

## Terrorism road testing: guidance on law enforcement agent (LEA) involvement

### Introduction

In June and July 2021, the Council agreed amendments, consulted on October 2021 to January 2022, to the [Preparation of terrorist acts](#) (Terrorism Act 2006, s.5) guideline to reflect Government changes introduced in the [Counter-Terrorism and Sentencing Act 2021](#):

- Adding ‘**Notes for culpability and harm**’ on how to approach cases where, due to the involvement of undercover LEAs, there is no/minimal likelihood of the terrorist act being committed, including whether to apply a downward adjustment on the basis of the harm intended and viability of the plan;
- Amending the sentence in C1 in the sentencing table to ensure the minimum term range does not go below 14 years; and,
- Adding ‘**Step 3 – Minimum Terms, Serious Terrorism Sentences and exceptional circumstances**’, where 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’, as the act brought in new statutory minimum sentences, which increased previous minimum sentences to 14 years.

### Methodology

This paper focuses on the scenario related specifically to the addition of the new guidance LEA involvement; the April Council paper covered the other aspects.

To examine how the proposed guidance is interpreted and impacts on sentencing practice, small-scale qualitative road testing took place September to October 2021, with 11 judges ticketed for terrorism offences, identified through the Research Pool and a sample of 2019 terrorism case transcripts. Two hypothetical scenarios were developed, each testing different elements of the draft amended guideline. One week prior to interview, participants were sent the existing and draft amended guidelines, with amendments clearly flagged on the draft amended one, and both scenarios, to allow judges time to consider them, due to the complexity of terrorism cases and the likelihood they would not have sentenced a terrorism case since the law changed on 29<sup>th</sup> June 2021.

### Testing the new notes on culpability and harm – guidance on LEA involvement

The scenario designed to test the new guidance is below:

The 32-year-old male offender was convicted at trial of one count contrary to Preparation of Terrorist Acts, s.5(1) (a) of the Terrorism Act 2006. The offender was arrested walking along Victoria Street carrying a holdall bag containing (as he believed) a rucksack which had been fitted with a pressure cooker improvised explosive device, a jacket which had been modified as an explosive suicide vest, a pepper spray and a set of gloves. His plan had involved blowing up the security gates of the Houses of Parliament; killing or disabling police officers posted at the gates by explosion or knife wounds (or incapacitating them with pepper spray); and then entering Parliament and making a determined attack with a knife and explosives on those inside, with the ultimate target being the Prime Minister.

The offender had three contacts who claimed to be members of IS. He worked with them to plan the attack, gathering advice, assistance and equipment.

The offender provided a rucksack and a jacket to his IS contacts so that they could be fitted with explosive devices. The contacts had also provided him with detailed instructions on how to detonate the devices. The offender had also made a reconnaissance of the area surrounding parliament and discussed and refined his plan of attack with his contacts.

Unbeknown to the offender, 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 agents (“LEAs”) all working for the security services.

This was deemed an A1 case: starting point life imprisonment, minimum term 35 years, range 30-40 years. Key findings are summarised below, followed by the results table.

### *Key findings*

- There was little difference between sentencing **culpability** across both guidelines.
- A mixed picture was found when sentencing **harm** using the existing guideline, while a more consistent approach was found when using the draft amended guideline.
- A range of **starting points** were elicited with both guidelines; comparing across the guidelines, five judges selected higher starting points using the draft amended guideline compared to the existing guideline, while six selected the same.
- Using the draft amended guideline, the majority of judges made a small **downward adjustment** on the basis of harm intended and viability of the plan due to LEA involvement.
- Six judges noted **aggravating factors** across both guidelines; five stated none applied.
- The majority of judges said there were no **mitigating factors** under either guideline.
- A range of **final sentences** were given: the majority were life sentences across both guidelines, with minimum terms from 12 years (one judge), through to 40 years (one judge) with the existing guideline, and 14 years (one judge) through to one judge stating a whole life term ‘*as the case is so exceptional*’, with the draft amended guideline.
- When using the existing guideline, judges generally felt that their final sentence was ‘*high but fair*’, while with the draft amended guideline, all judges felt their particular sentence was ‘*about right*’.
- The judges were generally positive about the **new notes on culpability and harm**, noting they were very ‘*helpful*’, and ‘*straightforward*’.
- **Possible clarifications** were also suggested, particularly around downward adjustment, such as: providing examples for different reductions; reference to the significance and timing of LEA involvement; and around viability of the plan, including wording being ‘*ambiguous*’. Other comments related to specific aspects of the wording, such as: ‘*what does ‘but for apprehension’ mean*’; a request for clearer examples under harm; and signposting the LEA involvement notes at step 2.

