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| **Lord Timpson**  Minister of State for Justice |
| All Peers | 13 May 2025 |

**SENTENCING GUIDELINES (PRE-SENTENCE REPORTS) BILL – SECOND READING FOLLOW UP**

During my closing speech at Second Reading of the Sentencing Guidelines (Pre-Sentence Reports) Bill, I committed to write to you all ahead of Committee Stage to set out further information on the Government’s view that ‘personal characteristics’ is the most appropriate term to use in the Bill, and on the other contexts in which the term has been used.

As I set out in my speech, 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.

**Protected characteristics**

The Equality Act 2010 uses the term “protected characteristics”. That term has a closed definition and refers to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. As noted above, however, the Government’s policy is not limited to particular personal characteristics (such as the specifically listed protected characteristics under the Equality Act). Use of the term “protected characteristic” would therefore not have met the Government’s policy intent. For example, it would not have addressed the issue that the *Imposition* guideline refers to members of a “cultural minority” within its list of cohorts for whom a pre-sentencing report would “normally be considered necessary”. Instead, the Government has adopted the broader term “personal characteristics” to ensure its policy intent is met and that all the issues raised by the guideline were appropriately addressed.

**Definition of ‘personal characteristics’**

The concept of “personal characteristics” has been extensively discussed in case law on what amounts to “other status” for the purposes of Article 14 of the European Convention on Human Rights (prohibition on discrimination). In *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711, the European Court of Human Rights referred to “*a personal characteristic… by which persons or groups of persons are distinguishable from each other*”. The concept 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). Similarly, in *R (AL) v Serbia* [2008] UKHL 42 at 26, Baroness Hale spoke of “*personal characteristics which the complainant did not choose and either cannot or should not be expected to change*”. Case law has also distinguished between “*personal characteristics*” and historical facts (see *R (on the application of S) v Chief Constable of South Yorkshire* [2004] UKHL 39 at 50 per Lord Steyn and *R (Clift) v Home Secretary* [2006] UKHL 54 at [62] per Baroness Hale). 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”.

The Government recognises that more recent Article 14 case law has taken a very broad approach to the meaning of “personal characteristics” for the purposes of establishing “other status”. This has elided the distinction between an offender’s personal characteristics (which relate, fundamentally, to who or what someone is) and what might more intuitively be thought of as their personal circumstances (which implies a more temporary, or contingent, situation and is more about what someone is doing or has been done to them). This reflects the different context of Article 14 where, since *Clift v UK* (7205/07), there has been increased focus on justification rather that the question of “personal characteristics” or status. The Government considers that, in the context of the Bill, the interpretation offered by Lord Neuberger in *RJM* is of greater assistance.

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:

* 1. being “at risk of first custodial sentence and/or at risk of a custodial sentence of 2 years or less”;
  2. being “the sole or primary carer for dependent relatives”;
  3. 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 considers that the judicial discussion of the term, albeit in a different context, together with the broader background of the Equality Act, ought to be of assistance to the Sentencing Council when reviewing its guidance following passage of the Bill and the Government will continue to work closely with the Council on implementation.

**Demographic cohort**

I would also like to take this opportunity to expand on the Government’s view that “membership of a particular demographic cohort” is not a preferable term to “personal characteristics”. The term was used in the explanatory notes to provide additional context to the Bill’s intent but was not intended to narrow the concept of “personal characteristics”. The Government does not consider that using the term “demographic cohort” in the Bill would provide clarity. Instead, it would create uncertainty regarding who or what amounts to a demographic cohort and it is difficult to see how such groups could be defined other than with reference to individuals who share certain personal characteristics. The Government therefore remains of the view that it is preferable simply to refer directly to the concept of personal characteristics.

I hope this letter answers many of your concerns regarding the detail of the Bill, and I look forward to working closely with you all in the upcoming Bill stages. Should you wish to discuss the Bill ahead of Committee stage, I am hosting a drop-in session at 16:30-17:00 on Tuesday 13 May, in Room 6. If you plan on attending, I would be grateful if you could inform my office on PS.JamesTimpson@justice.gov.uk.

Yours sincerely,

**Lord Timpson**

**Minister for Prisons, Probation and Reducing Reoffending**