

For reference only.
Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

Applicability of guideline

The Sentencing Council issues this definitive guideline in accordance with section 120 of the Coroners and Justice Act 2009.

The guidelines apply to all offenders aged 18 and older, who are sentenced on or after 27 April 2018, regardless of the date of the offence.

Section 125(1) of the 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.”

Structure, ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies offence ranges – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders is set out in the annex at page 59.

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)

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"> Offender caused an explosion or used, developed or was in possession of a viable explosive device Acting alone, or in a leading role, in terrorist activity involving explosives, where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
B	<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 in a leading role, in terrorist activity involving explosives where preparations were advanced and, but for apprehension, the activity was likely to have been carried out Significant role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
C	<ul style="list-style-type: none"> Leading role in terrorist activity involving explosives where preparations were not far advanced Significant role in terrorist activity involving explosives where preparations were advanced and, but for apprehension, the activity was likely to have been carried out Lesser role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out Act(s) of significant assistance or encouragement of other(s) 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 lesser assistance or encouragement of other(s) Other cases not falling within A, B or C

Harm
Harm is assessed based on the type of harm risked and the likelihood of that harm being caused.

When considering the likelihood of harm, the court should consider the viability of any plan.

Category 1	<ul style="list-style-type: none"> Multiple deaths risked and very likely to be caused
Category 2	<ul style="list-style-type: none"> Multiple deaths risked but not very likely to be caused Any death risked and very likely to be caused
Category 3	<ul style="list-style-type: none"> Any death risked but not very likely to be caused Risk of widespread or serious damage to property or economic interests Risk of a substantial impact upon civic infrastructure Any other cases

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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 the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).

The court must also consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).

Harm	Culpability			
	A	B	C	D
Category 1	Starting point Life imprisonment – minimum term 35 years' custody	Starting point Life imprisonment – minimum term 25 years' custody	Starting point Life imprisonment – minimum term 15 years' custody	Starting point 15 years' custody
	Category range Life imprisonment – minimum term 30 – 40 years' custody	Category range Life imprisonment – minimum term 20 – 30 years' custody	Category range Life imprisonment – minimum term 10 – 20 years' custody	Category range 10 – 20 years' custody
Category 2	Starting point Life imprisonment – minimum term 25 years	Starting point Life imprisonment – minimum term 15 years	Starting point 15 years' custody	Starting point 8 years' custody
	Category range Life imprisonment – minimum term 20 – 30 years' custody	Category range Life imprisonment – minimum term 10 – 20 years' custody	Category range 10 – 20 years' custody	Category range 6 – 10 years custody
Category 3	Starting point 16 years' custody	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody
	Category range 12 – 20 years' custody	Category range 8 – 16 years' custody	Category range 6 – 10 years' custody	Category range 3 – 6 years' custody

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The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

Recent and/or repeated possession or accessing of extremist material

Communication with other extremists

Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

Offender attempted to disguise their identity to prevent detection

Indoctrinated or encouraged others

Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one

Failure to respond to warnings

Failure to comply with current court orders

Offence committed on licence or Post Sentence Supervision

Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

Offender involved through coercion, intimidation or exploitation

Clear evidence of a change of mind set prior to arrest

Offender's responsibility substantially reduced by mental disorder or learning disability

Age and/or lack of maturity where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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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. See Additional guidance on page 57.

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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.

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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: High level community order – 6 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"> Offender in position of trust, authority or influence and abuses their position to encourage others Intended to encourage others to engage in any form of 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 to a large or targeted audience (if via social media this can include both open or closed groups) |
| 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.

- | | |
|-------------------|---|
| Category 1 | <ul style="list-style-type: none"> Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life Statement or publication provides instruction for specific terrorist activity endangering life |
| Category 2 | <ul style="list-style-type: none"> Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life Statement or publication provides non-specific content encouraging support for terrorist activity endangering life Statement or publication provides instruction for specific terrorist activity not endangering life |
| Category 3 | <ul style="list-style-type: none"> Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life 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.

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 High level community order – 2 years' custody

See page 20.

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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 (if not considered at step 1)

Vulnerable/impressionable audience (if not considered at step 1)

Communication with known extremists

Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

Significant volume of terrorist publications published or disseminated

Used multiple social media platforms to reach a wider audience

Offender attempted to disguise their identity to prevent detection

Failure to respond to warnings

Failure to comply with current court orders

Offence committed on licence or Post Sentence Supervision

Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

Offender involved through coercion, intimidation or exploitation

Clear evidence of a change of mind set prior to arrest

Offender's responsibility substantially reduced by mental disorder or learning disability

Age and/or lack of maturity where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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Proscribed organisations

Membership

Terrorism Act 2000 (section 11)

Triable either way

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

This guideline applies only to offenders aged 18 and older

