

Terrorism Guideline Consultation

October 2017

Terrorism Guideline

Consultation

About this consultation

To:	This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
Duration:	From 12 October 2017 to 22 November 2017
Enquiries (including requests for the paper in an alternative format) to:	<p>Office of the Sentencing Council Royal Courts of Justice (full address as below)</p> <p>Tel: 020 7071 5793 Email: info@sentencingcouncil.gsi.gov.uk</p>
How to respond:	<p>Please send your response by 22 November 2017 to:</p> <p>Vicky Hunt Office of the Sentencing Council Room EB20 Royal Courts of Justice Strand London WC2A 2LL</p> <p>DX: 44450 RCJ/Strand Email: consultation@sentencingcouncil.gsi.gov.uk</p>
Additional ways to feed in your views:	<p>This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:</p> <p>www.sentencingcouncil.org.uk</p> <p>A series of consultation meetings is also taking place. For further information, please use the “Enquiries” contact details above.</p>
Response paper:	<p>Following the conclusion of this consultation exercise, a response will be published at:</p> <p>www.sentencingcouncil.org.uk</p>
Freedom of information:	<p>We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.</p> <p>In addition, responses may be shared with the Justice Committee of the House of Commons.</p>

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit¹ extends to allow consultation on the sentencing of offenders following conviction.

Why terrorism?

In 2016, in the absence of sentencing guidelines for terrorism offences, the Court of Appeal gave guidance for sentences imposed under section 5 Terrorism Act 2006 (Preparation of Terrorist Acts) in the case of *R v Kahar & Others*² (*Kahar*). The guidance was intended to assist courts to achieve consistency when sentencing these very serious cases which vary hugely in nature. This guidance has worked effectively for sentencing preparation cases up until now, but the changing nature of offending requires that the guidance be reconsidered, and that a comprehensive package of guidelines be produced to cover a wider number of offences.

Over the last year there have been a number of terrorist attacks, and many more have been prevented. These latest acts of terrorism have involved far less sophisticated methods, many using motor vehicles, or knives, with devastating effects. This is a change from the types of case that were considered by the Court of Appeal when putting together the guidance that is set out in *Kahar*. In addition, there has been growing concern about the availability of extremist material over the internet. The wide availability of this material is increasingly of concern given that consumption of this material can lead to individuals becoming self-radicalised.

It is important to note that any terrorist incident where deaths actually occur, would be charged as murder. The offences covered by these guidelines include offences such as preparation for terrorism, encouragement of terrorism and possession for terrorist purposes. The harm that is involved is the harm that was intended, rather than that that was caused.

This comprehensive package of guidelines has been drafted to help sentencers with the assistance of statistical data case transcripts and Court of Appeal cases.

A fuller explanation of the scope of the guideline and the elements of the offences is given at section one below.

¹ ss.118-136 Coroners and Justice Act 2009

² [2016] EWCA Crim 568

Which offences are covered by the guideline?

There are nine draft guidelines as follows:

- Preparation of Terrorist Acts
- Explosive Substances
- Encouragement of Terrorism
- Membership of a Proscribed Organisation
- Support of a Proscribed Organisation
- Funding Terrorism
- Failure to Provide Information about Acts of Terrorism
- Possession for Terrorist Purposes
- Collection of Terrorist Information

What is the Council consulting about?

The Council has produced this consultation paper to seek the views of as many people as possible interested in the sentencing of terrorism offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation and case law upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for terrorist offences; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A.

What else is happening as part of the consultation process?

As a result of the recent terrorist attacks the Council felt it important to expedite the project in order to produce a package of guidelines as soon as possible. Therefore, this is a reduced consultation period of 6 weeks.

During the consultation period, the Council will host a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area as well as sentencers. We will also be conducting interviews with a sample of High Court and Crown Court judges who sentence terrorist cases to ascertain how they would apply the guideline and to identify whether the guideline presents any practical difficulties for sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all Crown Courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment. These can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk.

Section One: Overarching issues and the context of the guidelines

Terrorism

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after [date to be confirmed], regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

(a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Council’s definitive guideline, *Overarching Principles – Sentencing Children and Young People*.³

The guideline in relation to current practice and existing guidelines

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Ministry of Justice Court Proceedings database for the offences covered in the guideline. However, many of the offences have

³ <https://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline/>

such low volumes that it is difficult to establish an accurate picture of current sentencing levels.

The Preparation of Terrorist Acts guideline is expected to result in an increase in sentencing practice for offences at the lower end of seriousness. The Council considered the sentences as set out in the guideline case *Kahar* alongside the details of recent cases, and agreed that sentencing practice should be increased for these offences. In *Kahar* the lowest level offence will fall into Level 6 which has a sentencing range of 21 months to 5 years, whereas the lowest sentence within the proposed guideline is 3 years to 6 years. The cases that will fall into the lower categories of the proposed guideline are ones where preparations might not be as well developed or an offender may be offering a small amount of assistance to others.

The Council determined that, when considering these actions in the current climate, where a terrorist act could be planned in a very short time, using readily available items as weapons, combined with online extremist material on websites which normalise terrorist activity, and create a climate where acts of terrorism can be committed by many rather than a few highly-organised individuals, these offences are more serious than they have previously been perceived. The Council believes that our proposals take account of the need to punish and incapacitate to a greater extent in the light of the emergence of greater threats to society.

A statistical bulletin setting out information about sentencing levels and trends for terrorism is published on the Council's website.⁴

During the consultation period the Council will be testing the guideline with members of the judiciary who frequently hear this type of case.

⁴ <https://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

Section Two: Developing the guideline

Assessing seriousness

The guideline sets out a step-by-step decision making process for the court to use when sentencing each type of offence. This means that all courts are following a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline will be different. The draft guideline aims to help the court to decide how serious an offence is and what the sentence should be.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and indicates the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The approach taken at step one to culpability varies across the guidelines but in broad terms, culpability relates to the role the offender has played, the level of planning involved, the determination of the offender to commit an offence, and, where relevant, the sophistication with which the offence was carried out.

Harm is assessed in terms of the actual or potential harm caused as a result of the offence.

STEP TWO

Starting point and category range

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. This is discussed in more detail in the sections relating to each guideline below. The court must then consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive.

The starting points and ranges in the draft guidelines have been proposed based on a combination of statistical data collected by the Ministry of Justice, the starting points and

ranges set out in the Court of Appeal guideline case of *Kahar*, press reports, reported cases, and the collective judgement of the members of the Council.

There are then further steps to follow. The steps set out below feature in all of the guidelines, but some guidelines have additional steps.

STEP THREE

Consider any factors which indicate a reduction, for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.⁵

STEP FIVE

Totality principle

(Step seven for the preparation of terrorist acts, explosive substances and possession for terrorist purposes guidelines.)

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.

STEP SIX

Ancillary orders

(Step eight for the preparation of terrorist acts, explosive substances and possession for terrorist purposes guidelines.)

In all cases the court should consider whether to make any ancillary orders. There is additional guidance on the type of ancillary orders that are available.

⁵ <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline-2/>

STEP SEVEN

Reasons

(Step nine for the preparation of terrorist acts, explosive substances and possession for terrorist purposes guidelines.)

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail (tagged curfew)

(Step ten for the preparation of terrorist acts, explosive substances and possession for terrorist purposes guidelines.)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Section Three: Preparation of Terrorist Acts

(Draft guideline at page 75.)

This section considers offences under section 5 Terrorism Act 2006. A person commits an offence if, with the intention of committing acts of terrorism, or assisting another to commit such acts, he engages in any conduct in preparation for giving effect to his intention.

As the offence is preparatory in nature the culpability and harm factors associated with the offence reflect how close a person has come to carrying out a terrorist act, how determined they were, and what harm would have been caused had the act been carried out.

Step one

The first step of the guideline is to consider the culpability of the offender. Four levels of culpability are defined but the guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors. The Council recognises that the factual circumstances of individual offences can vary enormously and a degree of flexibility in determining the culpability level is necessary to achieve a fair assessment.

Culpability factors

The assessment of culpability includes a consideration of the seriousness of the preparatory act, the role played by the offender, and how close the offender came to carrying out the act.

Culpability A

There is only one factor in this category:

- Acting alone, or significant participant, in terrorist activity where preparations are complete or almost complete

This factor will apply to an offender who is a significant participant in a group activity or an offender who is acting alone. In either scenario the offender has control over the preparations, either completely or to a significant degree. The preparations must also be at a stage where they are complete or nearly complete. The Council believes that this demonstrates that the offender is committed to carrying out the act and has the capability to ensure the act is completed.

Culpability B

There are four factors in this category:

- Acting alone, or significant participant, in terrorist activity where preparations are well-advanced but not complete or almost complete

The only difference from this factor and the factor in culpability A is that the preparations need not be in the final stages, however they must still be advanced.

- Lesser participant in terrorist activity where preparations are complete or almost complete

As with culpability A, the preparations for the terrorist act must be complete or almost complete, however the offender will be playing a less significant role. This factor would not apply to an offender who is acting alone.

- Offender travels abroad for terrorist purposes

This factor would include any offender who travels abroad in order to engage in training, fighting or any other terrorist activity.

- Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)

This factor will apply to an offender who organises others to engage in terrorist activity anywhere in the world.

Culpability C

- Lesser participant in terrorist activity where preparations are well-advanced but not complete or almost complete

Similar to the factors in culpability A and B, this factor includes offenders who are playing a less significant role, and where the preparations are well advanced but not in the final stages.

- Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B)

This factor applies to an offender who is not part of the main group of offenders involved in preparing the terrorist act; they may not even know what the act will involve, but they are aware that preparations are being made for an act of terrorism, and they provide significant assistance or encouragement to those involved in the preparations.

- Determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)

This factor applies to offenders who make significant steps toward travelling abroad to engage in training or fighting, or any other type of terrorist activity, but ultimately the offender does not manage to get abroad to complete his aim.

Culpability D

There are two lower culpability factors:

- Offender has engaged in very limited preparation of terrorist activity

This factor is for an offender who is in the very early stages of preparation. At this stage it may even be too early to tell the nature of the plan.

- Act(s) of limited assistance or encouragement to other(s)

This factor would include an offender who is not part of the main preparations, but provides limited help, assistance or encouragement.

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> Acting alone, or significant participant, in terrorist activity where preparations are complete or almost complete
B	<ul style="list-style-type: none"> Acting alone, or significant participant, in terrorist activity where preparations are well-advanced but not complete or almost complete Lesser participant in terrorist activity where preparations are complete or almost complete Offender travels abroad for terrorist purposes Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)
C	<ul style="list-style-type: none"> Lesser participant in terrorist activity where preparations are well-advanced but not complete or almost complete Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B) Determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)
D	<ul style="list-style-type: none"> Offender has engaged in very limited preparation of terrorist activity Act(s) of limited assistance or encouragement to other(s)

Question 1: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Category 1

There is just one factor indicating the highest level of harm:

- Endangerment of life

As the guideline concerns preparation for a terrorist act there will be no actual loss of life caused. A terrorist act resulting in a loss of life would more likely be charged as murder. Therefore, the most serious level of harm that could be caused by this offence is the endangerment of life. This will apply when it is clear that the offender is preparing a terrorist act intending to cause loss of life or one where he is reckless as to whether lives will be lost.

