

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

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

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**