

Consultation Stage Resource Assessment: Terrorism Offences

1 INTRODUCTION

1.1 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

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 The Council has decided to produce guidelines covering 14 offences related to terrorism. In order to reflect the changing nature of this very serious type of offending (as described in the consultation document²) and to ensure consistency of approach to sentencing, it is important that judges have relevant and up-to-date guidance. It is equally important that the process which is followed in arriving at sentences is transparent to the public.

2.2 No current guideline exists for any of the offences covered by the new draft guidelines.

3 SCOPE

3.1 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.

3.2 This resource assessment covers the following offences:

- Section 5 (Preparation of Terrorist Acts) Terrorism Act 2006
- Section 2 (Causing explosion likely to endanger life or property) Explosive Substances Act 1883

¹ Coroners and Justice Act 2009 section 127.

² The consultation document can be found here:

<https://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=consultations&to pic=&year=>

- Section 3 (Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) Explosive Substances Act 1883
- Section 1 (Encouragement of Terrorism) Terrorism Act 2006
- Section 2 (Dissemination of Terrorist Publications) Terrorism Act 2006
- Section 11 (Membership of proscribed organisation) Terrorism Act 2000
- Section 12 (Support for a proscribed organisation) Terrorism Act 2000
- Section 15 (Fundraising) Terrorism Act 2000
- Section 16 (Use and Possession) Terrorism Act 2000
- Section 17 (Funding Arrangements) Terrorism Act 2000
- Section 18 (Money Laundering) Terrorism Act 2000
- Section 38B (Failure to Provide Information about Acts of Terrorism) Terrorism Act 2000
- Section 57 (Possession for Terrorist Purposes) Terrorism Act 2000
- Section 58 (Collection of Terrorist Information) Terrorism Act 2000

4 CURRENT SENTENCING PRACTICE

4.1 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 the guidelines.

4.2 The intention is that the new guidelines will encourage consistency of sentencing. For some of the offences, Council intends either to increase sentences, or for some of the very low volume offences, to set sentencing practice at a sufficiently high level to reflect the seriousness of the offences. In order to understand the potential impact of the guidelines on sentencing practice, knowledge of recent sentencing was required.

4.3 Sources of evidence have included the analysis of sentencing transcripts of recent terrorism cases, Court of Appeal sentencing remarks and by reference to the ranges within the Lord Chief Justice's guidance as set out in *R v Kahar & Others*³.

4.4 During the consultation stage, research will be conducted with a group of judges, to check that the draft guidelines would work as anticipated. This research should also provide some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

4.5 Detailed sentencing statistics for terrorism offences covered by the draft guidelines have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

4.6 All of the offences covered by the guideline are low volume offences, with 50 adult offenders⁴ sentenced in total in 2016.⁵ Around one third of these were sentenced for the offence of preparation of terrorist acts, and around another third were sentenced for causing/ attempting to cause an explosion likely to endanger life or property. The vast majority (89 per cent over the last decade) were sentenced to immediate custody. Average sentence lengths vary across the different offences, due to their different statutory maximum sentences.

5 KEY ASSUMPTIONS

5.1 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 guideline, and draws upon analytical and research work undertaken during guideline development. However, some important 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 guideline are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there

³ <https://www.judiciary.gov.uk/judgments/r-v-mohammed-abdul-kahar-and-others/>

⁴ Figures relating to volumes within the resource assessment have been rounded to the nearest 10.

⁵ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Further information about this data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

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 proposed new guidelines.

5.3 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.

5.4 In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered. Transcripts of cases and news articles have also been reviewed.

5.5 In addition, while data exists 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, and the low numbers of cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

5.6 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, further interviews will be undertaken with sentencers during the consultation period, which will provide more information on which to base the final resource assessment accompanying the definitive guideline.

6 RESOURCE IMPACTS

6.1 This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

Summary

6.2 The expected impact of each guideline is provided in detail below. Overall, the draft guideline is anticipated to increase sentences in some cases, but for some offences this will only be the case for certain levels of the offences. As very few offenders overall are sentenced for these offences, it is expected that the anticipated longer sentences imposed as a result of the guideline will have only a minimal impact on correctional resources.

