

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

Petitioner submission, 3 July 2024

In response to the submission https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2024/pe2102/pe2102_a.pdf that was added to my petition, I would like to add the following comment:

Being registered as a sex offender should be an automatic process according to Schedule 3 of the Sexual Offences Act 2003, however loopholes in the legal system are able to undermine this. The current legislation states that the court has no power over whether or not someone is subject to notification requirements and it is an automatic process, the length of time an offender is subject to the notification requirements is dependent on the sentence they receive - but they essentially cannot be “excused” from being subject to notification requirements by the court if they are convicted of an offence listed in Schedule 3 of the Sexual Offences Act 2003.

The Scottish Sentencing Council states that when a person is found guilty of a charge under solemn procedure, a conviction is recorded, even if the person receives an absolute discharge.

Therefore, an absolute discharge issued in a solemn case does not “overturn” a conviction, which means the offender would still be subject to notification requirements.

However, because the duration of compliance with notification requirements is determined by the offender’s sentence, if the offender receives an absolute discharge this is essentially no sentence. This provides a loophole that allows offenders to be excused from being subject to notification requirements because no sentence equals no duration in which an offender is subject to notification requirements.

So, the offender has a conviction making them automatically subject to notification requirements, but the court issues an absolute discharge, meaning the conviction cannot operate in accordance with the Part 2 of the Sexual Offences Act. Therefore, the convicted person of such offences is never subjected to the requirements outlined by the law.

The ability to discharge someone absolutely when they are convicted of an offence which is outlined in Schedule 3 of the Sexual Offences Act, directly undermines the laws that the act has put in place. This creates a huge discrepancy between how the law is supposed to function and its application in the courts.

The Committee should be aware in considering the petition, that the aim is to bring the way in which sentencing takes place in these cases, in line with how legislation is outlined to operate in order to be effective. The petition is not seeking to introduce new legislation as such, but rather to remove the ability to grant absolute discharges in these cases by drawing attention to the fact that legislation cannot currently

operate to serve its intended purpose while the sentencing loopholes that have been addressed in this information exist.

Simply put, the legislation states those found guilty of such crimes are automatically subject to notification requirements at point of conviction, and current sentencing powers do not comply with this.