

Citizen Participation and Public Petitions Committee  
Wednesday 25 September 2024  
14th Meeting, 2024 (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. This is a new petition that was lodged on 29 May 2024.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 453 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received submissions from the Scottish Government and the Petitioner which are set out in **Annexe C** of this paper.
7. The Scottish Sentencing Council is currently consulting on its draft sentencing guideline on the offence of rape. [The consultation closes on 18 October 2024 and can be found online.](#)

### Action

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

**Clerks to the Committee**  
**September 2024**

## **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: SPICe briefing on PE2102



### 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.

**Kirsty Deacon**

**Senior Researcher**

28 June 2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## **Annexe C: Written submissions**

### **Scottish Government submission of 27 June 2024**

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

The petitioner's proposal in PE2102 is to abolish absolute discharge as a sentence for crimes of rape and sexual assault and introduce a statutory minimum sentence for these crimes that ensures that the convicted person will be registered as a sex offender.

We would provide the following information to inform consideration of the petition by the Committee.

It may be helpful to explain the purpose of Sex Offender Notification Requirement (SONR, often referred to as the 'sex offenders register') is to enable a range of information about convicted sex offenders living in the community to be recorded because this will help the police both in monitoring those offenders and in the prevention and detection of sexual crime. It is imposed on the basis that those offenders are considered to pose a risk of harm to others because of the nature of their offending. The requirement to register is not itself intended to be a punishment following a conviction. The process for notifying the police of changes to the relevant data aims to ensure its accuracy and there is no general public access to a "register" of convicted individuals.

Within this context, in Scotland the sentencing framework operates with considerable discretion for the independent court within the overall legal framework. When a court is assessing an appropriate sentence in a given case, they consider the appropriate sentence for each offender before them, taking account of all the relevant facts and circumstances of the particular case. It should be noted that crimes of rape must be tried in the High Court where sentencing decisions will be made by Scotland's most senior judges.

In making their sentencing decision, the court will be aware that a consequence of imposing an absolute discharge on a person convicted of a sexual crime will be that they will not be subject to SONR. This will be a relevant factor in the consideration of the independent court.

It is important to note that, as part of the checks and balances within our justice system, the Crown Office and Procurator Fiscal Service (COPFS) can appeal against a court-imposed sentence if they consider that it is unduly lenient. The decision about whether to appeal a sentence in any individual case is entirely a matter for COPFS, which is independent of the Scottish Ministers. Where COPFS appeal against a sentence on grounds of undue leniency, it is then for the Appeal Court to determine if the sentence is legally unsound or inappropriate in all the circumstances.

The petitioner may also wish to be aware that the Scottish Sentencing Council is currently in the process of developing guidelines on sentencing for rape and sexual assault. More information on the development of these guidelines can be found on their website at:

<https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/rape>; and

<https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/sexual-assault>.

I hope this factual information is helpful to the Committee in considering this petition.

## **Criminal Justice Division**

### **Petitioner submission of 3 July 2024**

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

In response to the submission [https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2024/pe2102/pe2102\\_a.pdf](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.