The Council had considered whether the highest category should be reserved for offenders who endanger life on a large scale, i.e. those that plan to bomb a crowded venue, or drive into a crowd to kill as many as they can. However, the Council concluded that the endangerment of any life should lead to the highest level of harm, and that where there was endangerment of life on a large scale this would be an aggravating feature (see step 2) that could lead to a further uplift in sentence.

Category 2

There are two factors that indicate category two harm:

- Widespread and serious damage to property or economic interests
- Substantial impact upon civic infrastructure

The Council considered that these factors indicate a serious level of harm, likely to have an impact on a significant number of people, and so merit the second highest category of harm. Examples might include damage to the financial sector, or to the NHS.

Category 3

There is just one factor in this category of harm:

- Other cases where characteristics for categories 1 or 2 are not present

This is a 'catch all' factor for all other cases that do not fall into the two higher categories. This is the lowest level of harm, attracting the lowest sentences.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> • Endangerment of life
Category 2	<ul style="list-style-type: none"> • Widespread and serious damage to property or economic interests • Substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 2 are not present

Question 2: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

Sentence levels

The sentence ranges cover a very wide range of outcomes (from three years to life imprisonment with a minimum term of 40 years) and this range is distributed over 12 categories, with 12 starting points. It is important to note that whilst the table includes life imprisonment and extended terms of imprisonment, these are sentences that are only available when sentencing offenders who are found to be ‘dangerous offenders’. The Court must, therefore have regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003, to decide whether it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). Where the criteria are not met the court should instead of a life sentence, impose a determinate sentence approximately twice the length of the minimum term that is stated in the sentence table. The court must also have regard to section 236A Criminal Justice Act (special custodial sentence for certain offenders of particular concern).

The starting points and ranges have been based on statistical data from the Court Proceedings Database, analysis of first instance transcripts and Court of Appeal sentencing remarks, reference to the ranges within the Lord Chief Justice’s guidance as set out in *Kahar*, and from the collective judgement of the members of the Council.

Between 2006 and 2016 there were 90 adult offenders sentenced for the section 5 offence. 81 out of the 90 received an immediate custodial sentence. The average custodial sentence length was 8 years 5 months (mean) or 6 years (median), after any reduction for guilty plea.

Since the Lord Chief Justice set out his guidance in *Kahar* this has established the sentencing practice for these offences. The Council’s draft guideline cannot easily be compared with the Lord Chief Justice’s guidance as the guidance covered just 6 levels of offending whereas this guideline covers 12 levels. However, the Council has chosen to

increase sentence levels for this offence to some extent. As the upper levels of the Lord Chief Justice's guidance were already high (the highest sentence in the guidance is life imprisonment with a minimum term of 40 years, the same as the Council's draft guideline), the Council has maintained these levels and so the increase is only really seen at the lowest levels of the draft guideline.

The reason for the Council's decision to increase sentencing practice is due to the changing nature of offending in this area. Over the last year there have been five significant acts of terrorism in the UK (Westminster, Manchester Arena, London Bridge, Finsbury Park and Parsons Green tube), and similar acts in other countries. These acts have showed that offenders are taking less time to prepare, and their acts are less sophisticated but are equally as deadly. Offenders are more frequently using knives and vehicles as weapons, which are readily available so involve limited or no preparation to obtain. Many of the cases referred to in the Lord Chief Justice's guidance e.g. Ibrahim & Others,⁶ Barot,⁷ Khyam & Others,⁸ are 'big plot' cases that involve cells of offenders with different roles who are involved in months or years of planning to carry out large scale, catastrophic acts which, if completed, would result in loss of life on a mass scale. They tend to involve the building of bombs, obtaining of chemicals, members travelling abroad for training, and significant funding. *Kahar* was drafted to cater for this type of offending, whereas now the guideline needs to ensure that the new category of terrorists is covered as they are equally intent on causing significant loss of life and terror to members of the public, but are using quicker, less sophisticated methods to achieve it.

STEP TWO: Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page. ***Offenders committing offences at the upper end of seriousness are likely to be found dangerous and so the table below includes options for life sentences and/ or extended sentences. The court must however have regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination before imposing such sentences. (See step FIVE below). Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered. This guidance does not intend to restrict a court from imposing such sentences in any case where it is appropriate to do so.**

⁶ [2008] EWCA Crim 880

⁷ [2007] EWCA Crim 1119

⁸ [2008] EWCA Crim 1612

Harm	Culpability			
	A	B	C	D
1	<p>Starting point</p> <p>Life imprisonment with a minimum term of 35 years*</p> <p>Category range</p> <p>Life imprisonment with minimum term of 30 – 40 years*</p>	<p>Starting point</p> <p>Life imprisonment with minimum term of 20 years*</p> <p>Category range</p> <p>Life imprisonment with a minimum term 15 – 25 years. Or a determinate sentence of 30 – 40 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>Life imprisonment with minimum term of 15 years or a determinate sentence of 25 years with an extension period of 5 years*</p> <p>Category range</p> <p>Life imprisonment with minimum term 10 – 20 years. Or a determinate sentence of 20 – 30 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>15 years' custody with an extension period of 5 years*</p> <p>Category range</p> <p>10 – 20 years with an extension period of 5 years*</p>
2	<p>Starting point</p> <p>25 years with an extension period of 5 years*</p> <p>Category range</p> <p>20 – 30 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>20 years with an extension period of 5 years*</p> <p>Category range</p> <p>15 – 25 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>15 years' custody with an extension period of 5 years*</p> <p>Category range</p> <p>10 – 20 years' custody with an extension period of 5 years*</p>	<p>Starting point</p> <p>8 years' custody</p> <p>Category range</p> <p>6 – 10 years' custody</p>
3	<p>Starting point</p> <p>16 years' custody</p> <p>Category range</p> <p>12 – 20 years</p>	<p>Starting point</p> <p>12 years' custody</p> <p>Category range</p> <p>8 – 16 years' custody</p>	<p>Starting point</p> <p>8 years' custody</p> <p>Category range</p> <p>6 – 10 years' custody</p>	<p>Starting point</p> <p>4 years' custody</p> <p>Category range</p> <p>3 – 6 years' custody</p>

Question 3: Do you agree that the higher sentences proposed by this table are justified? Do you have any other comments?

Aggravating and mitigating factors

The aggravating and mitigating factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the sentence arrived at so far or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in terrorist cases.

Factors increasing seriousness
<i>Statutory aggravating factors</i>
<ul style="list-style-type: none"> • 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 (<i>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</i>)
<i>Other aggravating factors</i>
<ul style="list-style-type: none"> • Many lives endangered • Recent and/or repeated possession or accessing of extremist material • Communication with other extremists • Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/ or avoid or impede detection • Indoctrinated or encouraged others • Preparation was with a view to engage in combat with UK armed forces • Taking or preparing to take equipment abroad to be used in violent action • Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one • Failed to respond to warnings • Failure to comply with court orders • Offence committed on licence or Post Sentence Supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mindset prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

Question 4: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

Case studies

The following case studies are provided to illustrate how the guideline would operate in practice.

Case 1

The offender, A, was a male aged 26. His good friend, B, held extremist views and had recently shown an interest in terrorist activity. B introduced A to another couple of his friends who shared his views. Over time A came round to their way of thinking. Together they discussed 'taking action'. The men met several times to discuss a plan but were careful to avoid detection by meeting outdoors and using encrypted technology when communicating over the internet. They planned to hire a van and drive it into a crowded street in London on New Year's eve. The men also purchased knives intending to kill any other people in their path as they fled the scene. The men also made fake 'suicide vests'. A had been responsible for hiring the van. He had provided fake documents and hired the biggest van available. On 28 December they were arrested. A pleaded not guilty and his case went to trial.

Applying the guideline to this offence it would be assessed as culpability A 'acting alone or significant participant in terrorist activity where preparations are complete or almost complete'. The offender was clearly a significant participant as he was fully involved and aware of the plan, and was entrusted to purchase the main weapon to be used in the attack. The plan was to be carried out in just 3 days' time so preparations were complete or almost complete.

The harm category would be 1 as the offenders clearly intended to kill members of the public.

This leads to a starting point of life imprisonment with a minimum term of 35 years. The Court will need to carry out a dangerousness assessment to ensure that this is an available sentence. If not a determinate sentence would have to be considered.

The offence would be significantly aggravated by the fact that the offenders clearly intended that many lives would be lost and they had deliberately used encrypted

communications to avoid or impede detection.

Assuming the offender was found to be dangerous, a sentence in the region of Life with a minimum term of 40 years would be imposed.

Question 5: Do you have any views on the application of the guideline to case 1?

Case 2

The offender was a 20-year-old male with no previous convictions. He had become self-radicalised after spending months reading extremist material over the internet and communicating with other likeminded individuals. In committing this offence, he had engaged in online conversations with another likeminded supporter of terrorism. For months the offender spoke to this other male about trying to get hold of a bomb. He sent him an article showing how to make a bomb using simple, everyday equipment, and asked him to make it. The two met up and the offender handed over the money to buy the materials and make the bomb. It was agreed the bomb would be supplied within a matter of weeks. The offender spent a considerable amount of time researching over the internet using searches such as 'busiest areas in London', 'major events in the next month'. Shortly after the meeting the offender was arrested for a preparation offence. The case went to trial and he was convicted.

Applying the guideline to this offence it would be assessed as culpability B 'acting alone or significant participant in terrorist activity where preparations are well advanced but not complete or almost complete'.

The harm category would be 1 as the offender clearly intended that the bomb be used to kill people.

This leads to a starting point of life imprisonment with a minimum term of 20 years. The court will need to carry out a dangerousness assessment to ensure that this is an available sentence. If not a determinate sentence of approximately 40 years would have to be considered. The offence would be significantly aggravated by the fact that the offender clearly intended that many lives would be lost, he had both recent and repeated possession of extremist material, and he had been in communication with other known extremists. There would be some limited mitigation for the lack of previous convictions.

Assuming the offender was found to be dangerous, a sentence in the region of Life with a minimum term of 24 years would be imposed.

Question 6: Do you have any views on the application of the guideline to case 2?

Case 3

The offender was a 40-year-old female with no previous convictions. Her activity on social media, and videos found in her possession demonstrated a profoundly extremist mindset and support for terrorism. She expressed a strong interest in travelling abroad to join a proscribed organisation. She was put in touch with another, B, a 20-year-old male who had already set off to join the group. In conversations with him the offender provided advice on steps to take in the event that B was stopped whilst travelling abroad. She also put B in touch with a friend that she had made over the internet and asked that friend to offer assistance to B.

Applying the guideline to this offence it would be assessed as culpability D 'act(s) of limited assistance or encouragement to other(s)'.

The harm category would be 3.

This leads to a starting point of 4 years' custody.

The offence is aggravated by recent and repeated possession of extremist material, and she had been in communication with other known extremists. There would be some mitigation for the lack of previous convictions.

The final sentence would be in the region of 4 – 5 years' imprisonment.

Question 7: Do you have any views on the application of the guideline to case 3?

Section Four: Explosive Substances (Terrorism Only)

(Draft guideline at page 82.)

This guideline covers offences under sections 2 and 3 of the Explosive Substances Act 1883. The Explosive Substances Act creates an offence of causing an explosion likely to endanger life or property (section 2) and an offence of attempting to cause an explosion, or making or keeping explosives with intent to endanger life or property (section 3). As this is part of a package of guidelines on terrorism the Council has chosen to restrict the guideline to include only those offences that have a terrorist connection.

Many of the section 3 offences will be very similar in nature to a preparation of terrorist acts offence (section 5 Terrorist Act 2006) and so there are many similarities between this and the earlier guideline.

Step one

Culpability factors

The first step of the guideline is to consider the culpability of the offender. Four levels of culpability are defined but as with the earlier guideline, a fair assessment of the offender's overall culpability will require a balancing of the factors.

Category A

There are two factors in this category:

- Offender caused an explosion or used, developed or was in possession of a viable explosive device

The first part of this factor covers the section 2 offence of actually causing an explosion. The second part covers a section 3 offence of attempting to cause an explosion. The Council felt that being ready to cause an explosion, i.e. developing or being in possession of a viable device, meant that the offender was equally as culpable as one who actually caused an explosion, and that they should also be in the highest category. This would include an offender who was planning a terrorist act, had a bomb ready to go and was just waiting for the relevant time to use it. The main difference between the two scenarios will be the difference in the harm caused, and that will be considered later.

- Acting alone or significant participant in terrorist activity involving explosives, where preparations are complete or almost complete

This factor is the same as the top factor in the Preparation of Terrorist Acts guideline.

Category B

There are three factors in this category:

- Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device

This factor is for offenders who have not yet fully developed an explosive device, or have not yet obtained a device, but have made significant steps toward doing so. It would include an offender who has obtained all or most of the elements to build the device but was yet to construct it, or an offender who has made contact with someone who could supply a device and discussed purchasing it.

- Acting alone or significant participant in terrorist activity involving explosives where preparations are well-advanced but not complete or almost complete
- Lesser participant in terrorist activity involving explosives where preparations are complete or almost complete

These two factors are the same as those in the Preparation of Terrorist Acts guideline.

Category C

There are two factors in this category:

- Lesser participant in terrorist activity operation involving explosives where preparations are well-advanced but not complete or almost complete
- Act(s) of significant assistance or encouragement to another/others involved in causing, developing or possessing an explosive device (where not falling within A or B)

These two factors are the same as those in the Preparation of Terrorist Acts guideline.

Category D

There are three factors in this category:

- Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device

This factor is for an offender who is in the very early stages of creating or obtaining an explosive device. They have perhaps carried out research only.

- Offender has engaged in very limited preparation of terrorist activity involving explosives
- Act(s) of limited assistance or encouragement to other(s)

The last two factors are the same as those in the Preparation of Terrorist Acts guideline.

STEP ONE**Determining the offence category**

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	<ul style="list-style-type: none"> Offender caused an explosion or used, developed or was in possession of a viable explosive device Acting alone or significant participant in terrorist activity involving explosives, where preparations are complete or almost complete
B	<ul style="list-style-type: none"> Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device Acting alone or significant participant in terrorist activity involving explosives where preparations are well-advanced but not complete or almost complete Lesser participant in terrorist activity involving explosives where preparations are complete or almost complete
C	<ul style="list-style-type: none"> Lesser participant in terrorist activity operation involving explosives where preparations are well-advanced but not complete or almost complete Act(s) of significant assistance or encouragement to another/others involved in causing, developing or possessing an explosive device (where not falling within A or B)
D	<ul style="list-style-type: none"> Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device Offender has engaged in very limited preparation of terrorist activity involving explosives Act(s) of limited assistance or encouragement to other(s)

Question 8: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

The harm factors are the same as the Preparation of Terrorist Acts guideline

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> • Endangerment of life
Category 2	<ul style="list-style-type: none"> • Widespread and serious damage to property or economic interests • Substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 2 are not present

Offences under section 2 of the Explosive Substances Act might involve actual harm caused rather than just intended (unlike the Preparation of Terrorist Acts guideline). However, if the offender caused an explosion resulting in loss of life it is likely that a murder or manslaughter charge would be brought.

Question 9: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point. The sentence levels in this guideline are the same as those in the Preparation of Terrorist Acts guideline. (see page 75).

Between 2011 and 2016 there were 38 adult offenders sentenced for offences under sections 2 and 3 of the Explosive Substances Act.⁹ 36 out of the 38 received an immediate custodial sentence. The average custodial sentence length was 9 years 5 months (mean) or 7 years 6 months (median), after any reduction for guilty plea.

Question 10: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in these cases.

⁹ These figures include all adult offenders sentenced under this legislation (i.e. including those not related to terrorism), as it is not possible to separate these out.

All of the aggravating and mitigating factors are the same as those in the Preparation of Terrorist Acts guideline. (see page 75).

Question 11: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

Case studies

The following case studies are provided to illustrate how the guideline would operate in practice.

Case 4

Offenders A and B were husband and wife. They had both become radicalised and were supporters of a proscribed organisation. They had embarked on a plan to purchase a considerable amount of chemicals with a view to making a series of explosives which could be used for a terrorist attack. B (the female offender) had financed this and A (the male offender) had purchased the chemicals. A tested the explosives and uploaded a video of the test explosion in his garden to social media. He sought advice on social media about which location he should target in the attack. Upon arrest his house was searched and substantial quantities of chemical explosives were found. Interrogation of their phones revealed that they had spent a considerable amount of time persuading their young nephew to become involved in their plans, and that he had in fact filmed the test explosion and helped purchase some materials.

Expert evidence at trial revealed that the explosives were in the final stages of being deployed.

Applying the guideline to this offence it would be assessed as culpability A 'offender caused an explosion or used, developed or was in possession of a viable explosive device'. It is clear from both the test explosion and the expert evidence that the device was viable.

The harm category would be 1, as it is clear the intention was to cause loss of life.

This leads to a starting point of life imprisonment with a minimum term of 35 years. The court will need to carry out a dangerousness assessment to ensure that this is an available sentence for both offenders. If not a determinate sentence would have to be considered.

The offence would be aggravated by the fact that the offenders had indoctrinated or encouraged their nephew to be involved.

Assuming the offenders were found to be dangerous, a sentence in the region of Life with a minimum term of 36 years would be imposed on both.

Question 12: Do you have any views on the application of the guideline to case 4?**Case 5**

Offender A was a 22-year-old male and architecture student of previous good character. He had been using the internet to talk to others of his age, and over time had become friendly with some radicalised individuals. A soon learnt that one of the men he was communicating with, B, was planning a terrorist attack with a group of **other** individuals. He was unaware of the details of the plan, but understood that some of the group were significant parties in a known proscribed organisation.

Over time A learnt that the plan involved the use of explosives but was never entrusted with any of the details. B bragged that the plans were coming together and that the big day would take place in a few months. He said 'lives would be lost in their hundreds'. Knowing that A was an architecture student, B asked A if he could assist by carrying out some research about how buildings collapsed. A agreed and a week later sent him back a report.

A was arrested. He pleaded guilty.

Applying the guideline to this offence it would be assessed as culpability C 'lesser participant in terrorist activity involving explosives where preparations are advanced but not complete or almost complete'.

The harm category would be 1, as it was clear that the intention of the terrorist act would be to cause loss of life.

This leads to a starting point of life imprisonment with a minimum term of 15 years or a determinate sentence of 25 years with an extension period of 5 years. The Court will need to carry out a dangerousness assessment to ensure that this is an available sentence. If not a determinate sentence should be imposed with no extension period.

The offence would be significantly aggravated by the fact that the intention was that many lives would be lost. There would be mitigation for previous good character.

After a reduction for pleading guilty the final sentence would be life imprisonment with a minimum term of 10 years (if the dangerousness criteria were met) or a determinate sentence of 20 years.

Question 13: Do you have any views on the application of the guideline to case 5?

Section Five: Encouragement of Terrorism

(Draft guideline at page 90.)

This guideline covers offences under sections one and two of the Terrorism Act 2006. Both of these offences are concerned with statements or publications likely to be understood by those to whom they are published as ‘encouragement’ to them to commit, prepare or instigate acts of terrorism. The ‘statement’ offence (section one) captures those who are responsible for publishing prohibited statements, and the ‘dissemination’ offence (section two) captures those who further disseminate it.

Section one prohibits the publication of a statement which is likely to be understood as a direct or indirect encouragement to engage in terrorism. Indirect encouragement includes, but is not limited to, statements ‘glorifying’ terrorist acts in such a way that members of the public could reasonably infer that the conduct should be emulated by them.

Section two prohibits the dissemination of terrorist publications, or of being in possession of such publications with a view to dissemination. A terrorist publication is one which encourages terrorism (directly or indirectly) or one which would be useful in the commission of an act of terrorism.

Both section one and two offences can be committed intentionally or recklessly. The guideline covers both of these offences.

Step one

Three levels of culpability are defined. As with the earlier guidelines, the draft guideline recognises that a fair assessment of the offender’s overall culpability will require a balancing of the factors.

Culpability factors

Culpability considers the extent to which an offender intends to encourage terrorism. Those who *intend* to encourage are in higher culpability categories than those who are *reckless* as to the effect their actions might have on others.

Category A

There are three factors in this category:

- Offender in position of trust, authority or influence and abuses their position to encourage others

This factor would include a university or college lecturer or a leader of a place of worship who is in a position of authority and uses their position to encourage their students or worshipers to take part in terrorist activity.

- Intended to encourage others to engage in terrorist activity
- Intended to provide assistance to others to engage in terrorist activity

These two factors include those who intentionally (rather than recklessly) seek to encourage or assist others engaging in terrorist activity. This might include an offender who uses social media to share articles or audio of lectures which advocate terrorist activity, intending that others will be encouraged to commit or engage in terrorist activity. Or it may include an offender who shares articles showing how to build a bomb for terrorist purposes, or how to travel abroad to engage in terrorist acts, intending that someone will make use of the information.

Category B

This includes just one factor:

- Reckless as to whether others would be encouraged or assisted to engage in terrorist activity **and** published statement/disseminated publication widely

This factor includes those who recklessly provide or share information and do so with large audiences. This might include an offender who has a bookshop selling literature which includes literature that might assist or encourage another to commit acts of terrorism. The bookseller sells his books far and wide. He is reckless as to whether his books will have this effect, his only interest is in making a living.

Category C

There is only one lower culpability factor:

- Other cases where characteristics for categories A or B are not present

This is a 'catch all' factor for those offences not falling into A or B. This might include an offender who recklessly encourages or assists others to engage in terrorist activity who only publishes or disseminates the material to a very limited audience, perhaps to just one or two other people.

