

The Counter-Terrorism and Sentencing Bill – Further changes to sentencing

Factsheet

What are we going to do?

1. The Bill increases the maximum penalty for three terrorism offences from 10 to 14 years, ensuring consistency in sentencing and sending a clear message as to how serious the Government considers this type of offending.
2. The Bill also closes a loophole in existing legislation by expressly requiring the Courts, in cases where it appears that any non-terrorism offence with a maximum penalty of more than two years was committed in the course of an act of terrorism, or for the purposes of terrorism, to actively consider whether the offence was committed with a terrorist connection and should be aggravated as such. Currently, the Courts are only expressly required to consider this in relation to a defined list of non-terrorism offences. Where the Courts identify a terrorism connection at the point of sentencing, for example in an offence involving firearms, then this must be treated as an aggravating factor and the offender will be subject to the registered terrorist offender (RTO) notification requirements following their release from prison.
3. Together, these changes to the sentencing framework will help ensure that the Courts are not restricted from handing down a sentence that truly fits the crime and that all terrorist offenders are recognised as such by the criminal justice system.
4. These changes will reduce the threat posed to the public by keeping dangerous terrorists in custody for longer and maximising the time authorities have to work with offenders, giving them more time in which to rehabilitate and disengage from their often deeply entrenched ideological views.

How are we going to do it?

Increasing the maximum penalty for three terrorism offences

5. The Bill increases the maximum penalty for the following three terrorism offences from 10 to 14 years:
 - membership of a proscribed organisation (s.11 Terrorism Act 2000);
 - supporting a proscribed organisation (s.12 Terrorism Act 2000); and
 - attending a place used for terrorist training (s.8 Terrorism Act 2006).
6. The terrorist threat has continued to evolve, as evidenced by the attacks at Fishmongers' Hall and in Streatham, and there remain certain offences where the maximum penalty is not aligned to the seriousness of the offence. This change will help address this discrepancy, sending a clear message as to how serious the Government considers this type of offending.
7. This change also ensures consistency with existing penalties for similarly serious terrorism offences, for example the offence of encouragement of terrorism. It will remain up to the Courts to impose sentences of an appropriate length.

Increasing the scope of offences where the Courts must consider a terrorist connection

8. The Bill will require the Courts, in cases where it appears that any non-terrorism offence with a maximum penalty of more than two years was committed in the course of an act of terrorism, or for the purposes of terrorism, to actively consider whether the offence was committed with a terrorist connection and should be aggravated as such. At present, the Courts are only expressly required to consider this at the point of sentencing in relation to a defined list of non-terrorism offences, set out in Schedule 1 of the Sentencing Code

(for England and Wales) and Schedule 2 of the Counter-Terrorism Act 2008 (for Scotland and Northern Ireland).

9. The identification of a terrorist connection by the Courts will have an important impact:
 - it must be treated as an aggravating factor when sentencing, ensuring that offenders receive punishment befitting the severity of their offending;
 - offenders will be subject to the RTO notification requirements following their release from prison, ensuring that operational partners can manage their risk upon release more effectively; and
 - once this Bill receives Royal Assent, offenders will also be subject to terrorist release provisions to assist in the effective management of their risk, including early release only considered by the Parole Board at the two-third point of the sentence and a minimum of 12 months on licence following their release.
10. Removing the defined lists of non-terrorism offences currently contained in Schedule 1 of the Sentencing Code and Schedule 2 of the CTA 2008 provides a necessary flexibility in the legislation, reflecting the fact that terrorist offending takes a wide variety of forms. Closing this loophole ensures that no terrorist-related offenders can fall through the cracks.
11. This change also addresses a recommendation that Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, made in his report on the Multi-Agency Public Protection Arrangements¹. Mr Hall noted that for the purposes of managing terrorist offenders and other offenders who may pose a terrorist risk, 'the power of the sentencing judge to identify offences as having a terrorist connection should be extended'. The Crown Prosecution Service has also publicly confirmed its support for this change, noting that 'the current list of offences in which a terrorist connection can be applied is fairly limited, and the range of terrorist related offending can take many forms'².

Terrorist connection worked example:

- **Someone committing the offence:** possession of a firearm with intent to endanger life (section 16 of the Firearms Act 1968; maximum penalty of life imprisonment).
- **What would happen now:** the Court may note there is a terrorism connection at the point of sentencing but would not be required to aggravate the sentence as a result of this connection and the RTO notification requirements would not be triggered because the offence is not on Schedule 1 of the Sentencing Code or Schedule 2 of the CTA 2008. The sentencing judge would consider a life sentence; then (if life is not appropriate for the offender) an Extended Determinate Sentence (EDS); then (if an EDS is not appropriate for the offender) the judge would give the offender a standard determinate sentence (SDS). If the offender receives an SDS, they would be released automatically at the half way point of their sentence and spend the latter half of their sentence on licence in the community. This would be the case even if the offence was committed with a terrorism connection.
- **What would happen if this provision becomes law:** at the point of sentencing, the Court would be required to consider if there is a terrorist connection, as the offence is a non-terrorism offence and has a maximum penalty of over two years. If the Court finds the offender committed the offence for the purposes of terrorism, or in the course of an act of terrorism, the sentence must be aggravated (additional time added), and the offender would be automatically subject to RTO notification

