

The Courts (Prescribed Recordings) Order 2023

Policy change summary

1. The following sets out the Government's assessment, under the Public Sector Equality Duty (PSED) of the measures below contained in The Courts (Prescribed Recordings) Order 2023.

Proposal 1: Regularise the current practice of using CCTV cameras in areas of court buildings to which the public have access. The aim of the use of CCTV cameras is to provide a safe and secure environment for court users.

Proposal 2: Enable Prison Officers, Police Officers and court security staff to use bodyworn video (BWV) in court buildings. The aim of this provision is to improve the safety of all those in the court buildings, including court users, security staff and defendants.

Proposal 3: Disapply the section 41 prohibition of photography of participants in court proceedings and within court buildings, for the taking of Adoption Photographs.

Proposal 4: Allow Court of Appeal judges sitting in the Crown Court to be able to broadcast sentencing remarks.

2. In line with our PSED responsibilities under section 149 of the Equality Act 2010, we have paid due regard to the need to:
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
3. Having due regard to the PSED needs to be considered in light of the following nine protected characteristics:
 - Race
 - Sexual Orientation
 - Marriage/Civil Partnership
 - Sex
 - Religion or Belief
 - Gender Reassignment
 - Disability
 - Age
 - Pregnancy/Maternity

Direct Discrimination

4. We hold the view that none of the proposals in this Statutory Instrument are likely to be directly discriminatory within the meaning of the Equality Act 2010. We do not consider that any of the proposals would result in anyone being treated less favourably as a result of any protected characteristic.

Indirect Discrimination

Proposal 1: Regularise the current practice of using CCTV cameras in areas of court buildings to which the public has access.

5. CCTV is installed throughout public spaces in court buildings and this provision doesn't implement any change from current practice. As CCTV is only used within public spaces it does not target a specific cohort and therefore, we do not believe that this proposal will result

in any indirect discrimination amongst users of the justice system and do not believe that that it is likely to cause any particular disadvantage to people with protected characteristics.

Proposal 2: Enable Prison Officers, Police Officers and court security staff to use BWV in court buildings

6. The definition of indirect discrimination under the Equality Act 2010 is where a provision, or practice in relation to a relevant protected characteristic, is applied uniformly (to everyone), but has the effect of putting those with the protected characteristic at a particular disadvantage when compared to those who do not share the protected characteristic.
7. This provision will allow specified security personnel to use BWV in court buildings and is applied uniformly to any security incident that may occur either in the court building itself or around the exterior.
8. We do not believe the use of BWV by police officers and court security staff will result in any indirect discrimination amongst users of the justice system or that it is likely to cause any particular disadvantage to people with protected characteristics as any court user or member of the public could be captured on BWV.
9. The use of BWV by PECS (Prisoner Escort and Custody Services) staff, Police Officers, and Court and Tribunal Security Staff in the docks and courts will capture defendants in the courtroom and court building, as well as members of the public. There is an overrepresentation of minority ethnic men in the defendant population, therefore any footage recorded will more likely capture those with a protected characteristic, namely those defendants who are Black or Mixed race. This table details the numbers of defendants remanded in custody and remanded on bail against the general population, broken down into [self-defined] ethnicity.

ETHNICITY	ON REMAND	ON BAIL	GENERAL POPULATION
BLACK	10.7% (4,131)	6.6% (4,765)	4.0%
WHITE	56% (21,667)	53.2% (3,3457)	81.7%
ASIAN	5.6% (2,166)	5.5% (3,470)	9.3%
MIXED	3.4% (1,298)	2.4% (1,497)	2.9%
NOT STATED	22.2% (8,588)	29.6% (18,656)	-

Total count of defendants remanded in custody 2021: 38,718

Total count of defendants remanded on bail 2021: 62,926

There are cases for which the remand status is unknown, however these are quite small numbers and for defendants whose remand status is unknown, 70.2% (1790 defendants) did not state their ethnicity, therefore it is difficult to draw any robust conclusions from this data.

10. While the use of BWV will likely capture a proportionally higher number of defendants with a protected characteristic, namely black, male defendants, the use of cameras in the court building for security incidents will increase transparency and accountability of PECS staff, police officers, and court and tribunal security staff dealing with defendants. We further consider that the policy will significantly decrease the number of security incidents in court buildings.

Proposal 3: Disapply the section 41 prohibition for the taking of Adoption Photographs.

11. This proposal will disapply the prohibition of photography in court buildings for Adoption Photographs taken at Adoption Ceremonies as part of the Celebration Day when a child is adopted.

12. Since this is an entirely optional part of the adoption process and at the discretion of the individuals involved, we do not believe that this proposal will result in any indirect discrimination amongst users of the justice system and do not believe that that it is likely to cause any particular disadvantage to people with protected characteristics.

Proposal 4: Allow Court of Appeal judges sitting in the Crown Court to be able to broadcast sentencing remarks.

13. The purpose of this provision is to increase transparency in the justice system by adding Court of Appeal judges sitting in the Crown Court to the list of judges whose sentencing remarks may be recorded and broadcast.
14. Since only the judge is permitted to be filmed when broadcasting, we do not consider that this provision would result in anyone with a protected characteristic being put at a particular disadvantage because of their protected characteristic.

Discrimination arising from disability and duty to make reasonable adjustments

15. We do not consider there to be a risk of discrimination arising from disability and/or a duty to make reasonable adjustments as a result of these measures.

Harassment and victimisation

16. We do not consider there to be a risk of harassment or victimisation as a result of these provisions, when they are implemented.

Advancing equality of opportunity

17. We do not consider that these measures would have any significant impact on the achievement of this objective.

Fostering good relations

18. We do not consider that these measures would have any significant impact on the achievement of this objective.