Step One

Determining the offence category

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	<ul style="list-style-type: none"> Offender in position of trust, authority or influence and abuses their position to encourage others Intended to encourage others to engage in terrorist activity Intended to provide assistance to others to engage in terrorist activity
B	<ul style="list-style-type: none"> Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/ disseminated publication widely)
C	<ul style="list-style-type: none"> Other cases where characteristics for categories A or B are not present

Question 14: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

The harm factors consider the nature of the material and whether it directly or indirectly encourages terrorist activity, and the nature of that terrorist activity.

Category 1

There are two factors in this category of harm:

- Evidence that others have acted on or been assisted by the encouragement

Where there is clear evidence that another person has acted on or been assisted by the encouragement the Council believes that the case should fall into the highest category of harm. This might include a case where a person has received instruction on bomb making by the offender and gone on to build a bomb. Or a case where an offender has given another instruction on how to get to travel abroad to fight, and that person has then left the country.

- Statement/terrorist publication directly encourages or assists terrorist activity which endangers life

This factor covers offences where the material is a direct encouragement to terrorism, i.e. it does more than simply glorify terrorism, it actively encourages others to engage in it. In addition, the type of terrorism that it encourages is activity that endangers life. As with the earlier guidelines the Council believes that any terrorist act that endangers life should be placed into the highest harm bracket.

Category 2

There are two factors that indicate category two harm:

- Statement/terrorist publication indirectly encourages or glorifies terrorist activity which endangers life

This factor would include an offence where the offender posts articles or pictures glorifying a terrorist act, perhaps celebrating a terrorist atrocity.

- Statement/terrorist publication directly encourages or assists terrorist activity not endangering life

This factor is for those offenders who share or publish material that actively encourages or assists others to carry out terrorist activity that does not endanger life but that could cause widespread damage to property, or impact on civic infrastructure.

Category 3

There are two factors in this category of harm:

- Statement/terrorist publication indirectly encourages or glorifies terrorist activity not endangering life

Similar to category 2 this factor includes those offenders who glorify terrorist activity, but in this case it is not activity that endangers life. It might be a person who glorifies an act of terrorism that led to a serious impact on the NHS.

- Other cases where characteristics for categories 1 or 2 are not present

This factor is a 'catch all' for those cases not falling into categories 1 or 2, and represents the lowest level of harm.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> • Evidence that others have acted on or been assisted by the encouragement • Statement/ terrorist publication directly encourages or assists terrorist activity which endangers life
Category 2	<ul style="list-style-type: none"> • Statement/terrorist publication indirectly encourages or glorifies terrorist activity which endangers life • Statement/terrorist publication directly encourages or assists terrorist activity not endangering life
Category 3	<ul style="list-style-type: none"> • Statement/terrorist publication indirectly encourages or glorifies terrorist activity not endangering life • Other cases where characteristics for categories 1 or 2 are not present

Question 15: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2006 and 2016 there were 28 adult offenders sentenced for the section 1 and 2 offences. 25 out of the 28 received an immediate custodial sentence. The average custodial sentence length was 2 years 10 months (mean) or 2 years 8 months (median), after any reduction for guilty plea. Given the low case volume it is difficult to establish current sentencing practice. The statutory maximum sentence is 7 years. The maximum sentence in the range is 6 years which allows courts a small amount of ‘headroom’ to sentence above the range in exceptionally serious cases.

Harm	Culpability		
	A	B	C
Category 1	Starting point 5 years’ custody	Starting point 4 years’ custody	Starting point 3 years’ custody
	Category range 4 – 6 years’ custody	Category range 3 – 5 years’ custody	Category range 2 – 4 years’ custody
Category 2	Starting point 4 years’ custody	Starting point 3 years’ custody	Starting point 2 years’ custody
	Category range 3 – 5 years’ custody	Category range 2 – 4 years’ custody	Category range 1 – 3 years’ custody
Category 3	Starting point 3 years’ custody	Starting point 2 years’ custody	Starting point 1 year’s custody
	Category range 2 – 4 years’ custody	Category range 1 – 3 years’ custody	Category range 6 months’ – 2 years’ custody

Question 16: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to

the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in these cases.

Factors increasing seriousness
<i>Statutory aggravating factors</i> <ul style="list-style-type: none"> • 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 (<i>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</i>)
<i>Other aggravating factors</i> <ul style="list-style-type: none"> • Specifically targeted audience • Vulnerable/ impressionable audience • Communication with known extremists • Significant volume of terrorist publications published or disseminated • Used multiple social media platforms to reach a wider audience • Failure to respond to warnings • Failure to comply with court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation
<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Good character and/or exemplary conduct • Offender coerced • Clear evidence of a change of mindset prior to arrest • Offender's responsibility substantially reduced by mental disorder or learning disability

Question 17: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case study is provided to illustrate how the guideline would operate in practice.

Case study

Case 6

The offender, a female aged 21 posted more than 20,000 messages on an open account to her 5,000 social media followers between January 2015 and January 2017. The material she posted encouraged young men and women to travel abroad and engage in acts of terrorism. She encouraged men to go and fight and women to marry them and raise their children. She encouraged mothers to be proud of their sons who die for the cause. Some of the material she posted included graphic images of dead bodies and prisoners.

Applying the guideline to this offence it would be assessed as culpability A 'intended to encourage others to engage in terrorist activity'.

The harm category would be 1; 'statement/terrorist publication directly encourages or assists terrorist activity which endangers life'.

This leads to a starting point of 5 years.

The offence would be aggravated by the significant volume of posts, the use of multiple social media platforms to reach a wider audience, and the fact that the offending took place over a significant time period.

The final sentence would be in the region of 6 years after a trial.

Question 18: Do you have any views on the application of the guideline to case 6?

Section Six: Proscribed Organisations – Membership

(Draft guideline at page 95.)

Section 11 Terrorism Act 2000 creates an offence of belonging to or professing to belong to a proscribed organisation. A proscribed organisation is one which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism. It is a defence for a person charged with this offence to prove that the organisation was not proscribed when they became a member or professed to be a member, and that they have not taken part in any activities of the organisation since it was proscribed.

Step one

Three levels of culpability are defined. As with the earlier guidelines, the draft guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors and the guideline specifically warns against taking an overly mechanistic approach to applying the factors.

Culpability factors

Category A

There is just one factor in this category:

- Prominent member of organisation

This factor would include offenders who are in a position of significance within the organisation.

Category B

There is just one factor in this category:

- Active (but not prominent) member of organisation

This would apply to an offender who may not be particularly significant in terms of his position, but is engaged in activity in support or on behalf of the organisation.

Category C

There is only one factor in this category:

- All other cases

This factor would apply to an offender who is neither active nor prominent. It would include an offender who takes no or little active part in the organisation. It may be relevant to someone who joined the organisation years before and has since had a change of mindset.

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> Prominent member of organisation
B	<ul style="list-style-type: none"> Active (but not prominent) member of organisation
C	<ul style="list-style-type: none"> All other cases

Question 19: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

The Council gave careful consideration to the assessment of harm and whether more than one level of harm could be justified, and concluded that it could not. Membership of any terrorist organisation is harmful, even where the offender is not particularly active, as the organisation gains strength from its increased numbers. It might be suggested that membership of some organisations is more harmful than membership of others, i.e. those that carry out significant terrorist atrocities. However, the Council believes that it would be inappropriate to require judges to rank terrorist organisations. Indeed, in the guideline case of *Kahar* the court asked the Attorney General whether an offence committed in favour of one organisation or terrorist cause should be regarded more or less seriously than an offence committed in favour of another and whether that should be a relevant factor in sentencing. In response it was submitted that:

"Parliament has legislated against all terrorism (as defined) and does not distinguish between causes or aims..."

- It would be invidious, in dealing with law enforcement agencies and partners, here and abroad, to publicly rank terrorist organisations or causes.*
- In any event, the security situation in England and Wales and elsewhere can change rapidly.*

- *It is not a fanciful suggestion that some terrorist organisations may perceive any ranking to be an incentive to commit further atrocities.*
- *It would not be possible, for Public Interest Immunity reasons, to disclose in public the information behind any such decision.*
- *In any event, it would not be practicable to provide information to the court, which was not provided to the offender, but which would have a direct impact on the sentence to be passed."*

The Council agrees with these views and for that reason does not propose to differentiate between membership of one terrorist organisation or another.

Question 20: Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2011 and 2016 there was just one adult offender sentenced for a membership offence. The sentence imposed was 4 years' custody. Given the lack of data in this area it is impossible to establish what sentencing practice might be for this offence. However, there are only 3 sentencing categories in this guideline, and so the ranges will have to be very wide. The offence statutory maximum sentence for this offence is 10 years. The maximum sentence in the range is 9 years which allows courts a small amount of 'headroom' to sentence above the range in exceptionally serious cases.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody	Category range 6 months' custody – 4 years' custody

Question 21: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in these cases.

Factors increasing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> • 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 (<i>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</i>) <p><i>Other aggravating factors:</i></p> <ul style="list-style-type: none"> • Length of time over which offending was committed • Failure to respond to warnings • Failure to comply with current court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation
<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Good character and/or exemplary conduct • Clear evidence of a change of mindset prior to arrest • Unaware that organisation was proscribed • Pressured or coerced into becoming a member • Offender's responsibility substantially reduced by mental disorder or learning disability

Question 22: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case study is provided to illustrate how the guideline would operate in practice.

Case study

Case 7

The offender, a female aged 26, used social media to express her support for a proscribed organisation. She professed to be a member of that organisation, and in messages to her family she explained that she was travelling abroad to join that organisation. She did in fact leave the country and once abroad posted pictures of herself wearing clothing branded with the symbol of the organisation, and posing with guns. After a couple of months, she returned to England and was arrested.

Applying the guideline to this offence it would be assessed as culpability B. She was an active member of the organisation, she posted messages on social media in support of the cause, and to encourage others to join. She also travelled abroad in order to join other members in her support. However, she was not a prominent member of the organisation.

This leads to a starting point of 5 years.

The final sentence would be in the region of 5 years after a trial.

Question 23: Do you have any views on the application of the guideline to case 7?

Section Seven: Proscribed Organisations – Support

(Draft guideline at page 100.)

Section 12 Terrorism Act 2000 creates an offence of inviting support for a proscribed organisation. In addition, a person commits the offence if they arrange, manage or assist in arranging or managing a meeting which either supports a proscribed organisation; furthers the activities of a proscribed organisation; or includes an address from a person who belongs or professes to belong to a proscribed organisation. The offence can also be committed by an offender who addresses a meeting in order to encourage support for a proscribed organisation or to further its activities.

Step one

Three levels of culpability are defined. As with the earlier guidelines, the draft guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors.

Culpability factors

Category A

There are three factors in this category:

- Offender in position of trust, authority or influence and abuses their position

This factor would include a university or college lecturer or a leader of a place of worship who is in a position of authority and uses their position in order to influence their students or worshipers in order to gain support for a proscribed organisation.

