 to 15 years' custody under the Counter-Terrorism and Border Security Act 2019, which came into force on 12 April 2019. Statistics on sentence lengths are therefore provided for 2020 only. An average custodial sentence length (ACSL) has not been calculated for this offence due to the very low number of offenders sentenced in 2020.

¹⁵ The statutory maximum sentence for this offence increased from 5 to 10 years' custody under the Counter-Terrorism and Border Security Act 2019, which came into force on 12 April 2019. An average custodial sentence length (ACSL) has not been calculated for this offence due to the very low number of offenders sentenced.

¹⁶ The statutory maximum sentence for this offence increased from 10 to 14 years' custody under the Counter-Terrorism and Sentencing Act 2021. The latest full year of data available for analysis was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

Support for a proscribed organisation (Terrorism Act 2000, section 12)

Since the existing guideline came into force in 2018, no offenders have been sentenced for the offence of support for a proscribed organisation (Terrorism Act 2000, section 12), where this was the principal offence.⁶

Funding terrorism (Terrorism Act 2000, sections 15, 16, 17 and 18)

Between 2018 and 2020, around 10 adult offenders were sentenced for funding terrorism and 80 per cent were sentenced to immediate custody. The ACSL over this period was 4 years 1 month and all offenders received a sentence length of 8 years or less.

Preparation of terrorist acts (Terrorism Act 2006, section 5)

There were around 20 adult offenders sentenced between 2018 and 2020 for this offence, of whom 78 per cent were sentenced to immediate custody. The ACSL over this period was 11 years 5 months.

Causing explosion likely to endanger life or property/ Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (Explosive Substances Act 1883, sections 2 and 3)

There were around 40 adult offenders sentenced for these offences between 2018 and 2020. However, as previously stated, it is likely that a high proportion of these cases were non-terrorist related and the guideline would not have been applicable. As such, sentence outcomes and ACSLs have not been provided for these offences in this report.¹⁷

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

¹⁷ These data are still available from the data tables published alongside this resource assessment.

The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels have been considered, where available, as well as consideration of the impact of the legislative changes, for example increases in the statutory maxima, for the relevant offences.

While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To mitigate against the risk of the guidelines having an unintended impact and to support the development of the definitive guidelines, interviews were undertaken with sentencers using the Preparation of terrorist acts draft guideline.

Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/crown-court/>.

Summary

Overall, the guidelines are anticipated to increase sentences in some cases. For most of the offences, these increases are mainly expected to affect offenders categorised at the highest levels of harm and culpability, where the sentence levels have been driven by the changes to legislation introduced in the 2019 and 2021 Acts. In addition, there may be increases to sentences for those cases sentenced using the Preparation of terrorist acts and Explosive substances guidelines where there was involvement of law enforcement authorities or intelligence organisations (LEA).

There has been little evidence on which to base any estimates of the impact of these guidelines, due to the infrequent nature of these offences, and so no attempt has been made to quantify the prison impacts. However, given that very few offenders overall are sentenced for these terrorism offences, it is expected that any anticipated longer sentences imposed as a result of the guidelines will have only a minimal impact on prison and probation services.

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 of terrorism (Terrorism Act 2000, section 38B), membership of a proscribed organisation (Terrorism Act 2000, section 11)¹⁸

The existing guideline for the offence of collection of terrorist information (section 58 of the Terrorism Act 2000) has a sentencing table ranging from a high level community order to 9 years' custody. The 2019 Act both increased the statutory maximum sentence for this offence, from 10 to 15 years' custody, and also widened the scope of the offence, to cover those who view or access material over the internet. To reflect these changes, the wording of the culpability factors at step one of the revised guideline has been amended, and starting points and sentence ranges have been increased at the upper end of the sentencing table (i.e. for the more serious offences).

The Encouragement of terrorism guideline covers two offences introduced under the Terrorism Act 2006: encouragement of terrorism (section 1) and dissemination of terrorist publications (section 2). The sentencing table in the existing guideline for these offences ranges from a high level community order to 6 years' custody. The 2019 Act increased the statutory maximum sentence for these offences from 7 to 15 years' custody. To reflect this substantial increase, starting points and sentence ranges in the guideline have been increased at the upper end of the sentencing table.

The offence of failure to disclose information about acts of terrorism was introduced under section 38B of the Terrorism Act 2000. The existing guideline has a sentencing range spanning from a high level community order to 4 years 6 months' custody. The statutory maximum sentence for this offence has doubled as a result of the 2019 Act, increasing from 5 to 10 years' custody. As such, starting points and sentence ranges in the guideline have been increased at the upper end of the sentencing table.

The current guideline for the offence of membership of a proscribed organisation (section 11 of the Terrorism Act 2000) has a sentencing table ranging from a high level community order to 9 years' custody. Under the 2021 Act, the statutory maximum sentence for this offence has increased from 10 to 14 years' custody. To reflect this change, the starting points for all categories have been increased. In addition, the sentence ranges have been increased for high and medium culpability.

It is expected that the changes to sentence levels in these guidelines will result in increased sentences, particularly for those offenders sentenced for more serious offences. This reflects the increase in statutory maximum sentences from the changes in legislation. However, given the low volume of offenders sentenced for these offences, it is anticipated that the impact of these changes on prison and probation resources is likely to be minimal.

