

Citizen Participation and Public Petitions Committee
Wednesday 7 May 2025
8th Meeting, 2025 (Session 6)

PE2102: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Introduction

Petitioner Anna-Cristina Seaver

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases where the accused is found guilty of rape or sexual assault and introduce a statutory minimum sentence for these offences which includes the convicted person being registered as a sex offender.

Webpage <https://petitions.parliament.scot/petitions/PE2102>

1. [The Committee last considered this petition at its meeting on 25 September 2024](#). At that meeting, the Committee agreed to the Scottish Government, Victim Support Scotland, Rape Crisis, and the Scottish Sentencing Council.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from Rape Crisis Scotland, the Scottish Government, Victim Support Scotland, the Petitioner and the Scottish Sentencing Council, which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 27 June 2024](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 568 signatures have been received on this petition

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
May 2025

Annexe A: Summary of petition

PE2102: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Petitioner

Anna-Cristina Seaver

Date Lodged

29 May 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases where the accused is found guilty of rape or sexual assault and introduce a statutory minimum sentence for these offences which includes the convicted person being registered as a sex offender.

Background information

Between 2018 and 2022, an average of three people every year were granted an absolute discharge as a result of receiving a guilty verdict for sexual assault. It should be noted that absolute discharges will be included in the conviction statistics for these crimes, which are already unacceptably low (Rape:48%, sexual assault 57% compared to 88% average conviction rate of all crimes). An even lower number are registered as sex offenders as a result of these convictions. Information on the Scottish Sentencing Council and Scottish Government websites state that an absolute discharge is used in “exceptional circumstances” or when the judge feels the crime that has been committed “does not merit any form of punishment”. Those who truly believe in justice for victims of sexual assault will agree that there is not any circumstance that is exceptional enough to allow a person found guilty of sexual assault to go unpunished, and that sexual assault always merits a form of punishment.

Annexe B: Extract from Official Report of last consideration of PE2102 on 25 September 2024

The Convener: We come to PE2102, for our consideration of which Fulton MacGregor MSP has expressed an interest in joining us. I understand that he will be with the committee shortly.

The petition, which has been lodged by Anna-Cristina Seaver, calls on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases where the accused is found guilty of rape or sexual assault and to introduce a statutory minimum sentence for such offences that includes the convicted person being registered as a sex offender.

The Scottish Sentencing Council's information on absolute discharge states that

“Reasons for an absolute discharge can include, for example, that the crime is very minor, that the offender has been previously of good character, or that the offender is very young or old.”

The Scottish Government's statistics show that there were two absolute discharges for rape and attempted rape and nine for sexual assault in 2021-22.

The petitioner feels that, even though the numbers are low, there is no circumstance that is exceptional enough to allow a person who is found guilty of a sexual assault to go unpunished. In its response, the Scottish Government notes that, in assessing a case, the court will consider the appropriate sentence for each offender before them,

“taking account of all the relevant facts and circumstances of the particular case.”

That includes consideration of the fact that absolute discharge will remove the requirement for notification—that is, for the person to be registered as a sex offender.

In her recent submission, the petitioner argues that the current framework has a loophole that excuses those with an absolute discharge from being subject to notification requirements. That is because the length of an individual's notification requirement is set by the length of their sentence. When no sentence is set when an individual receives an absolute discharge, that equals a period of “no duration” in which they are subject to notification requirements.

I will use my discretion to briefly suspend the meeting, because I understand that Mr MacGregor will be with us shortly, and I know that the committee would want to give him an opportunity to comment on the issues raised by the petition.

10:09 Meeting suspended.

10:15 On resuming—

The Convener: Welcome back. Before we suspended, we were considering PE2102, from Anna-Cristina Seaver, which seeks to require that anyone who is

found guilty of rape or sexual assault to be registered as a sex offender. I read out and detailed the general principles of the petition.

Fulton MacGregor MSP has now joined us, and I am delighted that he will contribute some thoughts to the committee ahead of our consideration of the actions that we might take. Good morning, Mr MacGregor. The committee would be delighted if you would detail your thoughts to us.