- Persistent efforts to gain significant support for organisation

This factor would include an offender who has spent time and effort to try to gain support for the organisation, they may have organised or been involved in the organisation of a big event, or they may have spent years giving out leaflets and talking to members of the public trying to gain support.

- Encourages specific activities which endanger life

This factor would include an offender who encourages others to engage in terrorist activities which endanger life in support of a proscribed organisation.

Category B

There are four factors in this category:

- Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation
- Specifically targeted audience in an attempt to gain significant support for organisation
- Targeted a wide audience in an attempt to gain significant support for organisation

The first three factors would cover those offenders who have made significant attempts to gain support for the organisation, either by being involved in the organisation of a large meeting or event or by targeting a wide, or particularly susceptible audience.

- Encourages specific activities causing widespread and serious damage to property, economic interests or activities which would impact upon civic infrastructure

The third factor is for those offenders who, in support of a proscribed organisation, encourage activities that would cause serious harm, but not endanger life.

Category C

There is only one lower culpability factor:

- Lesser cases where characteristics for categories A or B are not present

This is a 'catch all' factor for those offences not falling into A or B, and represents the lowest level of culpability.

STEP ONE**Determining the offence category**

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 | <ul style="list-style-type: none"> • Offender in position of trust, authority or influence and abuses their position • Persistent efforts to gain significant support for organisation • Encourages specific activities which endanger life |
|----------|--|

B	<ul style="list-style-type: none"> • Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation • Specifically targeted audience in an attempt to gain significant support for organisation • Targeted a wide audience in an attempt to gain significant support for organisation • Encourages specific activities causing widespread and serious damage to property, economic interests or activities which would impact upon civic infrastructure
C	<ul style="list-style-type: none"> • Lesser cases where characteristics for categories A or B are not present

Question 24: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

Category 1

There is just one factor in this category of harm:

- Gained significant support for the organisation

This is for cases where the offender has in fact gained a significant amount of support for the organisation.

Category 2

- All other cases

This is a 'catch all' factor for those not falling into category 1, representing the lower level of harm.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> • Gained significant support for the organisation
Category 2	<ul style="list-style-type: none"> • All other cases

Question 25: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2011 and 2016 there were 5 adult offenders sentenced for the support offence. All of those sentenced received an immediate custodial sentence. The average custodial sentence length after any reduction for guilty plea was 4 years (mean) or 5 years (median). These figures should be treated with caution due to the low numbers of offenders sentenced.

As with the earlier offence, given the low case volume it is difficult to establish the current level of sentencing practice. The statutory maximum sentence for this offence is 10 years. The maximum sentence in the range is 9 years which allows courts a small amount of 'headroom' to sentence above the range in exceptionally serious cases.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range 6 months – 2 years' custody

Question 26: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in these cases.

Factors increasing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> • 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 (<i>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</i>) <p><i>Other aggravating factors:</i></p> <ul style="list-style-type: none"> • Vulnerable/ impressionable audience • Failure to respond to warnings • Failure to comply with current court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation
<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Good character and/or exemplary conduct • Offender coerced • Clear evidence of a change of mindset prior to arrest • Offender's responsibility substantially reduced by mental disorder or learning disability

Question 27: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case study is provided to illustrate how the guideline would operate in practice.

Case study

Case 8

The offender, a 21-year-old male, set up a stall near Oxford Circus to distribute leaflets urging support for a proscribed organisation. The leaflets glorified terrorist acts and encouraged the reader to join the organisation and fight. He pleaded guilty.

This is the second time that the offender has been convicted of the same offence. The last occasion was 3 years ago when he was just 17 years old. He received a referral order.

Applying the guideline to this offence it would be assessed as culpability A as the leaflets encouraged activities which endanger life.

Harm category 2 would apply as there is no evidence that the offender's actions actually led to many, or indeed anybody, joining the organisation.

This leads to a starting point of 5 years. The offence is aggravated by his previous conviction which would increase the sentence to around 6 years.

After a reduction for pleading guilty, the final sentence would be in the region of 4 years.

Question 28: Do you have any views on the application of the guideline to case 8?

Section Eight: Funding Terrorism

(Draft guideline at page 105.)

This guideline covers offences under sections 15 to 18 of the Terrorism Act 2000. Under sections 15 –17 a person commits an offence if he receives, uses, possesses or provides (or invites another to provide), money or property for the purposes of terrorism. For money laundering (section 18) a person commits an offence if he enters into an arrangement making available or facilitating the retention or control of money or property which is for the purposes of terrorism. For all of the offences the offender must either have known or had reasonable cause to suspect that the money or property would be used for the purposes of terrorism.

Step one

Three levels of culpability are defined. As with the earlier guidelines, the draft guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors.

Culpability factors

Category A

There are five factors in this category:

- A significant role where offending is part of a group activity

Many of the funding offences are likely to involve group activity, and in some cases it will be clear if the offender has played a significant role, or is perhaps the 'ringleader'. Group activity is treated more seriously as the impact is often greater.

- Involvement of others through pressure or influence

Where offenders involve others, particularly vulnerable people, or young people, through pressure or influence the Council considers that this also demonstrates a high degree of culpability.

- Abuse of position of power, trust or responsibility

Similar to the above factor, but this might involve a university or college lecturer, or a leader of a place of worship, using their position and influence in order to carry out the offence.

- Sophisticated nature of offence/significant planning

Some funding offences involve sophisticated planning, such as an international credit card fraud, or a complex drug dealing/smuggling operation in order to fund terrorism. This level of sophistication demonstrates a high level of culpability.

- Activities took place over a sustained period of time

As with the above factor, where an offence has taken place over a sustained time period this demonstrates an offender's commitment to the illegal act, and again demonstrates a high level of culpability.

Category B

There is only one culpability factor in this category:

- Cases whose characteristics fall between A and C

This is a 'catch all' factor for those offenders whose cases fall between A and C.

Category C

There are three factors in this category:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Very little or no planning

All three of these factors are the counter factors to those in category A.

STEP ONE

Determining the offence category

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 | <ul style="list-style-type: none"> • A significant role where offending is part of a group activity • Involvement of others through pressure or influence • Abuse of position of power, trust or responsibility • Sophisticated nature of offence/significant planning • Activities took place over a sustained period of time |
|----------|---|

B	<ul style="list-style-type: none"> • Cases whose characteristics fall between A and C
C	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Very little or no planning

Question 29: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

Category 1

There are three factors in this category of harm:

- Money or property made, or was likely to make, a significant contribution to furthering terrorism

This is for an offence that involves a significant amount of money, or involves the use or possession of an item of property which, by its nature would make a significant contribution to furthering terrorism. For example, it might include a weapon, or materials to build a bomb.

- Use or provision of false or fraudulent identification

This would include the use or provision of passports or identity cards that could be used to get another person into or out of a country for the purposes of terrorist activity.

- Use or provision of money or property to fund or assist activity which involved risk to life

As with the top factor this might include the provision of a weapon or the provision of money, where the offender is aware that the money or item is to be used to fund or assist an activity which would involve risk to life.

Category 2

There are two factors in this category of harm:

- Widespread and serious damage to property/economic interests or substantial impact upon civic infrastructure

This would include the provision of money or property, where the offender is aware that the money or item is to be used to fund or assist an activity which would risk widespread disruption or damage to property.

- All other cases whose characteristics fall between 1 and 3

This factor is a 'catch all' for all other cases that fall between categories 1 and 3.

Category 3

There is just one factor in this category:

- Money or property made, or was likely to make, a minor contribution to furthering terrorism

This is the counter factor to the first factor in category 1.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a significant contribution to furthering terrorism • Use or provision of false or fraudulent identification • Use or provision of money or property to fund or assist activity which involved risk to life
Category 2	<ul style="list-style-type: none"> • Widespread and serious damage to property/ economic interests or substantial impact upon civic infrastructure • All other cases whose characteristics fall between 1 and 3
Category 3	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a minor contribution to furthering terrorism

Question 30: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2011 and 2016 there were 15 adult offenders sentenced for funding offences. 13 out of the 15 received an immediate custodial sentence. The average custodial sentence length was 2 years 4 months (mean) or 2 years 3 months (median) after any reduction for guilty plea.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 years' custody	Starting point 9 years' custody	Starting point 7 years' custody
	Category range 10 – 14 years' custody	Category range 8 – 10 years' custody	Category range 6 – 8 years' custody

Category 2	Starting point 9 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 10 years' custody	Category range 6 – 8 years' custody	Category range 2 – 5 years' custody
Category 3	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 6 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody

Question 31: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case.

Factors increasing seriousness
<i>Statutory aggravating factors:</i>
<ul style="list-style-type: none"> • 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 (<i>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</i>)
<i>Other aggravating factors:</i>
<ul style="list-style-type: none"> • Failure to respond to warnings • Failure to comply with current court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character
- Offender's responsibility substantially reduced by mental disorder or learning disability

Question 32: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case studies are provided to illustrate how the guideline would operate in practice.

Case studies

Case 9

The offender, a 30-year-old male offered to send military style trousers and steel toe cap boots to a friend who was abroad fighting for a proscribed organisation. The offender made arrangements to procure and send the trousers and boots in the knowledge that they would be used for terrorist purposes. He discussed the arrangements with his friend and made the purchase online, he did not, however get to send them to his friend before he was arrested for an offence under section 17 Terrorism Act 2000.

The offender had a previous conviction for an offence of encouraging terrorism 2 years ago for which he received a suspended sentence of 2 years.

Applying the guideline to this offence it would be assessed as culpability C as there was little planning involved.

Harm category 3 would apply as the items were likely to make a minor contribution to furthering terrorism.

This leads to a starting point of 2 years' custody. The offence is aggravated by the offender's previous conviction. The final sentence would be in the region of 2 – 2 ½ years after a trial.

Question 33: Do you have any views on the application of the guideline to case 9?

Case 10

The offender, a 40-year-old male was the ringleader of an international credit card fraud which ran for 5 years. The men involved ran the scheme using false identifications to hide their connections to terrorist cells across Europe. The scheme raised more than £200,000 for a proscribed organisation.

Applying the guideline to this offence it would be assessed as culpability A as the offender played a significant role in a group activity, the offence was sophisticated and involved significant planning. In addition, the offence took place over a long time.

Harm category 1 would apply as the money was a significant amount and was likely to make a significant contribution towards furthering terrorism.

This leads to a starting point of 12 years' custody. Due to the presence of multiple high culpability factors the court is likely to move up in the range before considering the step 2 factors.

The final sentence would be in the region of 14 years after a trial.

Question 34: Do you have any views on the application of the guideline to case 10?

Section Nine: Failure to Disclose Information about Acts of Terrorism

(Draft guideline at page 110.)

Section 38B Terrorism Act 2000 creates two offences. The first offence is committed where a person fails to disclose information which he knows or believes might be of material assistance in preventing the commission by another of an act of terrorism. The second offence is committed where a person fails to disclose information which he knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of another who is involved in an act of terrorism. The statutory maximum for both of these offences is 5 years.

