

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

## **Scottish Sentencing Council written submission, 18 December 2024**

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.