



Ministry
of Justice

Lord Timpson
Minister of State for Justice

Rt Hon The Lord Strathclyde CH
Constitution Committee
House of Lords
London
SW1A 0PW

MoJ ref: SUB123861

14 May 2025

Dear Lord Strathclyde,

CONSTITUTION COMMITTEE REPORT ON THE SENTENCING GUIDELINES (PRE-SENTENCE REPORTS) BILL

Thank you for your report, published 7 May, regarding the Sentencing Guidelines (Pre-sentence Reports) Bill. You asked for a response ahead of Committee stage of the Bill; I have set out below the report's recommendations and my responses.

The House may wish to satisfy itself that the Bill will not adversely impact upon the authority of existing case law in this sphere.

As set out in the explanatory notes, the Government does not consider the Bill will adversely impact upon case law in this area. The Bill is tightly drafted so that it only restricts the powers of the Sentencing Council to make guidelines about pre-sentence reports. Existing case law (such as *R v Thompson* [2024] EWCA Crim 1038, *R v Meanley* [2022] EWCA Crim 1065, and *R v Kurmekaj* [2024] EWCA Crim 1666) does not relate to the powers of the Sentencing Council; it relates to the separate question of when the *court* should obtain a pre-sentence report. The Government has made clear in supporting materials that the legislative intention behind the Bill is not to affect existing case law on when to obtain a pre-sentence report. For these reasons, the Government is satisfied that the Bill will not adversely impact upon the authority of existing case law in this sphere.

The Bill should be amended to ensure appropriate legislative certainty and clarity. The Government should either provide a full definition of the “personal characteristics” on the face of the Bill or adopt an alternative term which is clearly legally defined.

The Government considers the term “personal characteristics” is sufficiently clear and certain. The Government's concern with the *Imposition* guideline due to be introduced by the Sentencing Council was that it risked offenders receiving differential treatment, in terms of access to pre-sentence reports. The Government's policy in bringing forward this Bill was therefore to ensure that the Sentencing Council did not use guidelines on pre-sentence reports to prioritise certain groups over others based on their personal characteristics. The Government's policy is not limited to particular personal characteristics, such as the specifically listed protected characteristics under the Equality Act 2010.

The concept of “personal characteristics” is a broad and flexible one and it is not possible (or consistent with the Government’s policy intent) to set out an exhaustive definition or list of all qualities that amount to a “personal characteristic”. The Government considers that the essence of the concept was articulated clearly by Lord Neuberger *in R (RJM) v Work and Pensions* [2008] UKHL 63 at 35, where he said: “*the concept of “personal characteristic” ... generally requires one to concentrate on what somebody is, rather than what he is doing or what is being done to him*” (original emphasis). Clause 1(3) of the Bill provides a non-exhaustive list of personal characteristics – examples of attributes that describe “what somebody is, rather than what he is doing or has been done to him”.

For clarity, the Government’s view is that the following cohorts listed in the *Imposition* guideline would not comprise a “personal characteristic” under the Bill:

- a. being “at risk of first custodial sentence and/or at risk of a custodial sentence of 2 years or less”;
- b. being “the sole or primary carer for dependent relatives”;
- c. where “the offender is, or there is a risk that they may have been, a victim of: domestic abuse, physical or sexual abuse, violent or threatening behaviour, coercive or controlling behaviour, economic, psychological, emotional or any other abuse; modern slavery or trafficking, or coercion, grooming, intimidation or exploitation”.

The Government will continue to work closely with the Sentencing Council on implementation.

If the Bill is intended to have retrospective effects—in other words is intended to apply to sentencing guidelines which are already operational—then this should be made explicit on the face of the Bill.

The Government is satisfied that that the Bill, as currently drafted, clearly applies to existing and future Sentencing Guidelines and therefore does not consider that any drafting amendments are required.

The Government should set out clearly its reasoning for continuing with an expedited legislative timetable and the House may wish to satisfy itself that this this approach is proportionate and justified in these circumstances.

The *Imposition* guideline was due to come into effect on 1 April 2025, which is why we moved quickly to introduce this legislation. As you note in your report, the Sentencing Council then agreed to put the guideline on hold while Parliament has its say. Whilst we are thankful to the Council for doing so, the Government remains of the view that it is right to continue with the Bill’s passage as planned and announced (which has been agreed in the usual channels) so that Parliament can promptly express its intent in this area, recognising that the appearance of differential treatment in the *Imposition* guideline risks undermining public confidence in the criminal justice system.

Your report raises the implications of the Bill for the standing of the Sentencing Council. As the Lord Chancellor has set out, this situation has highlighted that there is potentially a democratic deficit here, and she is reviewing the wider roles and powers of the Sentencing Council, and is willing to further legislate if necessary. Both the Lord Chancellor and I have been clear that these wider questions around the standing of the Sentencing Council and its powers are beyond the scope of this Bill and it is right to take time to consider more fundamental reform.

The Government considers that the scheduling of this Bill, which has been agreed in the usual channels, provides sufficient time for effective parliamentary scrutiny of this narrow and targeted legislation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James', written in a cursive style.

Lord Timpson
Minister for Prisons, Probation and Reducing Reoffending