

Briefing for the Citizen Participation and Public Petitions Committee

Petition [PE1881](#): Longer sentences for paedophiles and sexual predators,
lodged by Carol Burns

Background

The petition seeks an increase in “the length of time sexual predators serve in jail”.

The petitioner refers to personal experience of being the victim of child sexual abuse, in relation to which the perpetrator was prosecuted and sentenced 33 years later.

Sexual offences

Most sexual offences are now covered by the [Sexual Offences \(Scotland\) Act 2009](#). As well as detailing the offences themselves, it sets out the maximum sentences which a judge may impose for each offence. These maximums vary depending on the offence and how the specific case is prosecuted (e.g. whether prosecuted in a sheriff court under summary procedure or the High Court of Justiciary under solemn procedure).

Some sexual offence cases are prosecuted under common law offences. These includes situations where a sexual offence committed before the coming into force of the Sexual Offences (Scotland) Act 2009 is being prosecuted. The maximum sentence for common law offences is determined by how the case is prosecuted.

Crown Office & Procurator Fiscal Service

Decisions on how a case is prosecuted are taken by the [Crown Office & Procurator Fiscal Service](#), although legislation can restrict

its discretion (e.g. rape must be prosecuted in the High Court of Justiciary).

It has powers to appeal against what it considers to be unduly lenient sentences.

Sentencing

Sentencing is carried out by the judge in the case (e.g. a sheriff or High Court judge). The range of sentences open to a judge may be constrained by legislation relating to the specific offence (e.g. setting a maximum) and the [general sentencing powers of the particular type of court](#).

The [Scottish Sentencing Council](#) was established in 2015 as an independent advisory body, with membership drawn from the judiciary, legal profession and others with relevant expertise. Its work includes:

- preparing sentencing guidelines for the courts
- publishing information on sentencing (e.g. see the section of its website [about sentencing](#)).

The Scottish Sentencing Council is not involved in deciding the sentence in individual cases.

Sentencing guidelines

As indicated above, the work of the Scottish Sentencing Council includes the preparation of sentencing guidelines for the courts. Its website provides [information on how guidelines are prepared and their purpose](#). It states:

“These guidelines will help judges decide what sentences to give to people who have committed offences. They should also help the public to better understand sentences.

Sentencing guidelines can be general and apply to all offences. Or they may focus on a particular type of offence or category of person who has offended, for example young people. This will be stated clearly on each guideline.

Any guidelines developed by the Council must be approved by the High Court of Justiciary before they have effect.”

The work of the Scottish Sentencing Council in preparing guidelines covering a range of areas will take time. Thus far, one set of guidelines has been approved, covering the [principles and purposes of sentencing](#) (2018).

Ongoing work in preparing sentencing guidelines includes [sexual offences](#). The website notes:

“Sexual offending has increasingly become an area of public concern in recent years, with increased reporting, prevention, and enforcement action. Sexual offences account for a high proportion of sentencing, particularly in the High Court, often involving difficult decisions in complex circumstances. This is an area of great importance in which we believe sentencing guidelines would bring significant benefits to the judiciary, those involved in such cases, and the wider public.”

And that:

“Taking into account the information we have gathered to date, the Council has decided to begin its work on sexual offences by developing sentencing guidelines in relation to rape, sexual assault, and indecent images of children.”

As part of this work on sexual offending, two academic reports were published earlier this year:

- [Sexual offences involving rape literature review](#)
- [Sexual offences involving sexual assault literature review](#)

The authors have discussed their findings in a blog – [What do we know about sentencing sexual offences in Scotland?](#) (2021). In relation to public perceptions of sentencing, it says:

“Our reports discuss international research on public perceptions of sentencing of sexual offences. Little in-depth research has been conducted on public perceptions of sentencing of sexual offences in Scotland. McPherson and Tata have recently completed research on this in association with Scotcen and our report will be published shortly by the Scottish Sentencing Council.

Research studies from comparable countries have tended to find that members of the public believe that there is excessive leniency in sentencing in general, not least in sexual offences,

including rape. However, those studies show that people tend to greatly to over-estimate the leniency of actual practices.”

The petitioner highlights events where successful prosecution took a long time. Given this, it is worth noting that additional sentencing issues can arise in ‘historical cases’. For example, the above-mentioned [academic report on sexual offences involving sexual assault](#) notes:

“Sentencing depends on the facts of the case. However, historical cases raise particular questions. One question, in light of potential changes to the law and policy, is whether the court ought to sentence the offender according to contemporary standards or those at the time of the commission of the offending.” (p 26-27)

It goes on to say that:

“it seems that when sentencing for historical offences courts will use a contemporary approach subject to any maxima that may have existed previously.” (p 28)

In relation to sexual offending, it notes that this may lead to a court imposing a sentence which is higher than that which may have been likely around the time the offence was committed.

Release from a custodial sentence

Where an offender receives a custodial sentence, the amount of time spent in prison (or young offender institution) depends on the both the length of sentence and release arrangements.

A [SPICe subject profile on the prison service](#) (2021) provides information on release arrangements – see sections on [early release](#) and [home detention curfew](#).

Key organisations

- [Crown Office & Procurator Fiscal Service](#)
- [Faculty of Advocates](#)
- [Law Society of Scotland](#)
- [Rape Crisis Scotland](#)
- [Scottish Government](#)

- [Scottish Sentencing Council](#)
- [Victim Support Scotland](#)

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