Fulton MacGregor (Coatbridge and Chryston) (SNP): As the committee will be aware, the petition before you calls on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases where the accused is found guilty of rape or sexual assault and to introduce a statutory minimum sentence for those offences that includes the convicted person being registered as a sex offender. The petitioner is a constituent of mine and has met me to discuss the issue on several occasions. It is an issue that she is very passionate about.

It should be noted that I have written to the Cabinet Secretary for Justice and Home Affairs on the issue as a result of the discussions that I have had with my constituent. The cabinet secretary has outlined the narrow scope whereby someone who is convicted of a sexual assault can receive an absolute discharge, as well as some of the reasons that a change to legislation might be difficult to implement here. With permission of the cabinet secretary and my constituent, I could share that correspondence with the committee if it is interested in seeing that.

The petitioner acknowledges that an average of three people each year were granted an absolute discharge as a result of receiving a guilty verdict for sexual assault, which underlines the rare circumstances in which that occurs.

However, at its core, the petition seeks to address an apparent loophole. Being convicted of an offence that is listed under schedule 3 to the Sexual Offences Act 2003 makes the offender automatically subject to notification requirements—that is, they become a registered sex offender. The notification requirements are not dependent on an order of the court. An offender who becomes subject to the requirements does so automatically, because they have been convicted, cautioned, reprimanded or warned for a “relevant offence”. There is no discretion exercised by the courts or the police in imposing the notification requirements on relevant offenders.

However—this is the perceived loophole—absolute discharges do not trigger the notification requirements. In solemn proceedings, even when an offender receives an absolute discharge, a conviction is still recorded. Despite the conviction, an absolute discharge means that no duration is assigned for notification requirements, creating the said loophole that means that the offender is not subject to notification requirements. The petitioner feels that that should be an automatic process as part of the conviction.

The petition has perhaps come at an apt time as the Scottish Sentencing Council is currently at stage 2 of its process to develop sentencing guidelines on sexual assault and at stage 4 of its process to develop sentencing guidelines on rape. As the council must consult Scottish ministers and the Lord Advocate before submitting the

guidelines to the High Court, there might be some scope for the committee or the Parliament to impress upon the Scottish Government the nature of the petition and what it is trying to achieve.

Ultimately, the petition is based on the notion that my constituent has asserted to me very clearly that they do not believe there is any circumstance that is exceptional enough to allow a person who is convicted of sexual crimes not to be subject to the notification requirements. Part of the assertion comes from how difficult such convictions are to obtain, through every part of the criminal justice process, which is something that the Criminal Justice Committee is very aware of. There are a small number of people who receive guilty verdicts and whose sentence is absolute discharge. However, where victims later learn that they are not subject to sex offender registration, that could and does have a devastating impact on victims.

I conclude by thanking my constituent for submitting the petition, for getting the number of signatures that she did and for bringing the matter to the Parliament. As I said, she is very passionate about the issue and she wants to see change in that area. I will continue to support her in my role as her local MSP.

Back to you, convener.

The Convener: Thank you very much, Mr MacGregor. I also thank your constituent for submitting her petition, which raises issues for the committee to consider. Do colleagues have any suggestions as to how we might proceed?

David Torrance: I wonder whether the committee would consider writing to the Scottish Government to ask for its views on the petitioner's request to abolish absolute discharge in cases of rape or sexual assault and to introduce a statutory minimum sentence for those offences.

The Convener: If I could just interrupt you on that point, Mr Torrance. In that letter to the Scottish Government, we could draw on some of the additional suggestions that might be made to it from Mr MacGregor's evidence as well.

David Torrance: Yes. I also wonder whether the committee would consider writing to Victim Support Scotland and Rape Crisis seeking their views on the action called for in the petition. As Mr MacGregor has already highlighted, I would like to inform the petitioner about the Scottish Sentencing Council's consultation on the draft sentencing guidelines on rape—although I have no doubt that the petitioner is already engaged with that process.

The Convener: Thank you. Are there any other comments or suggestions from colleagues?

Fergus Ewing: Mr MacGregor put the case very well. I noted that 453 signatures have been obtained, which is a fairly substantial number. I support the recommendations that have been made by Mr Torrance and yourself, convener.

