

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2102](#): Require anyone found guilty of rape or sexual assault to be registered as a sex offender, lodged by Anna-Cristina Seaver

Brief overview of issues raised by the petition

The petition 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 introduce a statutory minimum sentence for these offences which includes the convicted person being registered as a sex offender.

The petitioner notes that while there are relatively low numbers of people granted an absolute discharge each year as a result of receiving a guilty verdict for sexual assault, that they believe there is no circumstance that is exceptional enough to allow a person found guilty of this crime to go unpunished.

Background Information

Absolute discharge

[Section 246 of the Criminal Procedure \(Scotland\) Act 1995](#) sets out that, where someone is guilty of an offence which does not have a sentence that is fixed by law, the court may, if it appears to the court:

“...having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment [...] make an order discharging him absolutely.”

This applies both where someone is convicted in solemn (more serious) and summary (less serious) proceedings.

The [Scottish Sentencing Council](#) (SSC) sets out that an absolute discharge means that no punishment is given. In solemn proceedings this will still result in the recording of a conviction, while in summary cases no conviction is recorded, although for some purposes it may be regarded as a previous

conviction. The SSC note that this disposal is only given in “exceptional circumstances”, stating 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 [Criminal Proceedings in Scotland statistics](#) show that there were 2 absolute discharges for rape and attempted rape and 9 for sexual assault in 2021-22.

Sex offender notification requirements

Notification requirements for those convicted of sexual offences are set out within [Part 2 of the Sexual Offences Act 2003](#). These requirements automatically apply where someone is convicted of certain offences. These offences are listed in [Schedule 3 of the 2003 Act](#) and include rape and sexual assault of both adults and children.

The length of time for which the requirement applies depends on the sentence imposed. For sentences of imprisonment, this can be between 7 years and indefinitely depending on the length and type of sentence. Where a community payback order with an offender supervision requirement is imposed, the notification period is the length of the offender supervision requirement. For any other sentence, for example a fine or admonition, the period is 5 years. If the person is given an absolute discharge, they are not subject to the notification requirements.

The notification requirements are that the person must notify the police of their personal details (e.g. date of birth, names used, home address), passport, bank account and credit card details, and details of any residence they have with a child. They must also inform the police if they intend to leave the UK and provide details of this. Failure to comply with any of these notification provisions is an offence.

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Senior Researcher
28 June 2024

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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP