



Sentencing guideline on rape

Impact assessment

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Introduction

1. This document fulfils the Scottish Sentencing Council's statutory duty¹ to provide an assessment of the costs and benefits to which the implementation of the sentencing guideline on offences of rape² is likely to give rise, and an assessment of the likely impact of the guideline on the criminal justice system generally.
2. The guideline will apply to all offenders who are sentenced on or after the coming into force date of the guideline, and who have been convicted of one of the following offences:
 - an offence under section 1 of the Sexual Offences (Scotland) Act 2009 (rape)
 - the common law offence of rape³
3. As the core approach taken by the guideline is consistent across both section 1 and the common law offence of rape, this assessment considers the impacts holistically. Consideration has been given to whether there are any offence-specific impacts. While there may be variations in sentencing patterns between the offences, no distinct offence-specific impacts have been identified. It should be noted that the data on the common law offences available to the Council do not always distinguish between the ages of victims, encompassing both those aged under 16 and those aged 16 and over.⁴ This therefore does not allow for

¹ Under sections 3-5 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

² The Council has developed two separate sentencing guidelines for offences of rape: one on offences of rape and one on offences of rape of a young child. The Council has prepared a separate draft impact assessment for the sentencing guideline for offences of rape of a young child. These guidelines are the first of an intended series of guidelines on sexual offences. Like all offence-specific guidelines, these are to be read alongside our three general guidelines, see "[Principles and purposes of sentencing](#)" (Scottish Sentencing Council 2018), and "[The sentencing process](#)" (Scottish Sentencing Council 2021) and, if it is applicable, "[Sentencing young people](#)" (Scottish Sentencing Council 2022). The guidelines on rape offences build on the general approach to sentencing set out in these guidelines, and provide guidance that is particularly relevant to the offences of rape.

³ Although the common law offence of rape was abolished by [section 52 of the Sexual Offences \(Scotland\) Act 2009](#), offences committed before its commencement on 1 December 2010 continue to be prosecuted as non-recent offences under common law, in accordance with the legal principle that offences must be charged under the law in force at the time of the Act.

⁴ The Crown Office and Procurator Fiscal Service (COPFS), responsible for prosecuting criminal cases in Scotland, records and categorises offences based on age groups that generally distinguish victims as being under 16 or 16 and over. This threshold aligns with Scotland's age of legal capacity and established prosecutorial practices. As a result, data on common law rape often consolidates cases involving both younger children and older individuals. This can limit the ability to disaggregate offences specific to younger child victims.

meaningful comparisons between common law offences and the statutory offence of rape (and the statutory offence of rape of a young child under section 18 of the Sexual Offences (Scotland) Act 2009, in respect of which the Council has prepared a separate guideline and impact assessment). Given these inherent limitations in the data on the common law offences, direct comparisons with section 1 or section 18 data are not recommended.

Rationale and aims of the new guideline

4. The Criminal Justice and Licensing (Scotland) Act 2010 contains provision enabling the Council to prepare guidelines with regards to the sentencing of particular offences.⁵
5. The key aims of the guideline on sentencing offences of rape are:
 - To assist judges and lawyers in the criminal courts, particularly through providing guidance in relation to the assessment of culpability and harm in offences of rape.
 - To promote greater consistency and predictability in the sentencing of these offences.
 - To increase public knowledge of sentencing. As sexual offending is an area of public concern and accounts for a rising proportion of sentencing in Scottish courts, this is an area in which increased public understanding would be of particular value. These cases attract a significant degree of public and media interest, particularly in relation to the serious harm caused. Clarity around the sentencing process, and the factors involved in determining a sentence, will increase public understanding of sentencing practice.
 - To provide a guideline specific to the context in Scotland, removing any need to refer to the equivalent guideline created for the offence of rape by the Sentencing Council for England and Wales as a cross-check.
6. The guideline sets out a framework for the approach to undertaking the sentencing exercise, and provides guidance on selecting an appropriate sentence.
7. The guideline has been developed to be useful to:

⁵ Under section 3(3)(c) of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

- sentencers
- legal practitioners
- those involved in the delivery and administration of criminal justice
- those involved in, or with an interest in, such cases, for example victims, families, and support organisations
- those accused or convicted of an offence of rape
- the public
- the media.