6.3 There is expected to be a negligible impact on probation services as a result of the guideline. The vast majority of offenders sentenced for these offences are given immediate custodial sentences. Offenders that receive suspended sentences under current sentencing practice may receive immediate custodial sentences under the new guideline, but as only 10 offenders were given suspended sentence orders between 2006 and 2016 for the offences covered by the guideline, any reduction would have only a very small impact.

6.4 Further research will be conducted during the consultation stage, and this may help to provide a clearer estimate of the impact for the final resource assessment, to accompany the definitive guideline.

6.5 The recent increases in UK-based terrorist activity may lead to greater numbers of defendants coming before the courts for these offences, and therefore more offenders being sentenced. This would increase the impact of the guideline, as it would affect a larger number of offenders. However, as the number of offenders sentenced is very small, it is expected that an increase in volumes would have only a minor effect on the prison population.

Preparation of Terrorist Acts

6.6 Preparation of terrorist acts is the highest volume offence covered by the guideline, with approximately 20 adult offenders sentenced in 2016, and 90 offenders sentenced over the last decade.

6.7 The draft guideline includes four levels of culpability and three levels of harm, with a sentencing range from 3 years' custody up to life imprisonment with a minimum term of 40 years' custody.

6.8 For the most serious offences, sentencing data shows that offenders are already receiving life sentences with long minimum terms, comparable to those in the draft guideline. However, for those offences that would come under the lower levels of culpability and harm, evidence shows that some offenders have received sentences of under 3 years (after any reduction for guilty plea). In light of the changing nature of offending of this type, Council has decided to draft a guideline that should increase sentences, by setting starting points and ranges that should lead to higher sentences than those given in the past for these offences at the lower end of seriousness.

6.9 The number of offenders sentenced has fluctuated over the past few years, from over 20 in 2013, to fewer than 5 in 2014, and then back up to just under 20 in each of

2015 and 2016. If sentences at the less serious end of the scale increased slightly in line with the draft guideline, then there may be a requirement for minimal additional prison places per year.

6.10 However, this is based on a very small number of cases. There is a possibility that cases coming before the court in future will be different in nature to those used to develop the guideline, and so the impact of the guideline may be different to that expected.

Causing/ attempting to cause an explosion likely to endanger life or property, or making or keeping explosives with intent to endanger life or property

6.11 The offence of causing an explosion likely to endanger life or property, comes under section 2 of the Explosive Substances Act 1883, while the offences of attempting to cause an explosion, or making or keeping explosives with intent to endanger life or property, come under section 3. The draft guideline is only intended to be used where these offences have a terrorist connection.

6.12 The draft guideline is very similar to the draft guideline for preparation of terrorist acts, with four levels of culpability, three levels of harm, and the same sentencing ranges. In the same way as for the preparation of terrorist acts guideline, Council intends to increase sentences at the lower end of seriousness. However, as the figures available for these offences cover all cases, and not just those related to terrorism, it is not possible to determine how many cases per year this is likely to affect.

6.13 In 2016, around 20 adult offenders were sentenced for these offences, compared to fewer than 10 in all previous years since 2011 (and in most years, this was fewer than five offenders). Any increase in sentences is therefore expected to result in a need for minimal additional prison places.

Encouragement of terrorism, support of a proscribed organisation, funding terrorism, possession for terrorist purposes, or collection of terrorist information

6.14 The draft guideline for encouragement of terrorism covers two offences introduced under the Terrorism Act 2006: encouragement of terrorism (section one) and dissemination of terrorist publications (section 2), both with a statutory maximum sentence of 7 years' custody. The draft guideline includes three levels of culpability and three levels of harm, and the sentencing range spans from 6 months' to 6 years' custody. Fewer than 10 offenders have been sentenced for this offence in each year since it was

introduced, and the median custodial sentence length over that period⁶ was 2 years 8 months.