**Table 1: Summary of results for scenario 1 – new notes on culpability and harm, including guidance on LEA involvement**

	Guideline	Culp	Factors	Harm	Factors	Starting Point (SP)	Downward adjustment?	Aggravating factors	Mitigating factors	Final sentence
1	Existing	B	<ul style="list-style-type: none"> <li>• Significant role</li> <li>• Preparations complete/close</li> <li>• Act likely to be carried out</li> </ul>	2	<ul style="list-style-type: none"> <li>• Multiple deaths risked, not very likely</li> </ul>	Life, 15 years	N/A	• <i>Attack on police/parliament</i> <sup>12</sup>	None	Life, 17 years
	Amended	B	As above	1	<ul style="list-style-type: none"> <li>• Multiple deaths risked, very likely</li> </ul>	Life, 25 years	• Down to 20 years	As above	None	Life, 22 years
2	Existing	A	<ul style="list-style-type: none"> <li>• Acting alone/leading role</li> <li>• Preparations complete/close</li> <li>• Act likely to be carried out</li> </ul>	2	<ul style="list-style-type: none"> <li>• Multiple deaths risked, not very likely</li> </ul>	Life, 25 years	N/A	• <i>Attack on Government</i>	None	Life, 30 years
	Amended	A	As above	1	<ul style="list-style-type: none"> <li>• Multiple deaths risked, very likely</li> </ul>	Life, 35 years	• Small reduction from SP	• <i>Attack on Government</i>	None	Life, 40 years
3	Existing	A	<ul style="list-style-type: none"> <li>• Acting alone/leading role</li> <li>• <i>Substantial involvement</i></li> </ul>	1	<ul style="list-style-type: none"> <li>• Multiple deaths risked</li> <li>• <i>Harm intended</i></li> </ul>	Life, 35 years	N/A	None	None	Life, 32 years
	Amended	A	<ul style="list-style-type: none"> <li>• Leading role</li> <li>• Preparations complete/close</li> </ul>	1	<ul style="list-style-type: none"> <li>• Multiple deaths risked, very likely</li> </ul>	Life, 35 years	• Small reduction from SP	None	None	Life, 33 years
4	Existing	A	<ul style="list-style-type: none"> <li>• Acting alone</li> <li>• <i>Possessed all needed to carry out act and was going to do it</i></li> </ul>	1	<ul style="list-style-type: none"> <li>• Multiple deaths likely</li> </ul>	Life, 36 <sup>3</sup> years	N/A	<ul style="list-style-type: none"> <li>• <i>Reconnaissance</i></li> <li>• <i>Planning</i></li> <li>• <i>Conspiracy</i></li> </ul>	None	Life, 36 years
	Amended	A	Same as original guideline	1	Same as existing guideline	Life, 36 years	• No	As above	None	Life, 36 years

<sup>1</sup> Factors in italics are not listed in the guideline. Responses relating to the draft amended guideline are in grey for ease.

<sup>2</sup> Attack on police/parliament/Government is in line with 'Preparation was with a view to engage in combat with UK armed forces' from both the guidelines.

<sup>3</sup> Starting point in both guidelines is 35, however the Judge stated they would start at 36 years.