Current sentencing practice

8. Data presented here on offences of rape, including data on offender demographics, were provided by the Scottish Courts and Tribunals Service (SCTS) and are based on charge level data and classified by date of disposal.⁶ As such, there may be minor differences between the figures given here and those presented in the most recent Scottish Government Criminal Proceedings dataset.⁷ The decision to use the SCTS data reflects its inclusion of more

⁶ Data reported here were provided by SCTS and are drawn from live management information databases. Although every effort has been made to ensure the data presented here are accurate, it is not possible to undertake quality assurance to the same level as for national statistics. Care should be exercised when drawing conclusions from these data. These data should **only** be used for the purpose of considering the impact assessment on the guideline on sentencing rape offences as set out in this document. These data should **not** be compared to other datasets, as frames of reference and approaches to classification will differ.

⁷ The Scottish Government releases statistical data on criminal proceedings concluded in Scottish courts and on a range of measures available as alternatives to prosecution, which are issued by the police and by the Crown Office and Procurator Fiscal Service in its Criminal Proceedings (CP) statistical bulletin. At the time of writing, the most recent dataset available is the [Criminal Proceedings in Scotland 2022-23](#) bulletin. The CP data counts people by main charge. If there are multiple charges libelled on a complaint or indictment and thereafter proven against an accused in a single proceeding, the main charge is the crime or offence receiving the most severe penalty. If a person is, for example, charged with rape and sexual assault but convicted only of the sexual assault charge they would not appear as an acquittal in the rape statistics for CP (as the main charge would be sexual assault). In addition, the CP rape category also includes attempted rape as well as common law rape, Sexual Offences (Scotland) Act section 1, and Sexual Offences Scotland Act section 18, so is less disaggregated than SCTS data. Within the CP dataset, conviction rates for rape are calculated by dividing the number of people convicted by the number of people proceeded against. Unless otherwise noted, the data provided by SCTS and used in this assessment are given at charge code disposal level (i.e. number of disposals per charge code). Charge codes are unique identifiers used to classify criminal offences within the Scottish criminal justice system. The initial charge and corresponding internal charge code is assigned by COPFS when prosecuting a case. Charge codes therefore reflect the specific offence(s) an accused is charged with. SCTS records and manages these codes within courts to track cases in the court system, ensuring consistent classification and

detailed demographic information, making it the most appropriate source for the Council to fulfil its duty to consider the impact of any guidelines.

Number of offences

9. In Scotland, sexual offences which took place on or after 1 December 2010 generally fall under the Sexual Offences (Scotland) Act 2009. Offences of rape specifically fall under section 1 of the Act, while rape of a young child (defined in the Act as a child under the age of 13) is a separate offence under section 18 of the Act.⁸ Offences which took place before that date may be prosecuted as the common law offence of rape.⁹ In all cases, the maximum sentence provided by law for the offence of rape is imprisonment or detention for life or, as is more usual in practice, an order for lifelong restriction (OLR), which is a form of life sentence.¹⁰
10. This analysis¹¹ focuses solely on offences prosecuted under section 1 of the Act and the common law offence of rape.¹²
11. The figures provided reflect the total cases with disposals imposed for offences sentenced under section 1 of the Act over a 13-year period, between the financial years of 2011/12 to 2023/24.

reporting. Sentencing data classified by charge code disposal level means that each reported disposal pertains to a specific charge, however multiple charges and their respective disposals may relate to the same case, resulting in individual offenders potentially being counted more than once depending on the number of disposals associated with their case. The data in this impact assessment are therefore not strictly comparable with those in the Criminal Proceedings dataset.

⁸ See "Impact assessment for the guideline on sentencing offences of rape of a young child" (Scottish Sentencing Council, 2025).

⁹ Prior to the Act, the offence was defined at common law. The Act provides that the offence of rape includes penetration of the vagina, anus or mouth, and thereby extends the commission of the offence of rape (as previously defined) to include, for example, male victims. Prior to the Act, the equivalent common law offence against a male victim would have been indecent assault or sodomy. See for example ["Sexual offences involving rape literature review pp. 4-5" \(Scottish Sentencing Council 2021\)](#).

¹⁰ The law also provides that the court may require the offender to pay a fine of unlimited value in addition to, or instead of, any other sentence imposed.