Step one

Due to the limited ways in which the offences can be committed there are just two culpability categories with one factor in each.

Culpability factors

Category A

- Failed to pass on information which could have prevented an act of terrorism

This factor would include those offenders who had prior information about an act of terrorism but did not pass it on to the authorities. Had they have done so the terrorist act might have been prevented, and for this reason the offence falls within the highest culpability bracket.

Category B

- Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism

This factor would include those offenders who had information about an act of terrorism after the event but did not pass it onto the authorities. Had they have done so the terrorist could have been apprehended, prosecuted and/or convicted for the offence.

STEP ONE**Determining the offence category**

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.

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> Failed to pass on information which could have prevented an act of terrorism
B	<ul style="list-style-type: none"> Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism

Question 35: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors**Category 1**

There are two factors in this category of harm:

- Information related to a terrorist act involving the endangering of life or serious injury
- Information related to a terrorist act involving substantial impact to economic interests or civic infrastructure

The two factors relate to the type of harm that was caused by the terrorist act of which the offender had knowledge. Both of these factors indicate a high level of harm.

Category 2

There is just one factor in this category of harm:

- All other cases

This factor is a 'catch all' for those cases that do not fall into category 1, and represents the lowest level of harm.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> Information related to a terrorist act involving the endangering of life or serious injury Information related to a terrorist act involving substantial impact to economic interests or civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

Question 36: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2006 and 2016 there were eight adult offenders sentenced for the failure to disclose offence. 6 of those sentenced received an immediate custodial sentence. The average custodial sentence length was 2 years 10 months (mean) or 2 years 3 months (median) after any reduction for guilty plea. These figures should be treated with caution due to the low numbers of offenders sentenced.

Harm	Culpability	
	A	B
Category 1	Starting point 4 years' custody Category range 3 – 5 years' custody	Starting point 3 years' custody Category range 2 – 4 years' custody
Category 2	Starting point 3 years' custody Category range 2 – 4 years' custody	Starting point 2 years' custody Category range 6 months – 3 years' custody

Question 37: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within

the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case.

Factors increasing seriousness
<i>Statutory aggravating factors:</i>
<ul style="list-style-type: none"> • 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 (<i>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</i>)
<i>Other aggravating factors:</i>
<ul style="list-style-type: none"> • Many lives endangered • Lengthy period of time over which offender held the information • Failure to respond to warnings • Failure to comply with current court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation
<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Good character • Offender was pressured or coerced into concealing the information • Offender discloses information but not as soon as was reasonably practicable • Offender's responsibility substantially reduced by mental disorder or learning disability

Question 38: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case study is provided to illustrate how the guideline would operate in practice.

Case study

Case 11

The offender, a 23-year-old male was the brother of a suicide bomber who caused an explosion on public transport killing 25 people. He allowed his brother to stay at his flat the night before the terrorist act, and had known about the plan for many months.

After the bombing the offender was arrested.

Applying the guideline to this offence it would be assessed as culpability A as the offender had prior information about the offence which, had he have passed it to the authorities, could have prevented the act of terrorism.

Harm category 1 would apply as the act of terrorism caused the loss of life.

This leads to a starting point of 4 years' custody.

The sentence would be aggravated by the fact that many lives were lost, and by the fact that the offender knew what was planned for many months.

The final sentence would be in the region of 5 years after a trial (the statutory maximum sentence).

Question 39: Do you have any views on the application of the guideline to case 11?

Section Ten: Possession for Terrorist Purposes

(Draft guideline at page 115.)

Section 57 creates an offence where a person is in possession of articles in circumstances which give rise to a reasonable suspicion that their possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. It is a defence if the person can show that his possession was not for such a purpose.

An article includes a 'substance or any other thing'. The cases give examples of articles including documents, such as bomb making guides, as well as more practical tools that might assist the commission of an offence, including petrol, knives and sodium chlorate.

Step one

Culpability factors

Three levels of culpability are defined. As with the earlier guidelines, the draft guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors.

Category A

There are two factors in this category:

- Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete

This factor would include an offender who had the necessary materials to carry out a terrorist act. For example, it might include an offender who is in possession of a bomb making guide as well as the materials to make the bomb.

- Offender is a significant participant in the commission, preparation or instigation of an act of terrorism

This factor would include an offender who is a significant participant in a wider group, planning a terrorist act. His possession of a particular item, such as a weapon, or an article describing how to carry out a particular terrorist act, would put him in this highest category of culpability. Unlike the factor above, the court does not need to conclude from the presence of the articles in the offender's possession that the preparations are complete or almost complete. The reason for this is that in a group activity it is expected that different members of the group take control of different elements of the planning and so no one person is likely to be in possession of all key articles.

Category B

There is just one factor in this category:

- Cases falling between A and C

This is a 'catch all' factor for those that fall between A and C.

Category C

There are two factors in this category:

- Possession of article(s) indicates that offender has engaged in very limited preparation toward terrorist activity
- Offender is of limited assistance or encouragement to others who are preparing for terrorist activity

Both of these factors are the counter factors to Category A.

STEP ONE**Determining the offence category**

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	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism
B	<ul style="list-style-type: none"> • Cases falling between A and C
C	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender has engaged in very limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity

Question 40: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

Category 1

There is just one factor in this category of harm:

- Article(s) had potential to facilitate an offence causing loss of life, serious injury or a substantial impact to the economy or civic infrastructure

The factor relates to the type of harm that could potentially be caused by the article. For example, the article might be a weapon that could cause loss of life.

Category 2

There is just one factor in this category of harm:

- All other cases

This factor is a 'catch all' for those cases that do not fall into category 1, and represents the lowest level of harm.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked .	
Category 1	<ul style="list-style-type: none">• Article(s) had potential to facilitate an offence causing loss of life, serious injury or a substantial impact to the economy or civic infrastructure
Category 2	<ul style="list-style-type: none">• All other cases

Question 41: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2011 and 2016 there was just one adult offender sentenced for this offence and that offender was given a hospital order. There have been earlier cases for which the Council have obtained transcripts to assist in drafting this guideline, however this is clearly a very low volume offence.

The statutory maximum is 15 years, and the maximum sentence provided by the proposed draft is 14 years, allowing 1 year 'headroom' for exceptional cases.

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 14 years' custody	Category range 5 – 9 years' custody	Category range 2 – 6 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range 1 – 3 years' custody

Question 42: Do you have any comments on the sentence starting points or ranges in this guideline?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case.

Factors increasing seriousness
<i>Statutory aggravating factors:</i>
<ul style="list-style-type: none"> • 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)
<i>Other aggravating factors:</i>
<ul style="list-style-type: none"> • Article has the potential to endanger many lives • Length of time over which offending was committed • Failure to respond to warnings • Failure to comply with current court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Clear evidence of a change of mindset prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

Question 43: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case study is provided to illustrate how the guideline would operate in practice.

Case study

Case 12

The offender, a 40-year-old male, was found with a significant quantity of extremist material in his flat. The books included a number of manuals about how to manufacture improvised or homemade explosives and bombs. In addition, items including a large quantity of sodium chlorate, lighter fuel, and fireworks were found.

The offender had previous convictions, the only one of relevance was a conviction for arson for which he received a 5-year sentence in 2007.

Applying the guideline to this offence it would be assessed as culpability A as the offender had the materials necessary to make a bomb, and had obtained manuals in order to help him do so.

Harm category 1 would apply as the act of terrorism was one that could endanger life.

This leads to a starting point of 10 years' custody. The sentence would be aggravated by the previous conviction.

The final sentence would be in the region of 11 years after trial.

Question 44: Do you have any views on the application of the guideline to case 12?

Section Eleven: Collection of Terrorist Information

(Draft guideline at page 121.)

Section 58 Terrorism Act 2000 creates an offence to collect, make a record of, or be in possession of information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Step one

Three levels of culpability are defined. As with the earlier guidelines, the draft guideline recognises that a fair assessment of the offender's overall culpability will require a balancing of the factors.

Culpability factors

Category A

There is just one factor in this category:

- Offender collected, made a record of, or was in possession of information for use in terrorist activity where preparations are well advanced

An example would include an offender who was found in possession of a British soldier's address, a gun and a newspaper detailing the soldier's involvement in a particular campaign.

Category B

There are three factors in this category:

- Offender collected, made a record of, or was in possession of information for use in terrorist activity, but had engaged in limited preparation

This factor would include an offender who was in possession of an article which described how to build a bomb, but had purchased none of the materials.

- Offender gathered, collected, made a record of or was in possession of information intending to assist others engaging in terrorist activity

An example might include an offender who was drafting an email to send to others and that email contained links to articles or information about how to travel abroad to engage in terrorist training.

- Offender repeatedly accessed extremist material (where not falling within A)

This factor is for those offenders who have repeatedly returned to extremist documents. The danger of repeatedly accessing such material is that there is a greater scope for an offender to become radicalised.

Category C

There is only one lower culpability factor:

- The offender had no terrorist connections or motivation and had no intention to use or share the information

The offence does not require the offender to have terrorist intentions or motivations, and so some offenders might fall into this category where they have gathered information out of interest but have no intention to use or share the information.

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> • Offender collected, made a record of, or was in possession of information for use in terrorist activity where preparations are well advanced
B	<ul style="list-style-type: none"> • Offender collected, made a record of, or was in possession of information for use in terrorist activity, but had engaged in limited preparation • Offender gathered, collected, made a record of or was in possession of information intending to assist others engaging in terrorist activity • Offender repeatedly accessed extremist material (where not falling within A)
C	<ul style="list-style-type: none"> • The offender had no terrorist connections or motivation and had no intention to use or share the information

Question 45: Do you agree with the proposed culpability factors? Are there any that should be added or removed?

Harm factors

Category 1

There is just one factor in this category of harm:

- Information is useful to those planning to engage in terrorist activity causing loss of life, serious injury or involving substantial impact to the economy or civic infrastructure

As with the earlier guideline this factor relates to the type of harm that could potentially be caused by the article.

Category 2

There is just one factor in this category of harm:

- All other cases

This factor is a 'catch all' for those cases that do not fall into category 1 and represents the lowest level of harm.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked .	
Category 1	<ul style="list-style-type: none"> Information is useful to those planning to engage in terrorist activity causing loss of life, serious injury or involving substantial impact to the economy or civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

Question 46: Do you agree with the proposed harm factors? Are there any that should be added or removed?

Step two

Once the court has determined the offence category at step one, the next step is to identify the starting point.

Between 2011 and 2016 there were nine adult offenders sentenced for this offence. Six of those sentenced received an immediate custodial sentence. The average custodial sentence length after any reduction for guilty plea was 3 years 4 months (mean) or 3 years 2 months (median). These figures should be treated with caution due to the low numbers of offenders sentenced.

