

SENTENCING GUIDELINES (PRE-SENTENCE REPORTS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Sentencing Guidelines (Pre-Sentence Reports) Bill as introduced in the House of Commons on 1 April 2025 (Bill 217).

These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

These Explanatory Notes explain what each part of the Sentencing Guidelines (Pre-Sentence Reports) Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Sentencing Guidelines (Pre-Sentence Reports) Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Sentencing Guidelines (Pre-Sentence Reports) Bill. They are not, and are not intended to be, a comprehensive description of the Sentencing Guidelines (Pre-Sentence Reports) Bill.

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Overview of the Bill

- 1 The aim of this Bill is to prevent potential differential treatment arising from the Sentencing Council's *Imposition* guidelines, reinforce equal access to pre-sentence reports and support consistency in application across all demographic groups. It seeks to address concerns regarding the part of the guidance on the use of pre-sentence reports ("PSRs"), contained in the draft *Imposition of community and custodial sentences* guideline (the "Guideline"), which refer to particular "cohorts" of offenders for whom a PSR will "normally be considered necessary", and to prevent the Sentencing Council from reissuing guidance to the same effect.
- 2 The Bill has two clauses, and only one substantive clause.

Policy background

The Sentencing Council

- 3 The Sentencing Council for England and Wales is accountable to Parliament for delivering statutory obligations, which are set out in the Coroners and Justice Act 2009. The Sentencing Council is an independent, non-departmental public body, that has responsibility for:
 - a. developing sentencing guidelines and monitoring their use, assessing the impact of guidelines on sentencing practice; the Council may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government, and
 - b. promoting awareness among the public regarding the realities of sentencing, and
 - c. publishing information about sentencing practice in magistrates' courts and the Crown Court.
- 4 The Council must also:
 - a. consider the impact on victims of sentencing decisions,
 - b. monitor the application of the guidelines, and
 - c. when developing guidelines, promote understanding of, and public confidence in, sentencing and the criminal justice system.

The role of Parliament in setting sentencing policy

- 5 Historically, Parliament has been responsible for setting sentencing parameters (such as maximum and minimum sentences) but, within those parameters, judges have wide discretion.
- 6 The Sentencing Council is a creature of statute, already subject to parliamentary control as to its functions and how they may be exercised. The Bill amends the policy framework under which guidelines are made and is consistent with the principles of the existing framework. Decisions as to the need to obtain a pre-sentence report and to the imposition of any subsequent sentence are – and will remain – for the independent judiciary. The measure therefore does not encroach on the judicial function of sentencing and is consistent with the principles of judicial independence and the separation of powers.

The Imposition of community and custodial sentences guidelines

- 7 The Sentencing Council recently published revised *Imposition of community and custodial sentences* guidelines which are due to come into effect on 1 April 2025. These guidelines state that ‘when considering a community or custodial sentence, the court must request and consider a PSR before forming an opinion of the sentence, unless it considers that it is unnecessary (section 30 of the Sentencing Code)’ and that ‘a PSR will normally be considered necessary if the offender belongs to one (or more) of the following cohorts’. The cohorts listed include ‘those from an ethnic minority, cultural minority, and/or faith minority community’.
- 8 The Bill is intended to ensure that Sentencing Guidelines are drafted in such a way as to prevent differential treatment and maintain equality before the law. It does this by preventing the creation of a presumption regarding whether a pre-sentence report should be obtained based on an offender’s membership of a particular demographic cohort, rather than the particular circumstances of that individual. It is the Government’s view that guidelines should not do this, as it creates differential treatment before the law and that any policy which seeks to influence courts to obtain PSRs more readily for certain cohorts should be a matter for Parliament. Indeed, there is precedent for this as the Sentencing Act 2020 already limits the circumstances in which a pre-sentence report may be deemed unnecessary for children more strictly than is the case for adults.