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913983/supervision-terrorism-and-terrorism-risk-offenders-review.pdf

² <https://committees.parliament.uk/publications/1597/documents/15207/default/>

requirements following their release. In addition, a forfeiture order relating to money or other property could be imposed by the Court. The sentencing judge would consider a life sentence, then an EDS sentence (which would be served in full in custody as the offence has a maximum penalty of life, with an additional licence period set by the sentencing judge); if it does not justify an EDS, the offender would receive a Sentence for Offenders of Particular Concern as a minimum, and therefore be subjected to terrorist release provisions (early release only considered by the Parole Board at the two-third point of the sentence) and serve at least 12 months on licence.

Background

12. In February 2020, the Lord Chancellor announced to Parliament that the Government would review whether current maximum penalties and the sentencing framework for terrorist offences are sufficient and comprehensive. As a result of this review, the Bill recommends increasing the maximum penalty for three terrorism offences: membership of a proscribed organisation, supporting a proscribed organisation, and attending a place used for terrorist training from 10 to 14 years.
13. Only a handful of minor offences – where there is a maximum penalty of two years or less – will be excluded from the provisions in this Bill. For example, offences related to ‘tipping off’ in relation to investigation in the regulated sector (s21D Terrorism Act 2000) or wearing a uniform or displaying an article of a proscribed organisation (s13 Terrorism Act 2000), or parking in contravention of a prohibition (s51 Terrorism Act 2000). Data indicates that prosecution and conviction for these offences is rare.

Q&A

Why are you increasing the maximum sentence for these three terrorism offences in particular?

- The Government believes that recent sentencing decisions, and the need to ensure consistency with penalties for similar terrorism offences (which already carry a maximum penalty of 15 years), justify this increase. We also want to send a clear message as to how serious the Government considers this type of offending.
- This increase will help ensure terrorist offenders spend sufficient time in prison, giving the public greater confidence in the sentencing process. Crucially, it will also give authorities more time in which to support these individuals’ disengagement and rehabilitation, through the range of tailored interventions available while they are in prison.

Why are you increasing the sentence length when so few people have been convicted of these offences in the past few years? Will this have any real-world impact on the sentences that are handed out for these offences?

- Over approximately the last five years (October 2015-September 2020), 27 individuals have been convicted for these offences as their principal conviction³; this is not an insignificant number.

³ Based on data held by the Courts

- Individuals convicted of these serious offences represent a significant risk to public safety. It is right that the Government is taking action to protect the public by ensuring the sentencing framework properly reflects the severity of such offences.
- This change also ensures consistency with existing penalties for similarly serious terrorism offences, and helps ensure the Courts are not constrained in imposing sentences of an appropriate length.

Could this change encourage Courts to mistakenly find a terrorist connection and impose unfair sentences?

- The Courts already have significant experience in determining whether non-terrorism offences have a terrorist connection and are required to apply the criminal standard of proof ('beyond reasonable doubt') when doing so. The Independent Reviewer of Terrorism Legislation, when asked during oral evidence to the Public Bill Committee on whether the existing definition of terrorist connection is clear enough to aid the Courts, stated that it is 'clear enough' and 'has worked well'.
- The Government will also work closely with the Courts to ensure this change is understood and implemented properly. Furthermore, existing appeal rights are available to the offender if they believe the Courts have erred when finding a terrorist connection.
- We are simply taking action through the Bill to ensure that the Courts are required at the point of sentencing to consider if any serious non-terrorism offence was committed with a terrorist connection and should be aggravated as such, rather than only expressly requiring such consideration with reference to a fixed list, which by its very nature risks having offences missing from it.

Won't requiring the Courts to consider if any offence (with a maximum penalty of more than two years) is terror-connected mean a potential unlimited influx of offenders to the system?

- It has not been possible to estimate the precise volume impact of this change, but we would expect it to be minimal.
- The Courts are already able to find a terrorist connection including through reference to the defined list of non-terrorism offences set out in Schedule 1 of the Sentencing Code (for England and Wales) and Schedule 2 of the Counter-Terrorism Act 2008 (for Scotland and Northern Ireland), which contains the most likely offences that could be committed with a terrorist connection.
- This measure removes this defined list of offences to require the Courts to consider if any offence with a maximum penalty of more than two years was committed with a terrorist connection. This requirement will only apply in cases where it appears that a non-terrorism offence was committed in the course of an act of terrorism, or for the purposes of terrorism. This change provides a necessary flexibility in the legislation, since terrorist offending can take a wide variety of forms.

Will these changes apply across the UK?

- Yes. Counter-terrorism is a reserved matter and it is important that as far as possible these changes apply UK-wide.