

Rape offences - consultation

Overview

The **Scottish Sentencing Council** <<https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/how-sentencing-guidelines-are-developed/>> is preparing two guidelines on offences of rape. The first is on rape, and the second is on rape of a young child. We believe that these guidelines will bring benefits to the courts, to those involved in such cases, and to the wider public.

Sexual offences, including rape, are of public concern, and they account for a rising proportion of sentencing in the Scottish courts. These offences can involve a wide range of circumstances, and the guidelines are intended to assist courts in reaching what, at times, can be difficult sentencing decisions. By listing some of the factors that should be considered, we believe that the guidelines will help the court to determine sentences, and assist public understanding of how these decisions are reached.

A discussion paper, the draft guidelines, and draft impact assessments are linked below. The discussion paper provides background information about the guidelines and will assist you to answer the consultation survey. The questions refer directly to the draft guidelines.

We encourage you to respond to as many of the questions as you wish, or feel able, to answer, but it is not necessary to respond to them all.

The draft guidelines are intended to be read alongside the **principles and purposes** <<https://www.scottishsentencingcouncil.org.uk/media/1964/guideline-principles-and-purposes-of-sentencing.pdf>> and **sentencing process** <<https://www.scottishsentencingcouncil.org.uk/media/2118/the-sentencing-process-guideline-d.pdf>> guidelines, and, where applicable, the **sentencing young people** <<https://www.scottishsentencingcouncil.org.uk/media/2171/sentencing-young-people-guideline-for-publication.pdf>> guideline. They require to be approved by the High Court before coming into effect.

The consultation asks questions on the content of the guidance contained within the guidelines, and on their potential impacts.

Why your views matter

The Council is committed to carrying out public consultations on all our guidelines. This is a key part of the development process and we are keen to hear from all those with an interest in this work. We aim to engage with as wide and diverse an audience as possible in developing our guidelines to ensure that they are fit for purpose. This includes the wider public as well as criminal justice organisations, charities, academics, and other interested organisations.

If you are unable to respond to this consultation online, please contact the Scottish Sentencing Council to discuss alternative arrangements (by email at sentencingcouncil@scotcourts.gov.uk, by phone on 0300 790 0006, or by post at Scottish Sentencing Council, Parliament House, Parliament Square, Edinburgh, EH1 1RQ).

Consultation materials

The consultation paper, draft sentencing guidelines, and draft impact assessment are available for download:

Rape offences - consultation document <<https://www.scottishsentencingcouncil.org.uk/media/frejzbl/rape-consultation-document.pdf>>

Rape - draft sentencing guideline <<https://www.scottishsentencingcouncil.org.uk/media/ufcaqjes/rape-draft-guideline.pdf>>

Rape of a young child - draft sentencing guideline <<https://www.scottishsentencingcouncil.org.uk/media/ya2jdn4/rape-of-a-young-child-draft-guideline.pdf>>

Rape - draft impact assessment <<https://www.scottishsentencingcouncil.org.uk/media/w0hfiinj/rape-draft-impact-assessment.pdf>>

Rape of a young child - draft impact assessment <<https://www.scottishsentencingcouncil.org.uk/media/rvffjqz/rape-of-a-young-child-draft-impact-assessment.pdf>>

To respond to this consultation, please complete the survey below.

What happens next

The Council will publish an independent analysis of the responses to this consultation, as well as a consultation report, on our website once completed.

Respondents will have the choice to indicate whether they agree for their responses to be published with or without their name. Please note that this choice is applicable only to individual participants and not applicable to representatives of organisations who are participating in the consultation. Where confidentiality is sought it should be noted that the Scottish Sentencing Council is subject to the Freedom of Information (Scotland) Act 2002 so we may be required to release some information if requested, although this will be done without contravening the data protection principles in Articles 5(1) and 10 of the UK General Data Protection Regulation and in sections 10(5) and 35(1) of the Data Protection Act 2018.

Offender known or not known to victim

1 Should either of the rape guidelines explicitly address where the offender is known to the victim, as opposed to not known to the victim?

	Yes	No	Don't know
Section 1 'Rape' <i>Please select only one item</i>	☐	☒	☐
Section 18 'Rape of a young child' <i>Please select only one item</i>	☐	☒	☐

If yes, what guidance do you think would be useful?

Historical offences

2 Do you think further guidance should be provided in relation to historical rape offences in either of the guidelines?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☒	☐	☐
Rape of a young child <i>Please select only one item</i>	☒	☐	☐

If yes, what guidance do you think would be useful?

It should not matter if the rape was 'sustained and repeated' or only committed once. The mental anguish for the victim is there for their lifetime from either offence/s.

Assessing seriousness

3 Do you agree or disagree that there should be two levels of culpability in the guidelines?

	Agree	Disagree	Don't know
Rape <i>Please select only one item</i>	☐	☒	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

If you disagree, please explain your answer.

Rape is rape - whether or not the victim was, for example, punched in the face etc, should not be relevant. This could - in my opinion - let men think that so long as they do not do anything as severe as that, then the sentence/crime will not be seen as so serious. Holding someone down and raping them is physical harm on it's own.

4 Do you think that the features of culpability listed in each of the guidelines are appropriate?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☐	☒	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

If you answered 'no' in relation to either guideline, please list which features of culpability are inappropriate and explain your reasons.