I was curious as to how many instances of absolute discharge there have been in cases in which there has been a conviction for rape or attempted rape or, indeed, for sexual assault. I have been advised that the figures show that there were two

absolute discharges for rape and attempted rape and nine for sexual assault in 2021-22.

I mention that as I am curious to know whether it is possible to get any explanation, without breaking any rule about confidentiality, as to why an absolute discharge was granted in those cases. To any onlooker, it must seem pretty inexplicable that an absolute discharge would be granted, especially for a crime of rape. It is very difficult to understand what circumstances could be so exceptional as to justify such an outcome when someone is convicted of something as serious as rape. I find it very hard to imagine any circumstances in which that would be fair. However, on the other hand, the whole point of discretion of the court is that, if there are truly exceptional circumstances, it has that discretion. That would be the argument.

I am labouring the point a little bit, but I am curious as to what the justification was for that outcome in those cases. I do not know whether it is possible to find that out, convener, but I think that we should certainly try to do so.

The Convener: Would that be for the Scottish Sentencing Council to respond to? Should we invite it, insofar as it is able, to identify circumstances in which absolute discharge would have been granted, without prejudicing the particular circumstance of any individual case?

Fergus Ewing: Yes, I think that it would be. There is an additional point here: if the council is unable to explain what the circumstances were that merited that surprising outcome, how can it make a judgment on dealing with those matters in future? In other words, this is a sine qua non in relation to its work on sentencing guidelines.

The Convener: Given that we know that the Scottish Sentencing Council is undertaking a consultation—and we respect the fact that it is—it would be helpful to the committee, in trying to understand on behalf of both the petitioner and others who might be looking at the issues that are identified in the petition, if the council was able to give us some understanding as to how an absolute discharge might arise as an appropriate sentence. We are not asking for any breach of confidentiality in a specific circumstance, but we would like to understand in a more general sense how that could happen. On the face of it, it seems unpardonable.

We will keep the petition open. Thank you, Mr MacGregor, for your contribution.

Are colleagues content that, in addition to Mr Torrance's and Mr Ewing's suggestions, we proceed on the basis that we have identified?

Members *indicated agreement.*

Annexe C: Written submissions

Rape Crisis Scotland written submission, 14 November 2024

PE2102/C: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Thank you for contacting us regarding petition PE2102.

The Scottish Sentencing Council has recently published draft sentencing guidelines for rape. These guidelines address a significant amount of the subject of this petition. We have outlined our position on these guidelines, and where we believe more action is needed around sentencing for rape in Scotland, below.

Sentencing for rape must be transparent, consistent, and robust. We are hopeful that new proposed sentencing guidelines for rape can go some way to ensuring that this is the case for sentencing across Scotland.

We often hear from survivors that they do not understand why their rapist received the sentence they did, and that they are left confused by the process. We hope these guidelines will bring clarity. We also hope the guidelines will make sentencing more consistent.

The sentencing guidelines set out the factors that should be considered when determining a sentence, and what this sentence should be. The guidelines set out a minimum tariff for a rape sentence, which is four years' custody. In our view, it is difficult to imagine any circumstance where an absolute discharge would be appropriate for a crime as serious as rape.

The guidelines also set out that any offender in receipt of the sentences outlined within the guidelines after a rape conviction would automatically be made the subject of the notification requirements of the Sexual Offences Act 2003. This is commonly referred to as the sex offenders register.

Harm is a significant factor in how the guidelines set out that sentences should be reached. We need more clarity on how this harm will be assessed by the justice system.

If harm is to be such a significant factor in the determination of a sentence, it's vital that survivors have the right to read out a victim impact statement in court to communicate, in their own words, what harm the perpetrator's crime has caused them, or have a person of their choice read this statement for them. Victims already have the right to read their impact statement in England and Wales. While the extension of this right to survivors in Scotland is outwith the remit of the Scottish Sentencing Council, we hope it will be actioned by the Scottish Government.

We also believe mandatory non-harassment orders must be part of sentencing in order to protect survivors when their rapists are released from prison.

Currently, participation in sex offender programmes for convicted rapists is optional. This means many rapists leave prison without having undergone any rehabilitation of

this nature. We are calling for the sentencing guidelines to include mandatory participation in such programmes as part of sentencing.

