

Consultation Stage Resource Assessment

Terrorism Offences

Introduction

This document fulfils the Sentencing 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

In March 2018, the Sentencing Council published a package of definitive terrorism guidelines, which subsequently came into force on 27 April 2018.

On 12 April 2019, the Counter Terrorism and Border Security Act came into force, making substantial legislative changes to a number of terrorism offences covered by the Council's *Terrorism* guideline. The Council has therefore revised the relevant guidelines, and is now consulting on these. The guidelines will apply to both the Crown Court and to magistrates' courts, where appropriate.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline 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:

- Section 1 (Encouragement of Terrorism) Terrorism Act 2006;
- Section 2 (Dissemination of Terrorist Publications) Terrorism Act 2006;
- 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 Disclose Information about Acts of Terrorism) Terrorism Act 2000; and

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

- Section 58 (Collection of Terrorist Information) Terrorism Act 2000.

The other offences covered by the existing *Terrorism* guideline have not been revised, and consequently are not covered in this resource assessment.

The *Terrorism* guideline applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

Current sentencing practice

The intention is that the draft guideline will encourage consistency of approach to sentencing, and reflect the recent legislative changes to terrorism offences.

The Council's usual approach to developing a guideline is to consider both case law and current sentencing practice. Sources of evidence have included sentencing transcripts of recent terrorism cases, and sentencing data from the Court Proceedings Database. However, as the revision to this guideline was prompted by legislative changes which only recently came into force, in April 2019, data on current sentence levels are not yet available.

Detailed sentencing statistics for terrorism offences covered by the revised guideline 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>.

The offences covered by the revised *Terrorism* guideline are all low volume, with around 120 adult offenders² sentenced in total over the period 2008-2018.³ During this period the number of offenders sentenced each year has fluctuated within the range of 10 to 40. The majority of offenders (91 per cent over the the period 2008-2018) were sentenced to immediate custody. Average custodial sentence lengths vary across the different offences, due to their different statutory maximum sentences. In 2018, 20 offenders were sentenced in total for these offences. Around half of the offenders sentenced in 2018 were sentenced for encouragement of terrorism offences.

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

² Figures relating to volumes within the resource assessment have been rounded to the nearest 10.

³ 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 median average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying data tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

objectives of the draft guideline, 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 draft guideline are therefore subject to a large 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 proposed draft guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

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

Resource impacts

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

Summary

The expected impact of each guideline is provided in detail below. Overall, under the draft guideline, sentences are anticipated to increase in some cases, however any increase in sentence lengths will be a result of the recent legislative changes, rather than the guideline.

The revised sentencing guideline therefore aims to ensure that future sentencing for terrorism offences is in line with the intention of Parliament when it increased the maximum penalties for some of these offences, while at the same time ensuring consistency of sentencing for these offences.

Encouragement of terrorism, failure to disclose information about acts of terrorism, collection of terrorist information⁴

The guideline for encouragement of terrorism 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.

Since 2008 fewer than 20 offenders have been sentenced for these offences each year, and the median custodial sentence length over the last decade was 2 years 9 months.

⁴ These offences have been grouped together as they are all offences for which the statutory maximum sentence has been increased.

The statutory maximum sentence for these offences has increased 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 (i.e. for the more serious offences).

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. Ten offenders were sentenced for this offence between 2008 and 2018, and the median custodial sentence length during this period was 2 years 4 months.

The statutory maximum sentence for this offence has doubled, 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 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.

Since 2011 fewer than 10 offenders have been sentenced for this offence each year. During the period 2011 to 2018, the median custodial sentence length was 3 years 6 months.

Recent legislation has both increased the statutory maximum sentence for this offence, from 10 to 15 years' custody, and also widened the scope of the offence. 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.

It is expected that the changes to sentence levels in these guidelines will result in increased sentences for those offenders sentenced for more serious offences. Any impact on prison resources would, however, be a result of the legislative changes increasing the statutory maximum sentences, and not due to the sentencing guideline.

Support for a proscribed organisation

The offence of support for a proscribed organisation comes under section 12 of the Terrorism Act 2000, with a statutory maximum sentence of 10 years' custody. The existing guideline has a sentencing range from a high level community order to 9 years' custody.

Fewer than 10 offenders have been sentenced for this offence each year since 2011. The median custodial sentence length over the period 2011 to 2018 was 5 years.

The Counter-Terrorism and Border Security Act 2019 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 whom the expression is directed will be encouraged to support a proscribed organisation.

Given that the scope of these offences has been widened, the culpability factors at step one of the guideline have been amended to reflect this. The sentencing table containing the sentence levels has not changed, however, and it is therefore not

anticipated that the revised guideline for this offence will have an impact on correctional resources.

Funding terrorism

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.

Between 2011 and 2018, 20 offenders were sentenced for these offences, and the median custodial sentence length was 2 years 8 months.

There have not been any legislative changes to these offences, however the Council has become aware 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 suspect that the money or property will or may be used for the purposes of terrorism'. In addition, the wording for culpability B at step one of the guideline has been amended, to align it with similar wording in more recent Sentencing Council guidelines. No changes have been made to the sentencing table in the guideline.

Given that the main changes to this guideline are at step two, 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.

Risks

In attempting to estimate the likely resource impacts of this guideline, there are two main risks to consider:

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 guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the consultation phase. This will include consideration of updated sentencing data, covering the period since the new legislation came into force. However, given the low number of offenders sentenced for these offences each year, it is unlikely that sufficient data will be available to provide a comprehensive picture of current sentencing practice.

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

If sentencers do not interpret the guideline 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 a new guideline 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.

Consultees can also feed back their views of the likely effect of the guideline, 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.