

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1994](#): Review the trial process for sexual offence cases, lodged by Margaret Fagan

Background

The [petition](#) seeks a review of the trial process and handling of witness evidence in sexual offences cases.

It raises concerns that some of the reforms aimed at protecting complainers have unduly disadvantaged the defence in such cases. In particular, it refers to defence evidence being held as irrelevant and not admissible.

The Scottish Government's [written response](#) (2023) to the petition interprets it as referring to legal provisions regulating the use of evidence about the sexual history or character of complainers in sexual offence trials. The matter is covered by sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995.

Restrictions on evidence relating to sexual offences

The provisions in sections 274 and 275 of the [Criminal Procedure \(Scotland\) Act 1995](#) set out some restrictions on evidence. They are intended to protect complainers in sexual offence trials from inappropriate questioning about their sexual history and character.

The current provisions are the result of reforms made by the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#).

Reports on the use of the provisions include:

- HM Inspectorate of Prosecution in Scotland (2022) – [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995](#)
- Equality and Human Rights Commission (2020) – [The use of sexual history and bad character evidence in Scottish sexual offences trials](#).

The provisions were also considered as part of a [review on improving the management of sexual offences cases](#) chaired by the Lord Justice Clerk (Lady Dorrian). Recommendations of its final report (2021) include the provision of independent legal representation for complainers to help ensure they receive the protection provided for in the legislation.

The Scottish Government has sought views on the above recommendation as part of its consultation on [Improving victims' experiences of the justice system](#) (2022).

Criminal Justice Reform Bill

The Scottish Government's [Programme for Government 2022-23](#) (2022) includes plans for a Criminal Justice Reform Bill. It is, amongst other things, intended to make reforms building on the recommendations of the above-mentioned review of the management of sexual offence cases.

It is anticipated that the Bill will be introduced in spring/summer 2023.

The Scottish Government's written response to the petition notes that consideration of the Bill will provide an opportunity for scrutiny of how sexual offence cases are dealt with.

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03/02/2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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