Sentencing is just one aspect of the justice system in Scotland where we see the need reform to improve survivors' experiences of seeking justice after rape. We hope that transparent, robust, and consistent sentencing can play a part in making the justice process a more positive experience for survivors, and a greater equity of outcomes.

Yours sincerely,
Sandy Brindley
Chief Executive
Rape Crisis Scotland

Scottish Government written submission, 15 November 2024

PE2102/D: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Thank you for your email of 18 October seeking further information from the Scottish Government to assist the Committee's consideration of petition PE2102.

In your letter, you ask what the Scottish Government's position is on the proposal to remove the power for a court to impose a sentence of absolute discharge on a person convicted of rape or sexual assault. The petitioner highlights that where an offender is given an absolute discharge, the offender is not made subject to the Sex Offender Notification Requirements (SONR) which would otherwise apply.

The Scottish Government supports discretion for the criminal court when sentencing in individual cases. It is a long-standing feature of sentencing law in Scotland that absolute discharge is available as an exceptional response available for a court in cases where the court assesses it appropriate. It is considered appropriate that the courts continue to have discretion to impose an absolute discharge for offences including rape and sexual assault if, having considered all the facts and circumstances of the particular case, the sentencing judge considers that this is the most appropriate disposal.

It might assist the Committee's consideration of the Petition to be aware that, in any individual case, if a sentencing judge decides that it is not appropriate to impose any 'punishment' on an offender, such as a custodial sentence, community payback order or financial penalty, but they do consider that for public protection reasons, the offender should be made subject to the SONR, it is open to the court to admonish the offender. The consequences of admonishment are the same as absolute discharge, except that the conviction will be recorded on the offender's criminal record and, where the offender has been convicted of a qualifying offence such as rape or sexual assault, they will be made subject to the SONR. As such, in cases where a court does decide to impose an absolute discharge, this is a decision of the court using their knowledge of the facts and circumstances of a case.

As noted in my previous letter and as part of the necessary checks and balances in the criminal justice system, in any individual case, if COPFS consider that the court has imposed an unduly lenient sentence, it is open to them to appeal against that sentence.

It is within this overall context that the Scottish Government does not have any current plans to adjust the powers of the court to impose absolute discharges in criminal cases.

I hope this is helpful to the Committee.

Criminal Justice Division

Victim Support Scotland written submission, 20 November 2024

PE2102/E: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Victim Support Scotland (VSS) supports the petition to require anyone found guilty of rape or sexual assault to be registered as a sex offender.

From the perspective of victims/survivors of sexual crime, we strongly believe that the option of an absolute discharge should be abolished for this specific crime type and a statutory minimum sentence that includes the convicted person being registered as a sex offender should be introduced.

There is no evidence to support a view that there are cases which are sufficiently exceptional to warrant an absolute discharge for sexual crimes. VSS strongly holds the view that absolute discharge should not be deployed for sexual crimes and that this should be embedded in law as this is in line with the interests of victim/survivors.

We take specific issue with examples of mitigating factors raised in the Citizen Participation and Public Petitions Committee session on Wednesday the 25th of September 2024. These were: minor offence, good character, and perpetrator is particularly old or particularly young. In line with the committee, we call on the Scottish Sentencing Council to provide greater clarity regarding what mitigating factors would be eligible for absolute discharge and provide robust guidance on what exceptional circumstances would be considered.

While these are examples, VSS wishes to rebut the three exceptional circumstances and mitigating factors raised during committee discussions in turn:

1. VSS does not believe someone found guilty of rape or sexual assault can be considered to have good character. Past behaviour or the absence of previous convictions should not be considered relevant when assessing this crime. Past behaviour does not mitigate against rape, especially given that sexual crime is under-reported, particularly in the context of domestic abuse, therefore the lack of previous conviction is not a true indication of past behaviour. Additionally, past behaviour holds no bearing on the impact the rape has had on the victim-survivor and therefore should not be considered.
2. VSS does not believe in minor rape or sexual assault. Even if that is the legal classification given, from a victims' perspective this is a highly invasive crime type with longstanding and distressing impact that can be felt for years to come. The traumatic and emotional impact of sexual crimes on victim/survivors cannot be underestimated. As such, it cannot be considered minor and there must be appropriate consequences for committing such a crime. We believe that being subject to notification requirements as a registered sex offender is the minimum permissible punishment.

