

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

Scottish Government written submission, 15 November 2024

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