

The Counter-Terrorism and Sentencing Bill – Young offenders

Fact sheet

What are we doing?

1. Some of the Bill's measures will apply to young offenders under the age of 18 convicted of a terrorism or terrorism-related offence.
2. We are introducing a new **'Special Sentence of Detention for Terrorist Offenders of Particular Concern'** for offenders aged under 18 who have committed a terrorism offence, or an offence found to have a terror connection which carries a maximum penalty of over 2 years. This sentence already exists for adults, and carries a minimum licence period of 12 months after release. Offenders will be eligible for Parole Board referral at the two-thirds point of their custodial term in alignment with the changes brought in by the Terrorist Offenders (Restriction of Early Release) Act 2020. We are creating an equivalent sentence for offenders aged under and over 18 in Scotland and Northern Ireland.
3. We are **increasing the maximum licence period for serious and dangerous terrorist offenders sentenced to an Extended Determinate Sentence (EDS)** including those under the age of 18 when convicted.
4. **We are also removing the possibility of early release from custody for very serious and dangerous terrorist offenders under 18**, who receive an EDS for an offence attracting a life sentence.
5. It remains the case that when sentencing children or young people (those aged under 18 when convicted) the judge must have regard to the welfare of the offender and the principal aim of the youth justice system of preventing offending. While the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person and custody should remain the last resort.

Age, sentencing and custody

6. For the purpose of sentencing, "young adults" (18-20 year olds) are treated as adults, which means for example that court will take into account the purposes of sentencing for adults¹, including the reduction of crime by deterrence.
7. However, in accordance with both the youth sentencing guidelines (for 10-17 year olds) and the sentencing guidelines for adults, courts must take account of age and maturity in determining the appropriate sentence. Pre-sentence reports for 18-25 year olds must also include a consideration of the offender's maturity.
8. Young adults, if sentenced to custody, will be treated differently from older adults: those aged 18, 19 and 20 are not given a sentence of imprisonment but sentenced to "Detention in a Young Offender Institution" (DYOI). There are no plans to change this.

¹ As set out in section 142 Criminal Justice Act 2003

9. Children are held in a separate custodial estate, either in Secure Children's Homes (SCHs), Secure Training Centres (STCs) or Young Offender Institutions (for males over 15 only). The placement decision is based on the information provided by youth offending teams, taking account of the needs, risks and circumstances of each young offender and using the YCS placement guidance.

Offences in scope

10. A Sentence for Offenders of Particular Concern (SOPC) will be available for terrorism offences involving or connected with terrorism listed in Part 1 of Schedule 13 to the Sentencing Code (as substituted by the Counter-Terrorism and Sentencing Bill). The criteria for determining whether an offence has a terrorist connection is set out in section 69 of the Sentencing Code and provides that where the court is considering the seriousness of an offence specified in Schedule 1 to the Sentencing Code (offences where a terrorist connection is to be considered), an offence has a terrorist connection where it is, or takes place in the course of, an act of terrorism or is committed for the purposes of terrorism.

Effect of the new sentence for terrorist offenders: the 'waterfall approach'

11. These changes mean that where the court is considering custody in relation to a young person found guilty of a terrorism or an offence which is determined to have a terrorist connection they will either be given:
 - a. A **life sentence** – where the offender spends a minimum period or 'tariff' in custody before being considered for release by the Parole Board. The offender may therefore never be released.
 - b. An **EDS** for offenders assessed as dangerous but a life sentence is not imposed².
 - c. A **SOPC** – where a life sentence or an EDS are not imposed, and the maximum penalty is over two years. In cases where a child is convicted of a terrorism offence punishable with a maximum penalty of 2 years or less in custody, a Detention and Training Order (DTO) will remain available.
12. This means that children who have committed an offence for which the maximum penalty is over two years' imprisonment and where a terrorist connection has been found by the court and would otherwise under current legislation receive a DTO or a sentence under s.91 of the Powers of Criminal Courts (Sentencing) Act 2000, will instead receive a SOPC.
13. The new sentence effectively excludes children convicted of terrorist and terrorism-related offences from the scope of Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, to avoid situations in which a serious young terrorist offender could be released back in the community without serving a period on licence following the changes made by the Terrorist Offenders (Restriction of Early Release) Act 2020.

² Following changes made to the EDS regime by this Bill, we are removing the option of early release for terrorism offences punishable with a life sentence, which means offenders will spend the full custodial period in prison. For offences eligible for EDS but where the maximum penalty was not life, offenders will continue to be eligible for discretionary early release from the two-thirds point, subject to risk assessment by the Parole Board.

Background

14. There is no **overarching** legal definition of the terms 'child', 'young person' or 'young offender' but rather definitions are included in different legislation for the purposes of that specific piece of legislation.
15. For example, the Children and Young Persons Act 1933, Crime and Disorder Act 1998, and the Powers of Criminal Courts (Sentencing) Act 2000 all define a child as under the age of 14 and a young person is defined as a person who has attained the age of 14 but is under the age of 18.
16. There is a **distinct justice system** for children and young people aged 10-17 with:
 - A separate sentencing framework with an emphasis on restoration and rehabilitation, with custody as a last resort and separate sentencing guidelines;
 - A statutory aim of the youth justice system 'to prevent offending by children and young persons' (Crime and Disorder Act 1998) and a duty for the courts to consider the welfare of the child;
 - A separate Youth Court (composed of specially trained magistrates), which deals with the majority of cases.