The victim may not know that the person entering their home as a trusted friend/boy/girlfriend has the intention to rape, or the mental capacity to e.g. a narcissistic/controlling personality. That person - in my opinion - should not be treated differently to someone who has forced their way in. Obviously there are other laws to deal with a break-in but I think that should be separate from the crime of rape. Someone could have been befriending the victim for months with the same intention as someone who 'broke' in.

5 Should any features of culpability be added to either of the guidelines, or should any features be removed?

If you believe any features of culpability should be added, please list these, identifying which guideline(s), and explain your reasons.

See answer to question 4.

If you believe any features of culpability should be removed, please list these, identifying which guideline(s), and explain your reasons.

See answer to question 4.

6 Do you agree or disagree that there should be three levels of harm in the guidelines?

	Agree	Disagree	Don't know
Rape <i>Please select only one item</i>	☐	☒	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

If you disagree that there should be three levels of harm in the guidelines please explain your answer.

The levels of harm should not be separated into physical & mental. The mental fallout is the same.

7 Do you think that the features of harm listed in each of the guidelines are appropriate?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☐	☒	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

If you answered 'no' in relation to either guideline, please list what features of harm are inappropriate and explain your reasons.

The victim is always harmed when raped - physically & mentally

8 Should any features of harm be added to either of the guidelines, or should any features be removed?

If you believe features of harm should be added, please list these, identifying which guideline(s), and explain your reasons.

If you believe features of harm should be removed, please list these, identifying which guideline(s), and explain your reasons.

9 Do you agree with the sentencing ranges for each of the guidelines?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☒	☐	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

Please provide any reasons for your answer.

5-7 years for the rape of a child - who does not yet realise what sex involves and would therefore be more traumatised by the event is not enough. The rapist may not have killed the victim, but they will have 'killed' a part of the child's life/development and in some cases their ability to feel any enjoyment in sex in years to come.

Public protection and risk

10 Do the guidelines sufficiently address the issue of public protection and risk?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☐	☒	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

If answering 'no' please tell us why and explain your reasons.

Every woman should be given an alarm free of charge* so that at least have some chance of attracting someone's attention whether the crime happens in public or at home. The public should be shown how to properly restrain the rapist until help arrives.

Perhaps councillors could give up a week of expenses to provide this.

Aggravating & mitigating factors

11 Are the aggravating factors listed in each of the guidelines appropriate?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☐	☒	☐
Rape of a young child <i>Please select only one item</i>	☐	☒	☐

If you answered 'no' in relation to either guideline, please list what aggravating factors are inappropriate and explain your reasons.

Mental health or disabilities should not come into these situations. The person knows what they are doing at the time. Remorse can easily be faked especially if the rapist knows leniency will be shown if they show it. Sorry does not cover someones actions for rape. There has to be serious repercussions whether the person is remorseful or not or many people will do what they want knowing they can make an excuse or apologise.

12 Should any aggravating factors be added to either of the guidelines, or should any factors be removed?

If you believe any aggravating factors should be added, please list these, identifying which guideline(s) and explain your reasons.

If you believe any aggravating factors should be removed, please list these, identifying which guideline(s) and explain your reasons.

13 Are the mitigating factors listed in each of the guidelines appropriate?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☐	☐	☐
Rape of a young child <i>Please select only one item</i>	☐	☐	☐

If you answered 'no' in relation to either guideline, please list what mitigating factors are inappropriate and explain your reasons.

14 Should any mitigating factors be added to either of the guidelines, or should any factors be removed?

If you believe mitigating factors should be added, please list these, identifying which guideline(s), and explain your reasons.

If you believe mitigating factors should be removed, please list these, identifying which guideline(s), and explain your reasons.

Potential impacts

15 Do you think either of the guidelines will influence sentencing practice in Scotland?

	Yes	No	Don't know
Rape <i>Please select only one item</i>	☐	☐	☐
Rape of a young child <i>Please select only one item</i>	☐	☐	☐

Please explain your reasons.

16 Do you think either of the guidelines will lead to an increase or decrease in public understanding of how sentencing decisions are made?

	Increase	Decrease	No change
Rape <i>Please select only one item</i>	☐	☐	☐
Rape of a young child <i>Please select only one item</i>	☐	☐	☐

Please explain your reasons.

I think in general sentencing in this country is too lenient. Develop old unused buildings into prisons.

17 Do you see any benefits or negative effects arising from the introduction of each of these guidelines?

If you believe benefits may arise, please state these and your reasons why.

If you believe negative effects will arise, please state these and your reasons why.

18 What costs (financial or other) do you see arising from the introduction of each of these guidelines, if any?

Please explain your reasons.

Costs should not come into it. The amount of therapy and mental health care a person needs after being raped may cost more in the 'long-run'

19 Please provide details about anything else you feel is of importance or we may have omitted with regard to sentencing for rape offences.

Please provide any reasons for your response.

Repeated rapist should be given meds to lower their sexual urges - especially paedophiles.

Final questions

20 Are you responding as an individual or an organisation?

(Required)

Please select only one item

☒ Individual

☐ Organisation

21 Name of person responding:

Name: *(Required)*

22 Name of your organisation (if responding on behalf of an organisation):

Organisation:

23 Phone number:

Number:

24 Address, including postcode:

Address:

25 The Scottish Sentencing Council would like your permission to publish your consultation response. Please indicate your preference:

(Required)

Please select only one item

- ☐ Publish response with name
- ☒ Publish response only (without name)
- ☐ Do not publish response

Information for organisations

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

26 We may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Sentencing Council to contact you again in relation to this consultation exercise?

Please select only one item

- ☐ Yes
- ☐ No