Support for a proscribed organisation (Terrorism Act 2000, section 12)

The 2019 Act created a new offence, under section 12(1A), of expressing an opinion or belief supportive of a proscribed organisation, reckless as to whether a person to

¹⁸ These offences have been grouped together as they are all offences for which the statutory maximum sentence has been increased.

whom the expression is directed will be encouraged to support a proscribed organisation.

A revised version of the existing Proscribed organisations – support guideline was consulted on in 2019, in which the culpability factors at step one were amended, to reflect the fact that the scope of these offences had been widened by the inclusion of section 12(1A). Following the consultation, two new aggravating and mitigating factors were added at step two of the guideline, to address some of the concerns raised during the consultation.

Before the revised definitive guideline was published, however, the 2021 Act subsequently increased the statutory maximum for this offence from 10 to 14 years' custody. To reflect this new legislation, changes were made to the sentencing table in the revised guideline; the starting points in the highest culpability categories and harm levels were raised and the sentence ranges broadened compared with the existing guideline, to give sentencers greater discretion. To address some concerns raised in the 2021 consultation, two further category ranges have subsequently been broadened (in B2 and C1).

It is possible that the change in sentence levels may increase sentence lengths for this offence, particularly at the top end of seriousness. However, since no offenders have been sentenced for this offence on a principal offence basis since 2017, the impact of the revised definitive guideline on prison and probation resources is estimated to be negligible.

Funding terrorism (Terrorism Act 2000, sections 15-18)

The Terrorism Act 2000 includes four offences related to funding terrorism: fundraising (section 15), use and possession (section 16), funding arrangements (section 17) and money laundering (section 18), all with a statutory maximum sentence of 14 years' custody. The existing guideline covering all of these offences has a sentencing range which spans from a high level community order to 13 years' custody.

There have not been any legislative changes to these offences, however the Council considered that it would be beneficial to include some additional guidance in this sentencing guideline, in relation to the offender's knowledge of whether the money would be used to fund terrorism. Step two of the revised guideline therefore includes a new aggravating factor 'knowledge that the money or property will or may be used for the purposes of terrorism' and a new mitigating factor 'offender did not know or reasonably suspect that the money or property will or may be used for the purposes of terrorism'. No changes have been made to the sentencing table in the guideline.

Given that the changes to this guideline are at step two (after the starting point sentence has been determined), and that the sentencing table is the same as that in the existing guideline, it is not anticipated that the revised guideline covering these offences will have an impact on correctional resources.

Preparation of terrorist acts (Terrorism Act 2006, section 5)

The legislative changes introduced by the 2021 Act created a new category of terrorism offence called a 'serious terrorism offence', which had implications for the

existing Preparation of terrorist acts guideline. As a result, expanded wording has been included above the sentencing table in the revised guideline and an additional step 3 has been added which sets out when a minimum sentence or serious terrorism sentence will apply, and also provides guidance on when exceptional circumstances might apply. These changes have been implemented so that the guideline complies with the latest legislation.

In addition to these changes driven by the legislation, there is a further change in the revised guideline: additional guidance for sentencing terrorist cases concerning law enforcement authorities or intelligence organisations (LEA). The revised definitive guideline states that the court should assess culpability as if the LEA was a genuine conspirator or, where the offender is under surveillance by LEA, thus preventing the offender from proceeding further, this should be treated the same as apprehension of the offender. Similarly, 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. It suggests that a small reduction within the category range will usually be appropriate in cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act.

Small-scale research was conducted with sentencers during the consultation period using the draft guideline, which included a scenario involving undercover LEAs. This research found that the assessment of harm was more consistent using the revised guideline compared to the existing version. The research also found that the majority of sentencers gave a higher final sentence when using the revised guideline, however, given the small sample size¹⁹ this finding is merely tentative.

It is possible that the revised guideline may have an upward resource impact for specific cases where the additional guidance on 'serious terrorism offences' applies and/or for those cases which concern LEA involvement, however given the very low number of offenders sentenced for this offence, any prison or probation²⁰ impacts are expected to be small.

Causing explosion likely to endanger life or property/ Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (Explosive Substances Act 1883, sections 2 and 3)

The existing guideline for these offences is also affected by the 2021 Act in the same way as the Preparation of terrorist acts guideline, and so the additional guidance for cases concerning LEA involvement has also been included within this guideline. It is possible that these changes might increase sentence lengths in specific cases where the additional guidance applies. However, given that the guideline applies only to those offences which relate to terrorism, and a large proportion of the offenders sentenced for explosive substances offences are understood to be non-terrorism related,¹⁰ any impacts on the prison and probation²⁰ services are expected to be minimal.

¹⁹ Research was conducted with 11 judges ticketed for terrorism offences.

²⁰ Changes to licence provisions resulting from the new legislation are likely to have some additional resource implications for the probation service, as calculated in the published impact assessment:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886106/cts-impact-assessment.pdf.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines come into effect.

The low volumes for all of the terrorism offences make it difficult to determine average sentence lengths or to be confident that cases that have gone before the courts in the past few years are representative of the sorts of cases that will be sentenced in future.

This risk is mitigated by information that was gathered by the Council as part of the guideline development and consultation phase. This included inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios, which were intended to explore whether the Preparation of terrorist acts guideline had any unintended effects. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of sentencing remarks for 74 cases have also been studied to ensure that the guidelines have been developed with current sentencing practice in mind. Additionally, research with sentencers carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

Consultees have had the opportunity to give their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.