Legal background

The Sentencing Council

- 9 The Sentencing Council is a statutory body created by Chapter 1 of Part 4 of the Coroners and Justice Act 2009. Its powers to make guidelines are set out in section 120. The existing Guideline has been issued under the Council’s powers under section 120(4) (“*the Council may prepare sentencing guidelines about any other matter*”).
- 10 The use by the court of sentencing guidelines is set out in Chapter 2 of Part 4 of the Sentencing Act 2020. This sets out the general duty of the court (section 59) and the impact of the duty in respect of determination of sentence (section 60).
- 11 Nothing in the Bill prevents the Council from issuing guidelines advising courts to consider the offender’s personal circumstances in deciding whether to request a PSR. Nor does the Bill affect Court of Appeal case law about when PSRs are necessary or desirable (see, for example: *R v Thompson* [2024] EWCA Crim 1038 which says that where a woman who is pregnant or has recently given birth is to be sentenced, it is desirable for the court to obtain a pre-sentence report; *R v Meanley* [2022] EWCA Crim 1065 where the court referred to the importance of PSRs in serious cases involving young defendants; and *R v Kurmekaj* [2024] EWCA Crim 1666 where the court said that the defendant’s traumatic upbringing, vulnerability and the fact they had been a victim of modern slavery meant a PSR should have been requested).

Territorial extent and application

- 12 Clause 2 sets out the territorial extent of the Bill (the jurisdiction of which the law forms a part). The provisions of the Bill extend and apply (where the law produces a practical effect) to England and Wales only.
- 13 See the table in Annex A for a summary of the position regarding territorial extent and

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application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Clause 1: Sentencing guidelines in relation to requests for pre-sentence reports

- 14 Clause 1 of the Bill is the only substantive clause; it amends section 120 of the Coroners and Justice Act 2009 so that Sentencing Guidelines about obtaining pre-sentence reports may not be framed by reference to the personal characteristics of an offender. This has the effect that, for example, Sentencing Guidelines cannot be issued to state that that it should generally be necessary to obtain a pre-sentence report based on an offender's membership of a particular demographic cohort, rather than the particular circumstances of that individual.
- 15 The Clause sets out a non-exhaustive list of personal characteristics including:
 - a. Race
 - b. Religion or belief
 - c. Cultural background.
- 16 This Clause removes the effect of the *Imposition of community and custodial sentences guideline* issued by the Sentencing Council which makes reference to particular cohorts and prevents the Sentencing Council from reissuing guidance to the same effect.

Clause 2: Extent, commencement and short title

- 17 Clause 2 sets out the extent of the Bill (that is, the jurisdiction in which it should have legal effect), the commencement provisions (that is, the date upon which that the Bill should have legal effect), and the short title of the Bill as it may be referenced.
- 18 The Clause sets out that the Bill, once enacted, extends to England and Wales only.
- 19 The Bill shall come into force on the day after the Act is passed.
- 20 The Bills may be cited as the Sentencing Guidelines (Pre-Sentence Reports) Act 2025 once it is enacted. The long title of the Bill is "A Bill to make provision about sentencing guidelines in relation to requests for pre-sentence reports."

Fast-track Legislation

- 21 The Government has asked Parliament to expedite the parliamentary progress of this Bill. In their report on *Fast-track Legislation: Constitutional Implications and Safeguards*, the House of Lords Select Committee on the Constitution recommended that the Government "should provide more information as to why a piece of legislation should be fast-tracked". The justification for fast-tracking the Bill is explained below.

Why is fast-tracking necessary?

- 22 On 5 March 2025, the Sentencing Council published its revised *Imposition of community and custodial sentences guideline* (<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/%20imposition-of-community-and-custodial-sentences-overarching-guideline/>), due to take effect from 1 April 2025. The Guideline is issued by the Council under its powers under section 120 of the Coroners and Justice Act 2009. It provides guidance that courts must follow, unless it is contrary to the interests of justice, when

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imposing community orders and custodial sentences.

- 23 The Guideline provides guidance on how courts should exercise their discretion to order a pre-sentence report under section 30 of the Sentencing Code, which says that, where the PSR requirements under the Code apply, the court must order a PSR “unless it considers that it is unnecessary”. The Guideline says that a PSR will “normally be considered necessary if the offender belongs to one (or more) of the following cohorts” and provides a non-exhaustive list of “cohorts,” including minority ethnic groups and women.
- 24 It is the Government’s view that guidelines which take demographic cohort as a factor in determining whether a pre-sentence report is required, rather than specific individual circumstances, is not acceptable as this creates differential treatment before the law. The Lord Chancellor asked the Sentencing Council to reconsider their approach, but on 27 March, they wrote to inform the Lord Chancellor that they declined to do so. The guidelines are due to come into effect on 1 April 2025 and we are therefore seeking to make use of fast-tracking to remediate the effect of these aspects of the guidelines as soon as possible in the interests of fair and equal justice.

What is the justification for fast-tracking each element of the bill?