6.15 The offence of support of a proscribed organisation comes under section 12 of the Terrorism Act 2000, with a statutory maximum sentence of 10 years' custody. The draft guideline (covering only this offence) includes three levels of culpability, two levels of harm, and a sentencing range from 6 months' custody to 9 years' custody. The offence of collection of terrorism information, under section 58 of the Terrorism Act 2000, has the same statutory maximum, and the draft guideline (again, covering this offence only) has the same number of levels of culpability and harm, and the same sentencing range. Both of these guidelines were developed based on a small number of previous cases, with fewer than 10 offenders sentenced for each of these offences between 2011 and 2016.

6.16 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 draft guideline covering all of these offences includes three levels of culpability and three levels of harm, and the sentencing range spans from 1 to 14 years' custody. Around 20 offenders were sentenced in total for these offences between 2011 and 2016, with a median custodial sentence length of 2 years 3 months.

6.17 The offence of possession for terrorist purposes (section 57, Terrorism Act 2000) has a statutory maximum sentence of 15 years' custody, and the guideline (covering only this offence) has three levels of culpability, two levels of harm, and a sentencing range from 1 to 14 years' custody. It is one of the lowest volume offences covered by the guidelines, with fewer than five offenders sentenced between 2011 and 2016.

6.18 Low volumes for all of these offences mean that very limited information has been available on which to determine current sentencing practice, and therefore on which to determine the likely impact of the guideline. Council intends to set sentencing practice at a level that reflects the seriousness of these offences, and so the guidelines as drafted are anticipated to result in sentences which in some cases will be more severe than has been the case in recent sentencing practice.

6.19 However, as fewer than 60 offenders in total were sentenced for these offences between 2011 and 2016, it is expected that any uplift in sentences as a result of the guideline will lead to a requirement for only minimal additional places.

⁶ The period from 2006 to 2016.

6.20 The Government has announced a proposal to increase the statutory maximum sentence for the offence of collection of terrorist information, from 10 years to 15 years. This will be a matter for parliament. The Council believe that the existing factors capture the range of offending that is likely to be seen by those committing this offence, however if the statutory maximum changes in accordance with the Government's proposal, it would be appropriate that the sentences should be higher in order to reflect the will of parliament, and in recognition of the fact that this type of offending is now considered to be far more serious than perceived when the legislation was first enacted. If more details about these proposals become available in the next few months, the final resource assessment accompanying the definitive guideline will consider these changes and their impact on requirements for prison places.

Failure to disclose information about acts of terrorism

6.21 The offence of failure to disclose information about acts of terrorism was introduced under section 38B of the Terrorism Act 2000, with a statutory maximum sentence of 5 years' custody. The draft guideline has two levels of culpability and two levels of harm, with a sentencing range from 6 months' to 5 years' custody. Fewer than 10 offenders were sentenced for this offence between 2006 and 2016. As this offence has a lower statutory maximum sentence than the others, and offenders are already receiving sentences at the top end of the proposed range, Council is not intending to change sentencing practice, and no impact on requirements for prison places is expected as a result of the guideline.

Membership of a proscribed organisation

The offence of belonging to or professing to belong to a proscribed organisation was introduced under Section 11 of the Terrorism Act 2000, with a statutory maximum sentence of 10 years' custody. The guideline has three levels of culpability, one level of harm and a sentencing range from 6 months' to 9 years' custody. Fewer than five offenders were sentenced for this offence between 2011 and 2016. The evidence available has been too limited to make a meaningful conclusion about the likely impact of the guideline, but as this is a very low volume offence, there is likely to be a negligible impact on the prison population if the guideline caused an increase in sentences.

7 RISKS

7.1 Two main risks have been identified:

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

7.2 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 guideline comes into effect.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. The low volumes for all of the terrorism offences also 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.

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

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

7.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of sentencing remarks for recent terrorism cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with judges carried out during the consultation period should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

7.6 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback 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 to ensure any divergence from its aims is identified as quickly as possible.