

SENTENCING GUIDELINES (PRE-SENTENCE REPORTS) BILL: OVERARCHING FACT SHEET

What are we going to do?

The Sentencing Guidelines (Pre-Sentence Reports) Bill will ensure that guidelines about when a pre-sentence report (PSR) should be obtained do not specifically refer to the race, ethnicity, or any other personal characteristic of the offender, avoiding differential treatment before the law. This is intended to:

- Prevent potential differential treatment arising from the Sentencing Council guidelines and avoid any unintended discrimination;
- Reinforce equal access to PSRs; and
- Support consistency in application across all demographic groups.

How are we going to do it?

The Bill does this by prohibiting references to personal characteristics in guidance on requests for PSRs, like the *Imposition of Community and Custodial Sentences* guidelines which currently refer to particular “cohorts” of offenders for whom a PSR will “normally be considered necessary”. The Bill will effectively remove those parts of the guidelines and prevent the Sentencing Council from reissuing guidelines in similar terms.

In summary, the Bill:

- **Amends the powers of the Sentencing Council** so that sentencing guidelines about PSRs may not include provision framed by reference to different personal characteristics of an offender.
- **Specifies that this applies in particular to race, religion or belief, and cultural background** although it will also apply more widely to other personal characteristics.

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 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). Judges will continue to be able to request pre-sentence reports in cases where they ordinarily would, for example, those involving pregnant women, young people, or domestic abuse.

Background

- PSRs were introduced in the 1991 Criminal Justice Act. PSRs provide the court with information about the offender and are not an indication of sentence. Sentencing determinations are an independent function of the judiciary, however, the Probation Service play an essential role in court by providing an expert assessment of the nature and causes of the offender's behaviour and the risk the offender poses.

- Evidence supports the conclusion that PSRs are an important element in sentencing. An MOJ Report ('The impact of oral and fast delivery pre-sentence reports on the completion of court orders') found that:
 - 80% of those who received a PSR fast delivery and 73% of those who received a PSR oral in 2016 successfully completed their court order.
 - This is higher than for similar offenders who did not receive any type of PSR (73% and 68% respectively), and this difference was statistically significant.
- The first *Imposition of Community and Custodial Sentences* guideline was issued in February 2017. The guideline provides sentencing courts with the general principles around imposing community orders and custodial sentences, and in what circumstances a custodial sentence can be suspended.
- Between 29 November 2023 and 21 February 2024 the Council consulted on a revised version of the Imposition guideline, which included changes to guidance on PSRs.
- The new guideline states 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)*'.
- It sets out 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.*'

How much will these measures cost?

The disapplication of particular aspects of the Sentencing Council's Imposition guidelines on PSRs will not have a quantifiable cost or benefit impact on society as it is a return to the current practices, therefore providing no change.

What is the scope of these measures?

The provisions in this Bill apply to England and Wales.