- 25 There is only one operative clause and, as the guidelines are due to come into effect on 1 April 2025, we need to address the cohort-specific guidance on pre-sentence reports as soon as possible in order to ensure that there is no differential treatment before the law.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 26 No formal consultation has taken place due to the need to urgently address the cohort specific aspects of the Imposition Guideline that is due to come into effect on 1 April 2025. We asked the Sentencing Council to consult on the specific section within the guideline under existing powers granted by Parliament, however, they declined to do so.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 27 Due to the Government’s desire to urgently address the effect of part of the Imposition Guideline that makes reference to cohorts, it was not possible to consult with stakeholders of the policy. There have been a number of stakeholders that criticised the Sentencing Council’s approach and will welcome these measures, such as the Equality and Human Rights Commission.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

- 28 No sunset clause is included because it is the intention of the Government for this restriction to have permanent effect to prevent similar revisions to Guidelines in the future.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 29 As with all sentencing policy, we will keep these changes under regular review to ensure that we continue deliver a fair and robust criminal justice system. Moreover, the high degree of public and parliamentary interest in this matter itself acts as a form of ongoing scrutiny, which the Government continues to welcome.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

- 30 New primary legislation is required in order to prevent the Sentencing Council from publishing guidelines which stipulate the use of PSRs according to the demographic cohort of the offender.

Have relevant parliamentary committees been given the opportunity to scrutinise the legislation?

- 31 A European Convention on Human Rights analysis is included in these Explanatory Notes for the Joint Committee on Human Rights.

Commencement

- 32 The Bill will come into force on the day after the Act is passed.

Financial implications of the Bill

- 33 The provisions of this Bill are not expected to incur additional costs on the private sector, nor are there expected to be public sector financial implications owing to the Bill removing the effect guidelines and returning to the status quo, prior to 1 April 2025. Accordingly, no Economic Impact Assessment has been produced for introduction.

Parliamentary approval for financial costs or for charges imposed

- 34 A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. No money resolution is required for this Bill.
- 35 Generally, a ways and means resolution is required where a Bill gives rise to, or confers power that could give rise to, new charges on the people (broadly speaking, new taxation or similar charges). This Bill does not give rise to such charges and, as a result, does not require a ways and means resolution.

Compatibility with the European Convention on Human Rights

- 36 The Rt Hon Shabana Mahmood MP, Lord Chancellor and Secretary of State for Justice concludes that the provisions of the Bill, as introduced, are compatible with the European Convention on Human Rights (ECHR). Accordingly, a statement under section 19(1)(a) of the Human Rights Act 1998 has been made to this effect.
- 37 Article 5 provides protection against arbitrary detention. It is potentially engaged by the Bill, because Sentencing Guidelines may influence the sentence imposed and therefore the extent of an offender's deprivation of liberty. In principle, however, matters of appropriate sentencing fall outside the scope of the Convention. Furthermore, any decision to obtain a PSR under guidelines revised as a result of this Bill as well as the subsequent imposition of any sentence would continue to be imposed as a matter of judicial discretion and fall within Article 5(1)(a): the lawful detention of a person after conviction by a competent court.

38 Article 14 provides that the enjoyment of the rights and freedoms set out in the Convention is to be secured without discrimination. For there to be a breach of Article 14, a person would need to show that they had been treated differently on the basis of a ground listed in Article 14 (including 'other status'), that the claimant is in an analogous position to the person treated differently, and such differences cannot be objectively justified. It is the government's view that the effect of the Bill is to ensure that there is no differential treatment on the basis of membership of a particular cohort and therefore that the provisions of the Bill are compatible with Article 14 together with Article 5.

Environment Act 2021 section 20 statement

39 The Lord Chancellor and Secretary of State for Justice, the Rt Hon Shabana Mahmood MP, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Statement on the Bills effect on trade between Northern Ireland and other parts of the United Kingdom

40 The Lord Chancellor and Secretary of State for Justice, the Rt Hon Shabana Mahmood MP, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the UK. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

41 The following documents are relevant to the Bill and can be read at the stated locations:

- a. Imposition of community and custodial sentences - Effective from 1 April 2025. Published by the Sentencing Council and available online here: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/%20imposition-of-community-and-custodial-sentences-overarching-guideline/>

Annex A - Territorial extent and application in the United Kingdom

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|-----------|--|--|---|----------------------------------|---|--|---|
| | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion process engaged? | Extends and applies to Scotland? | Legislative Consent Motion process engaged? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
| Clause 1 | Yes | Yes | No | No | No | No | No |
| Clause 2 | Yes | Yes | No | No | No | No | No |

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