	Guideline	Culp	Factors	Harm	Factors	Starting Point (SP)	Downward adjustment?	Aggravating factors	Mitigating factors	Final sentence
5	Existing	A	<ul style="list-style-type: none"> <li>Acting alone/leading role</li> </ul>	1	<ul style="list-style-type: none"> <li>Multiple deaths risked, very likely</li> </ul>	Life, 35 years	N/A	None	None	Life, 30 years
	Amended	A	As above	1	As above	Life, 35 years	<ul style="list-style-type: none"> <li>Down to 33 years</li> </ul>	None	None	Life, 33 years
6	Existing	A	<ul style="list-style-type: none"> <li>Preparations complete/close</li> <li><i>Kitted out to commit attack</i></li> </ul>	3	<ul style="list-style-type: none"> <li><i>Neutralised bar spray/knife so not 1</i></li> </ul>	16-20 years	N/A	<ul style="list-style-type: none"> <li>Indoctrinated</li> <li>Encrypted info</li> </ul>	<ul style="list-style-type: none"> <li>No relevant convictions</li> </ul>	20 years + 10 year extension
	Amended	A	<ul style="list-style-type: none"> <li>Preparations complete/close</li> <li>Act likely to be carried out</li> </ul>	1	<ul style="list-style-type: none"> <li>Multiple deaths risked, very likely</li> </ul>	Life, 35 years	<ul style="list-style-type: none"> <li>Down to 30 if not well connected</li> </ul>	None	As above	Life, 28/29 to 33/34 <sup>4</sup>
7	Existing	B	<ul style="list-style-type: none"> <li>Leading role</li> <li>Act likely to be carried out</li> </ul>	2	<ul style="list-style-type: none"> <li>Multiple deaths risked, not very likely</li> <li><i>Knife</i></li> </ul>	Life, 15 years	N/A	None	<ul style="list-style-type: none"> <li>LEA involvement</li> </ul>	Life, 12 years
	Amended	B	<ul style="list-style-type: none"> <li>Leading role</li> <li>Preparations advanced</li> <li>Engaging with others</li> </ul>	2	<ul style="list-style-type: none"> <li>Multiple deaths risked, not very likely</li> </ul>	Life, 15 years	<ul style="list-style-type: none"> <li>Small reduction from SP</li> </ul>	None	None	Life, 14 years
8	Existing	A	<ul style="list-style-type: none"> <li>Acting alone/leading role</li> </ul>	1	<ul style="list-style-type: none"> <li>Multiple deaths</li> </ul>	Life, 35 years	N/A	<ul style="list-style-type: none"> <li>Hostility</li> <li>Communication with extremists</li> <li><i>High profile attack on Parliament</i></li> </ul>	<ul style="list-style-type: none"> <li>No previous convictions</li> </ul>	Life, 40 years
	Amended	A	As above	1	As above	Life, 35 years	<ul style="list-style-type: none"> <li>No</li> </ul>	<ul style="list-style-type: none"> <li>Extremist material</li> <li>Communication with extremists</li> </ul>	None	Whole life term

<sup>4</sup> Stated two ranges depending on how well connected the defendant was in their own right (i.e. aside from LEA involvement); it would be lower if not well connected.

	Guideline	Culp	Factors	Harm	Factors	Starting Point (SP)	Downward adjustment?	Aggravating factors	Mitigating factors	Final sentence
9	Existing	A	<ul style="list-style-type: none"> <li>Acting alone</li> </ul>	2	<ul style="list-style-type: none"> <li>Multiple deaths, not very likely</li> </ul>	Life, 25 years	N/A	None	None	Life, 25 years
	Amended	A	<ul style="list-style-type: none"> <li>Acting alone</li> </ul>	1	<ul style="list-style-type: none"> <li>Multiple deaths</li> <li><i>Treat as a genuine device</i></li> <li><i>Blowing up parliament etc</i></li> </ul>	Life, 35 years	<ul style="list-style-type: none"> <li>30-35 years</li> </ul>	None	None	Life, 30-35 years, 32/33
10	Existing	A	<ul style="list-style-type: none"> <li>Acting alone/ leading role</li> </ul>	1	<ul style="list-style-type: none"> <li>Multiple deaths risked</li> <li><i>Knife</i></li> <li><i>Determined to act</i></li> </ul>	Life, 35 years, increase to 36/37	N/A	None	None	Life, 32 years
	Amended	A	<ul style="list-style-type: none"> <li>Acting alone/ leading role,</li> <li>Preparations complete/close</li> </ul>	1	<ul style="list-style-type: none"> <li><i>Explosives</i></li> <li><i>Knife</i></li> <li><i>Attack on police etc</i></li> </ul>	Life, 35 years, increase to 36/37	<ul style="list-style-type: none"> <li>Small reduction from SP</li> </ul>	None	None	Life, 32 years
11	Existing	B	<ul style="list-style-type: none"> <li>Significant role</li> <li>Preparations complete/close</li> <li>Act likely to be carried out</li> </ul>	2	<ul style="list-style-type: none"> <li>Multiple deaths risked, not very likely</li> </ul>	Life, 15 years	N/A	<ul style="list-style-type: none"> <li>Communicating with terrorists</li> </ul>	None	Life, 15-20 years
	Amended	A	<ul style="list-style-type: none"> <li>Acting alone/ leading role</li> <li>Preparations complete/close</li> </ul>	1	<ul style="list-style-type: none"> <li>Multiple deaths risked</li> <li><i>Knife</i></li> </ul>	Life, 40 <sup>5</sup> years	<ul style="list-style-type: none"> <li>Small reduction to 35</li> </ul>	<ul style="list-style-type: none"> <li>Communicating with terrorists</li> </ul>	None	Life, 35 years

<sup>5</sup> Starting point is 35, however the Judge stated they would start at 40 years as it was an exceptional case.

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