3. VSS does not believe that the age of the offender, either particularly old or particularly young, should be considered a mitigating factor. Regardless of age, if you have been found guilty of a crime there should be appropriate consequences for those actions. We again stress that being subject to notification requirements is a very light sentence, especially considering that in instances of a guilty verdict for rape cases custodial sentences are highly common.

VSS believes that rape and sexual assault are among the most invasive, distressing and traumatising crime types. As such, there should always be some form of punishment and safeguarding for the public as a result of a guilty verdict – being subject to notification requirements is the minimum. Sexual crimes have notoriously low conviction rates, with the burden of proof more often than not resting with the victims of crime. They are often subject to highly personal lines of questioning and victims of crime often feel like they are the ones on trial. It is unjust that a victim of sexual crime should have to go through this retraumatising process, securing a guilty verdict, just that to be undermined by an absolute discharge. We note that this is only used in an average of three cases per year, however this is no solace to the victims in affected cases.

Absolute discharge is widely considered a loophole that we maintain should be closed. It has been widely criticised by victims and witnesses across crime types, but it is particularly insulting to victims of rape and sexual assault. The disappointment felt by victim/survivors when their rapist has been found guilty, following the retraumatising trial process, has been described as ‘a slap in the face’. The victim/survivor will live with the impact and trauma of their rape or sexual assault for the rest of their life, therefore it feels profoundly unjust that even after a guilty verdict the perpetrator faces zero consequences.

Abolishing absolute discharge for sexual crimes will have little to no resource implications due to the low number of cases impacted per annum. However, for the victim/survivors of rape and sexual assault it will have a profound impact, as it will:

- Validate their experience, as many victim/survivors of sexual crimes report feeling unsupported and not believed
- Evidence a clear outcome from the trial, proving that the retraumatisation associated with the criminal justice system was in aid of something
- Demonstrate that justice has been carried out and that there has been a proportionate consequence for committing such a personal and invasive crime

People affected by crime strongly oppose the use of absolute discharge for rape and sexual assault, and as the leading charity dedicated to helping people affected by crime, VSS seeks to amplify this view. As such, we fully endorse this petition and agree that there is not any circumstance that is exceptional enough to allow a person found guilty of sexual assault to go unpunished, and that sexual assault always merits a form of punishment. We call on the abolition of absolute discharge for sexual crime in line with the aims of this petition.

Scottish Sentencing Council written submission, 18 December 2024

PE2102/G: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

The disposal of all cases is always entirely a matter for the independent sentencer and, in particular, under [section 246 of the Criminal Procedure \(Scotland\) Act 1995](#) the court, before imposing an absolute discharge, must consider the nature of the offence and the character of the offender. In assessing the seriousness of any offence for the purposes of disposal the court will consider the culpability of the offender and the harm caused to the victim. The sentencer will also consider any aggravating factors which will make the offence more serious, and any mitigating factors which will make the sentence less severe. For further details of the sentencing process, and examples of general aggravating and mitigating factors, please see the Council's [sentencing process guideline](#).

The offence of rape is only prosecuted in the High Court, which is governed by solemn procedure (which is for more serious cases). Sexual assault, which can encompass a very wide range of facts and circumstances, can be prosecuted under solemn or summary procedure.

In solemn cases an absolute discharge can only be imposed once the accused has been convicted. In summary cases, where the court is satisfied that the accused committed the offence, it can impose an absolute discharge without moving to conviction. In both situations, if the person is convicted of something else in the future an absolute discharge can be laid before the sentencing court as if it were a previous conviction. However, the effect of section 247(1) of the 1995 Act is that, whether in solemn or summary proceedings, an accused who has been absolutely discharged will not be made the subject of the sex offender notification requirements ('the register').

Both the High Court and the Sheriff Appeal Court have indicated that a case should only be disposed of by way of an absolute discharge in exceptional circumstances. However, as each case is unique and turns on its own facts and circumstances, it is not possible for the Council to be more specific about what exceptional circumstances might amount to in respect of any offence.