As with the earlier offence, given the low case volume it is difficult to establish the current level of sentencing practice. The statutory maximum sentence for this offence is currently 10 years. The maximum sentence in the range is 9 years which allows courts as small amount of 'headroom' to sentence above the range in exceptionally serious cases.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range 6 months – 2 years' custody

Question 47: Do you have any comments on the sentence starting points or ranges in this guideline?

On 3 October the Government announced a proposal to increase the statutory maximum sentence for this offence from 10 years to 15 years. This will be a matter for parliament to consider and agree.

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. The Council has, therefore, prepared a second sentencing table for consideration.

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 14 years' custody	Category range 5 – 9 years' custody	Category range 2 – 6 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range 1 – 3 years' custody

Question 48: Do you have any comments on the increased sentence starting points or ranges in the table above?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which may apply in these cases.

Factors increasing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> • 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 (<i>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</i>) <p><i>Other aggravating factors:</i></p> <ul style="list-style-type: none"> • Significant volume of terrorist publications • Length of time over which offending was committed • Failure to respond to warnings • Failure to comply with court orders • Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation
<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Good character and/or exemplary conduct • Clear evidence of a change of mindset prior to arrest • Offender's responsibility substantially reduced by mental disorder or learning disability

Question 49: Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.

The following case study is provided to illustrate how the guideline would operate in practice.

Case study

Case 13

The offender, a 35-year-old male was convicted of being in possession of four copies of a magazine produced by a proscribed organisation. The magazines contained practical information and instructions on how to build a bomb, how to avoid surveillance, and how to make car bombs.

Applying the guideline to this offence it would be assessed as culpability B as the offender was in possession of information that could be used in terrorist activity, though there was no indication that he had taken any steps toward using the information.

Harm category 1 would apply as the information is useful to those planning to engage in terrorist activity causing loss of life.

This leads to a starting point of 5 years' custody. In the absence of any aggravating or mitigating factors the final sentence would be in the region of 5 years after trial.

Question 50: Do you have any views on the application of the guideline to case 13?

Section Twelve: Changes to Legislation

The Council is aware that, following the review of counter terrorism legislation, the Government is likely to propose additional changes to the legislation, that could further impact on these guidelines. As seen above, it is clear that the Government is proposing an increase to the statutory maximum sentencing powers for the Collection of Terrorist Information offence (see section eleven), and it could be that similar changes are proposed for other offences.

The Council believe that the factors in all of the guidelines capture the wide range of offending that each offence covers, and that, should parliament decide that it is appropriate to change the statutory maximum sentences to these offences then the tables could be changed using a similar scaling up approach as is proposed for the Collection of Terrorist Information offence above.

Question 51: Do you agree with the Council's proposed approach in the event of any future increase in sentencing powers?

Section Thirteen: Additional guidance

In addition to the guidelines, the Council has produced some additional guidance to assist sentencers. The guidance includes a table of ancillary orders that are available when sentencing any terrorist offence:

ANCILLARY ORDER	STATUTORY REFERENCE
Confiscation A confiscation order may be made by the Crown Court in circumstances in which the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct.	Section 6 and Schedule 2 of the Proceeds of Crime Act 2002
Forfeiture When sentencing for a funding offence (sections 15 – 18 Terrorism Act 2000), the court may order the forfeiture of money or property which the offender had possession or control of at the time of the offence	Section 23 to 23B Terrorism Act 2000

Automatic orders on conviction	
The following requirements or provisions are not part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.	
Notification requirements A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly. The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.	Sections 41 – 53 Counter - Terrorism Act 2008

Secondly the guidance includes some information for those sentencing offences that are not terrorist offences, but ones which have a ‘terrorist connection’.

Sentencing for offences not covered by this guideline but with a terrorist connection

Section 30 Counter Terrorism Act 2008

Where a court is considering the seriousness of an offence specified in Schedule 2 Counter Terrorism Act 2008, and it appears that the offence has or may have a terrorist connection, the court must determine whether that is the case. To make this determination the court may hear evidence, and must take account of any representations made by the parties.

If the court determines that the offence has a terrorist connection it must treat that fact as a statutory aggravating factor and state in open court that the offence was so aggravated.

Notification requirements apply to these offences.

Offences not covered by schedule 2 Counter Terrorism Act 2008

Where a court is considering the seriousness of an offence not specified in Schedule 2 Counter Terrorism Act 2008, and it appears that the offence has or may have a terrorist connection, the court should determine whether that is the case by hearing evidence where necessary.

If the court determines that the offence has a terrorist connection it may treat that fact as a non-statutory aggravating factor where it appears relevant and appropriate to do so.

Notification requirements do not apply to these offences.

Question 52: Do you have any views on the guidance to be included with this package of guidelines?

Annex A: Consultation questions

Section Three: Q1: *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q2: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q3: *Do you agree that the higher sentences proposed by this table are justified? Do you have any other comments?*

Q4: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q5: *Do you have any views on the application of the guideline to case 1?*

Q6: *Do you have any views on the application of the guideline to case 2?*

Q7: *Do you have any views on the application of the guideline to case 3?*

Section Four: Q8: *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q9: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q10: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q11: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q12: *Do you have any views on the application of the guideline to case 4?*

Q13: *Do you have any views on the application of the guideline to case 5?*

Section Five: Q14: *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q15: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q16: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q17: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q18: *Do you have any views on the application of the guideline to case 6?*

Section Six: **Q19:** *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q20: *Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.*

Q21: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q22: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q23: *Do you have any views on the application of the guideline to case 7?*

Section Seven: **Q24:** *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q25: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q26: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q27: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q28: *Do you have any views on the application of the guideline to case 8?*

Section Eight: **Q29:** *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q30: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q31: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q32: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q33: *Do you have any views on the application of the guideline to case 9?*

Q34: *Do you have any views on the application of the guideline to case 10?*

Section Nine: **Q35:** *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q36: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q37: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q38: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q39: *Do you have any views on the application of the guideline to case 11?*

Section Ten: **Q40:** *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q41: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q42: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q43: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q44: *Do you have any views on the application of the guideline to case 12?*

Section Eleven: **Q45:** *Do you agree with the proposed culpability factors? Are there any that should be added or removed?*

Q46: *Do you agree with the proposed harm factors? Are there any that should be added or removed?*

Q47: *Do you have any comments on the sentence starting points or ranges in this guideline?*

Q48: *Do you have any comments on the increased sentence starting points or ranges in the table above?*

Q49: *Are there any aggravating or mitigating factors that should be removed or added? Please give reasons.*

Q50: *Do you have any views on the application of the guideline to case 13?*

Section Twelve: **Q51:** *Do you agree with the Council's proposed approach in the event of any future increase in sentencing powers?*

Section Thirteen: **Q52:** *Do you have any views on the guidance to be included with this package of guidelines?*

Annex B: Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;¹⁰
- the Council must publish a resource assessment in respect of the guidelines;¹¹ and,
- the Council must monitor the operation and effect of its sentencing guidelines.¹²

Section 125(a) of the Coroners and Justice Act 2009 states that, *‘every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case’*. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;

¹⁰ s.120 Coroners and Justice Act 2009

¹¹ s.127(2) *ibid*

¹² s.128(1) *ibid*

- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.¹³

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.¹⁴

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision-making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

¹³ s.120(11) Coroners and Justice Act 2009

¹⁴ s.127(3) Coroners and Justice Act 2009

Annex C: Draft guidelines

Preparation of Terrorist Acts

Terrorism Act 2006 (section 5)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

<p>This guideline applies only to offenders aged 18 and older</p>

STEP ONE**Determining the offence category**

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	<ul style="list-style-type: none"> Acting alone, or significant participant, in terrorist activity where preparations are complete or almost complete
B	<ul style="list-style-type: none"> Acting alone, or significant participant, in terrorist activity where preparations are well-advanced but not complete or almost complete Lesser participant in terrorist activity where preparations are complete or almost complete Offender travels abroad for terrorist purposes Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)
C	<ul style="list-style-type: none"> Lesser participant in terrorist activity where preparations are well-advanced but not complete or almost complete Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B) Determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)
D	<ul style="list-style-type: none"> Offender has engaged in very limited preparation of terrorist activity Act(s) of limited assistance or encouragement to other(s)

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> Endangerment of life
Category 2	<ul style="list-style-type: none"> Widespread and serious damage to property or economic interests Substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> Other cases where characteristics for categories 1 or 2 are not present

STEP TWO – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page. ***Offenders committing offences at the upper end of seriousness are likely to be found dangerous and so the table below includes options for life sentences and/ or extended sentences. The court must however have regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination before imposing such sentences. (See step FIVE below). Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered. This guidance does not intend to restrict a court from imposing such sentences in any case where it is appropriate to do so.**

Harm	Culpability			
	A	B	C	D
1	<p>Starting point</p> <p>Life imprisonment with a minimum term of 35 years*</p> <p>Category range</p> <p>Life imprisonment with minimum term of 30 – 40 years*</p>	<p>Starting point</p> <p>Life imprisonment with minimum term of 20 years*</p> <p>Category range</p> <p>Life imprisonment with a minimum term 15 – 25 years. Or a determinate sentence of 30- 40 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>Life imprisonment with minimum term of 15 years or a determinate sentence of 25 years with an extension period of 5 years*</p> <p>Category range</p> <p>Life imprisonment with minimum term 10 – 20 years. Or a determinate sentence of 20-30 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>15 years' custody with an extension period of 5 years*</p> <p>Category range</p> <p>10 – 20 years with an extension period of 5 years*</p>
2	<p>Starting point</p> <p>25 years with an extension period of 5 years*</p> <p>Category range</p> <p>20 – 30 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>20 years with an extension period of 5 years*</p> <p>Category range</p> <p>15 – 25 years with an extension period of 5 years*</p>	<p>Starting point</p> <p>15 years' custody with an extension period of 5 years*</p> <p>Category range</p> <p>10 – 20 years' custody with an extension period of 5 years*</p>	<p>Starting point</p> <p>8 years' custody</p> <p>Category range</p> <p>6 – 10 years' custody</p>
3	<p>Starting point</p> <p>16 years' custody</p> <p>Category range</p> <p>12 – 20 years</p>	<p>Starting point</p> <p>12 years' custody</p> <p>Category range</p> <p>8 – 16 years' custody</p>	<p>Starting point</p> <p>8 years' custody</p> <p>Category range</p> <p>6 – 10 years' custody</p>	<p>Starting point</p> <p>4 years' custody</p> <p>Category range</p> <p>3 – 6 years' custody</p>

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:

- Many lives endangered
- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/or avoid or impede detection
- Indoctrinated or encouraged others
- Preparation was with a view to engage in combat with UK armed forces
- Taking or preparing to take equipment abroad to be used in violent action
- Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one
- Failed to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). 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 SIX

Special custodial sentence for certain offenders of particular concern (section 236A)

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.

STEP SEVEN**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 *Offences Taken into Consideration and Totality* guideline.

STEP EIGHT**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP NINE**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN**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.

