

# 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	<b>Starting point</b> Life imprisonment - minimum term 35 years' custody	<b>Starting point</b> Life imprisonment - minimum term 25 years' custody	<b>Starting point</b> Life imprisonment - minimum term 15 years' custody	<b>Starting point</b> 15 years' custody
	<b>Category range</b> Life imprisonment - minimum term 30 – 40 years' custody	<b>Category range</b> Life imprisonment - minimum term 20 - 30 years' custody	<b>Category range</b> Life imprisonment - minimum term 10 – 20 years' custody*	<b>Category range</b> 10-20 years' custody**
2	<b>Starting point</b> Life imprisonment - minimum term 25 years' custody	<b>Starting point</b> Life imprisonment - minimum term 15 years' custody	<b>Starting point</b> 15 years' custody	<b>Starting point</b> 8 years' custody**
	<b>Category range</b> Life imprisonment - minimum term 20 - 30 years' custody	<b>Category range</b> Life imprisonment - minimum term 10- 20 years' custody*	<b>Category range</b> 10- 20 years' custody**	<b>Category range</b> 6-10 years' custody**
3	<b>Starting point</b> 16 years' custody	<b>Starting point</b> 12 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 12 – 20 years' custody	<b>Category range</b> 8- 16 years' custody	<b>Category range</b> 6 - 10 years' custody	<b>Category range</b> 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](#).