

**Guidance in relation to the prosecution of offences relating to Daesh and the conflict in Syria, Iraq and Libya (revised December 2016)**

**A. Code for Crown Prosecutors**

1. When considering whether to prosecute the CPS prosecutor applies the test for prosecution outlined in the Code for Crown Prosecutors (the Code).  
([http://www.cps.gov.uk/publications/docs/code\\_2013\\_accessible\\_english.pdf](http://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf)).
  
2. The test for prosecution is in two stages:
  - (i) is there sufficient evidence to provide a realistic prospect of conviction; and,
  - (ii) is a prosecution required in the public interest?The public interest stage will not be considered until the prosecutor is satisfied that the evidential stage has been met. When considering the public interest stage the prosecution will consider the factors outlined in the Code and any other relevant information.
  
3. Where offences are committed for a purpose connected with the affairs of a country other than the United Kingdom (UK); the permission of the Attorney General is required before the prosecutor can give DPP consent to a prosecution. The Attorney General will scrutinise the public interest factors in each individual case when deciding whether to grant his permission.

**B. Definition of terrorism**

4. Terrorism is defined in section 1 of the Terrorism Act 2000 (as amended). <http://www.legislation.gov.uk/ukpga/2000/11/section/1>
  
5. Section 1(4) of the Terrorism Act 2000 provides that the references to action, persons, property, the public and the government apply to the UK or abroad.

**C. Evidential stage**

6. The following elements of the definition of terrorism need to be proved:
  - there has been an actual or contemplated use or threat of action involving serious violence against a person, endangering a person's life or creating a serious risk to the health or safety of the public or a section of the public;
  - the use or threat of action also involved the use of firearms or explosives; or

- if the use or threat of action **did not** involve the use of firearms or explosives then it is necessary to consider whether the use or threat of action was designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public); **and that**
- the use or threat of action is made for the purpose of advancing a political, religious, racial or ideological cause.

11. The actions of individuals who travel from the UK to Iraq, Syria or Libya to participate in the fighting there, may be caught by the provisions of section 1 of the Terrorism Act 2000.
12. Section 1 of the Terrorism Act 2000 is not an offence creating provision. For an offence to be committed, the conduct and relevant mental element must be proven for a specific offence under one of the Terrorism Acts or other UK domestic criminal law.
13. Each individual case will involve different considerations depending on the known facts. All the circumstances that are known surrounding an individual's involvement in the fighting, support or funding and any potential terrorist offences must be carefully considered. These include location, the individual's nationality (which can affect jurisdiction for some offences), his/her purpose and actions or intended actions.
14. Any individual who becomes a member or professes to be a member of a proscribed organisation is committing an offence unless one of the defences in section 11 of the Terrorism Act 2000 applies.
15. Under section 4 of the Foreign Enlistment Act 1870, it is an offence for a British subject to enlist in the military of a foreign state at war with another foreign state with which the UK is at peace. That prohibition does not extend, however, to enlistment in a foreign government's forces which are engaged in a civil war or combatting terrorism or internal uprisings.
16. When assessing whether there is sufficient evidence of a terrorism offence/s, the prosecutor will also assess whether any other international or domestic criminal offences are applicable. Prosecutors should select the most appropriate charge for the case in question and in doing so should take into account any ancillary orders that might be available on conviction.

17. If the military of any country operate outside of the law, the individuals can be investigated and there should be consideration as to whether there is evidence that an individual has acted in violation of war crimes and crimes against humanity.

#### **D. Potential offences**

18. Potential Terrorism Act offences include:

- Sections 5 of the Terrorism Act 2006 - preparation for acts of terrorism;
- Section 6 and 8 of the Terrorism Act 2006 - providing and receiving training;
- Sections 15 to 18 of the Terrorism Act 2000 - fundraising offences;
- Section 54 of the Terrorism Act 2000 - providing and receiving weapons training;
- Section 57 of the Terrorism Act 2000 - possession of articles for terrorist purpose;
- Section 58 of the Terrorism Act 2000 - possession of information likely to be useful to a terrorist.

19. Where there is the necessary extra-territorial jurisdiction, potential other offences include:

- Kidnapping
- Murder/conspiracy to murder
- Conspiracy to cause explosions
- War crimes or crimes against humanity

#### **E. Public interest stage**

20. If individuals decide to travel to Syria to take part in fighting, if not in accordance with a properly authorised UK government operation, then it is likely that the public interest would be in favour of prosecution.

21. Although not an exhaustive list, dependent on the seriousness of the alleged conduct, a prosecution is less likely if it is established that the following factors apply:

- The suspect was involved solely in providing direct medical assistance
- There was no credible indication that the suspect had acted in violation of international humanitarian law, or other applicable international law

22. The above are a guide only; each individual case will involve different considerations and all public interest factors will be considered in reaching a decision. There is no guarantee or

certainty that even if these factors apply, a prosecution may not be required in the public interest.

23. When applying the public interest factors in a case involving a youth, paragraph 4.12 (d) of the Code for Crown Prosecutors is particularly important. This paragraph provides that: *'The best interests and welfare of a child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations Convention on the Rights of the Child 1989.'*
24. As a starting point, the younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's previous record (criminal or otherwise) shows that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.
25. Prosecutors will also have regard to CPS policies on dealing with defendants with mental health issues.