Explosive Substances (Terrorism only)

Causing explosion likely to endanger life or property

Explosive Substances Act 1883 (section 2)

Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property

Explosive Substances Act 1883 (section 3)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

<p>This guideline applies only to offenders aged 18 and older</p>

STEP ONE**Determining the offence category**

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	<ul style="list-style-type: none"> Offender caused an explosion or used, developed or was in possession of a viable explosive device Acting alone or significant participant in terrorist activity involving explosives, where preparations are complete or almost complete
B	<ul style="list-style-type: none"> Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device Acting alone or significant participant in terrorist activity involving explosives where preparations are well-advanced but not complete or almost complete Lesser participant in terrorist activity involving explosives where preparations are complete or almost complete
C	<ul style="list-style-type: none"> Lesser participant in terrorist activity operation involving explosives where preparations are well-advanced but not complete or almost complete Act(s) of significant assistance or encouragement to another/ others involved in causing, developing or possessing an explosive device (where not falling within A or B)
D	<ul style="list-style-type: none"> Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device Offender has engaged in very limited preparation of terrorist activity involving explosives Act(s) of limited assistance or encouragement to other(s)

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none">• Endangerment of life
Category 2	<ul style="list-style-type: none">• Widespread and serious damage to property or economic interests• Substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none">• Other cases where characteristics for categories 1 or 2 are not present

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STEP TWO – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page. ***Offenders committing offences at the upper end of seriousness are likely to be found dangerous and so the table below includes options for life sentences and/ or extended sentences. The court must, however have regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination before imposing such sentences. (See step FIVE below). Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered. This guidance does not intend to restrict a court from imposing such sentences in any case where it is appropriate to do so.**

Harm	Culpability			
	A	B	C	D
1	<p>Starting point Life imprisonment with a minimum term of 35 years*</p> <p>Category range Life imprisonment with minimum term of 30 – 40 years*</p>	<p>Starting point Life imprisonment with minimum term of 20 years*</p> <p>Category range Life imprisonment with a minimum term 15 – 25 years. Or a determinate sentence of 30 – 40 years with an extension period of 5 years*</p>	<p>Starting point Life imprisonment with minimum term of 15 years or a determinate sentence of 25 years with an extension period of 5 years*</p> <p>Category range Life imprisonment with minimum term 10 – 20 years. Or a determinate sentence of 20 – 30 years with an extension period of 5 years*</p>	<p>Starting point 15 years' custody with an extension period of 5 years*</p> <p>Category range 10-20 years with an extension period of 5 years*</p>
2	<p>Starting point 25 years with an extension period of 5 years*</p> <p>Category range 20 – 30 years with an extension period of 5 years*</p>	<p>Starting point 20 years with an extension period of 5 years*</p> <p>Category range 15 – 25 years with an extension period of 5 years*</p>	<p>Starting point 15 years' custody with an extension period of 5 years*</p> <p>Category range 10 – 20 years' custody with an extension period of 5 years*</p>	<p>Starting point 7 years' custody</p> <p>Category range 5 -10 years' custody</p>
3	<p>Starting point 16 years' custody</p> <p>Category range 12 – 20 years' custody</p>	<p>Starting point 12 years' custody</p> <p>Category range 8 – 16 years' custody</p>	<p>Starting point 8 years' custody</p> <p>Category range 6 – 10 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category range 3 years – 6 years' custody</p>

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:

- Many lives endangered
- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/or avoid or impede detection
- Indoctrinated or encouraged others
- Failed to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). 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 SIX

Special custodial sentence for certain offenders of particular concern (section 236A)

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.

STEP SEVEN**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 *Offences Taken into Consideration and Totality* guideline.

STEP EIGHT**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP NINE**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN**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.

Encouragement of Terrorism

Encouragement of terrorism

Terrorism Act 2006 (section 1)

Dissemination of terrorist publications

Terrorism Act 2006 (section 2)

Triable either way

Maximum: 7 years' custody

Offence range: 6 months' custody – 6 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE**Determining the offence category**

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	<ul style="list-style-type: none"> Offender in position of trust, authority or influence and abuses their position to encourage others Intended to encourage others to engage in terrorist activity Intended to provide assistance to others to engage in terrorist activity
B	<ul style="list-style-type: none"> Reckless as to whether others would be encouraged or assisted to engage in terrorist activity <i>and</i> published statement/disseminated publication widely
C	<ul style="list-style-type: none"> Other cases where characteristics for categories A or B are not present

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> Evidence that others have acted on or been assisted by the encouragement Statement/ terrorist publication directly encourages or assists terrorist activity which endangers life
Category 2	<ul style="list-style-type: none"> Statement/terrorist publication indirectly encourages or glorifies terrorist activity which endangers life Statement/terrorist publication directly encourages or assists terrorist activity not endangering life
Category 3	<ul style="list-style-type: none"> Statement/terrorist publication indirectly encourages or glorifies terrorist activity not endangering life Other cases where characteristics for categories 1 or 2 are not present

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 3 years' custody
	Category range 4 – 6 years' custody	Category range 3 – 5 years' custody	Category range 2 – 4 years' custody
Category 2	Starting point 4 years' custody	Starting point 3 years' custody	Starting point 2 years' custody
	Category range 3 – 5 years' custody	Category range 2 – 4 years' custody	Category range 1 – 3 years' custody
Category 3	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 4 years' custody	Category range 1 – 3 years' custody	Category range 6 months – 2 years' custody

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:

- Specifically targeted audience
- Vulnerable/ impressionable audience
- Communication with known extremists
- Significant volume of terrorist publications published or disseminated
- Used multiple social media platforms to reach a wider audience
- Failure to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

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 *Offences Taken into Consideration and Totality* guideline.

STEP SIX

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

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.

Proscribed Organisations

Membership

Terrorism Act 2000 (section 11)

Triable either way

Maximum: 10 years' custody

Offence range: 6 months' custody – 9 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> Prominent member of organisation
B	<ul style="list-style-type: none"> Active (but not prominent) member of organisation
C	<ul style="list-style-type: none"> All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

There is no variation in the level of harm caused. Membership of any organisation which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism is inherently harmful.

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody	Category range 6 months – 4 years' custody

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:

- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Clear evidence of a change of mind set prior to arrest
- Unaware that organisation was proscribed
- Pressured or coerced into becoming a member
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

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 *Offences Taken into Consideration and Totality* guideline.

STEP SIX

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

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.

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Proscribed Organisations

Support

Terrorism Act 2000 (section 12)

Triable either way

Maximum: 10 years' custody

Offence range: 6 months' custody – 9 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> Offender in position of trust, authority or influence and abuses their position Persistent efforts to gain significant support for organisation Encourages specific activities which endanger life
B	<ul style="list-style-type: none"> Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation Specifically targeted audience in an attempt to gain significant support for organisation Targeted a wide audience in an attempt to gain significant support for organisation Encourages specific activities causing widespread and serious damage to property, economic interests or activities which would impact upon civic infrastructure
C	<ul style="list-style-type: none"> Lesser cases where characteristics for categories A or B are not present

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> Gained significant support for the organisation
Category 2	<ul style="list-style-type: none"> All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range 6 months – 2 years' custody

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:

- Vulnerable/impressionable audience
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

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 *Offences Taken into Consideration and Totality* guideline.

STEP SIX

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

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.

Funding Terrorism

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)

Triable either way

Maximum: 14 years' custody

Offence range: 1 – 14 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> • A significant role where offending is part of a group activity • Involvement of others through pressure or influence • Abuse of position of power, trust or responsibility • Sophisticated nature of offence/significant planning • Activities took place over a sustained period of time
B	<ul style="list-style-type: none"> • Cases whose characteristics fall between A and C
C	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Very little or no planning

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a significant contribution to furthering terrorism • Use or provision of false or fraudulent identification • Use or provision of money or property to fund or assist activity which involved risk to life
Category 2	<ul style="list-style-type: none"> • Widespread and serious damage to property/economic interests or substantial impact upon civic infrastructure • All other cases whose characteristics fall between 1 and 3
Category 3	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a minor contribution to furthering terrorism

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 years' custody	Starting point 9 years' custody	Starting point 7 years' custody
	Category range 10 – 14 years' custody	Category range 8 – 10 years' custody	Category range 6 – 8 years' custody
Category 2	Starting point 9 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 10 years' custody	Category range 6 – 8 years' custody	Category range 2 – 5 years' custody
Category 3	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 6 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody

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 (*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:

- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**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 *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**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.

Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

Triable either way

Maximum: 5 years' custody

Offence range: 6 months' – 5 years' custody

DRAFT

<p>This guideline applies only to offenders aged 18 and older</p>

STEP ONE

Determining the offence category

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.

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> Failed to pass on information which could have prevented an act of terrorism
B	<ul style="list-style-type: none"> Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> Information related to a terrorist act involving the endangering of life or serious injury Information related to a terrorist act involving substantial impact to economic interests or civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	Starting point 4 years' custody	Starting point 3 years' custody
	Category range 3 – 5 years' custody	Category range 2 – 4 years' custody
Category 2	Starting point 3 years' custody	Starting point 2 years' custody
	Category range 2 – 4 years' custody	Category range 6 months – 3 years' custody

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:

- Many lives endangered
- Lengthy period of time over which offender held the information
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character
- Offender was pressured or coerced into concealing the information
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

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STEP FIVE

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 *Offences Taken into Consideration and Totality* guideline.

STEP SIX

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

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.

Possession for Terrorist Purposes

Terrorism Act 2000 (section 57)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

Triable either way

Maximum: 15 years' custody

Offence range: 1 – 14 years' custody

This guideline applies only to offenders aged 18 and older
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STEP ONE**Determining the offence category**

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	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism
B	<ul style="list-style-type: none"> • Cases falling between A and C
C	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender has engaged in very limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused, intended or risked**.

Category 1	<ul style="list-style-type: none"> • Article(s) had potential to facilitate an offence causing loss of life, serious injury or a substantial impact to the economy or civic infrastructure
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 14 years' custody	Category range 5 – 9 years' custody	Category range 2 – 6 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range 1 – 3 years' custody

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:

- Article has the potential to endanger many lives
- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). 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 SIX**Special custodial sentence for certain offenders of particular concern (section 236A)**

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.

STEP SEVEN**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 *Offences Taken into Consideration and Totality* guideline.

STEP EIGHT

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP NINE

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN

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.

Collection of Terrorist Information

Terrorism Act 2000 (section 58)

Triable either way

Maximum: 10 years' custody

Offence range: 6 months' – 9 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE

Determining the offence category

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	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information for use in terrorist activity where preparations are well advanced
B	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information for use in terrorist activity, but had engaged in limited preparation Offender gathered, collected, made a record of or was in possession of information intending to assist others engaging in terrorist activity Offender repeatedly accessed extremist material (where not falling within A)
C	<ul style="list-style-type: none"> The offender had no terrorist connections or motivation and had no intention to use or share the information

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused, intended or risked**.

Category 1	<ul style="list-style-type: none"> Information is useful to those planning to engage in terrorist activity causing loss of life, serious injury or involving substantial impact to the economy or civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range 6 months – 2 years' custody

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:

- Significant volume of terrorist publications
- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

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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 *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**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.