¹¹ The data presented here are retrospective and analysed holistically for the purposes of assessing potential costs and benefits and the impact of the guideline on the criminal justice system in general. The assessment therefore does not include an analysis of factors that may have influenced changes in practice up to this point. It is important to note that the information collected for guideline development is not solely based on this dataset. It includes the findings of extensive research and engagement. For further details on the development of sentencing guidelines, including the methodology for collecting evidence, see ["How guidelines are developed" \(Scottish Sentencing Council\)](#).

¹² Common law rape offences included in this analysis will most likely pertain to non-recent offences predating the statutory offences of rape.

12. The data on section 1 offences include some cases with a ‘child aggravation’. This signifies that the offence was committed against a child under the age of 16. However, due to the way the data are recorded, it is not always possible to distinguish between offences committed against an adult or a child, and the age of the child is not available in the data.¹³ Disaggregated totals for section 1 offences committed against adults and children are provided but should accordingly be treated with a degree of caution.¹⁴
13. Data regarding the common law offence of rape over the same 13-year period are also included. As with the child aggravation used for recording section 1 rape offences against children, there are similar limitations to distinguishing between common law offences committed against adults versus children with complete accuracy.¹⁵ To address this challenge, the common law figures are presented in a similar manner to the section 1 rape offences and for illustrative purposes only – first as an overall total, followed by common law offences recorded without the child aggravation (i.e. committed against an individual aged 16 and over), followed by common law offences recorded with the child aggravation (i.e. committed against a child under the age of 16).

¹³ The child aggravation, when attached to section 1 offences, is an administrative marker from COPFS systems, rather than a recording of a statutory aggravation which would require to be taken into account in sentencing. It generally indicates that the offence was committed against a child under the age of 16 and may reflect the increased seriousness of offending against a child, though the offence is sentenced under section 1 and is distinct from a section 18 offence. However, due to factors such as variations in how victim age information is recorded, and the inherent complexities of managing detailed case data across multiple systems, it is not always possible to determine with certainty the exact age of the victim in cases recorded with the child aggravation.

¹⁴ Section 1 rape offences committed against a child are recorded by use of a child aggravation that would be applied in situations where a child of any age was the victim of the offence. The age of 16 is generally used as the threshold for recording offences with or without the child aggravation; however, the age of the child is not recorded in the data. Therefore, it is not always possible to accurately disaggregate cases sentenced under section 1 rape offences by adult or child. For this reason, the overall totals of section 1 rape offences are provided followed by section 1 figures disaggregated by child aggravation. However, due to these limitations, the disaggregated child aggravation data are presented for illustrative purposes only, and comparisons should be avoided.

¹⁵ Official data collection and reporting of criminal proceedings, convictions, and sentencing of common law rape offences are subject to similar limitations to those noted in the previous footnotes which should be taken into consideration. As per the threshold set out in the Act, a young child refers to a child under the age of 13, an older child means a child who has attained the age of 13 but not yet reached the age of 16, and an adult means anyone who is aged 16 or older. However, the common law offences of rape which include the child aggravation are recorded using the age of 16 as a threshold. This means it is not always possible to accurately disaggregate cases sentenced under common law rape offences from other sexual offences, whether against children or adults. For this reason, the overall totals for the common law offences of rape are provided, followed by disaggregated totals, for illustrative purposes only. As there are limitations to the accuracy of estimations, comparisons should be avoided.

Number of offences: Total section 1 and common law offences

14. Data provided by SCTS show that there has been a total of 922 offences disposed of by the courts under section 1 of the Act between 2011/12 to 2023/24.
15. 793 of the section 1 offences were recorded without the child aggravation and will therefore pertain to offences committed against an individual aged 16 and over.¹⁶ The remaining 129 of the 922 section 1 rape offences were recorded with the child aggravation.
16. There has been a total of 773 common law offences of rape disposed of by the courts between 2011/12 to 2023/24. Of these, 416 were recorded without the child aggravation (i.e. committed against an individual aged 16 and over), and 357 were recorded with the child aggravation (i.e. committed against a child under the age of 16).

Number of offences: Total section 1 offences

17. Of the 922 section 1 rape offences, the average number disposed of by the courts over the 13-year period was approximately 71, with a median of 64. The lowest total of rape disposals was recorded in 2011/12 (5), while the highest occurred in 2023/24 (175).¹⁷ The mean number of disposals observed in each four/five year period¹⁸ within the 13-year period shows an increase, with an average of 32, 57, and 113 disposals imposed in 2011/12 to 2014/15, 2015/16 to 2018/19, and 2019/20 to 2023/24, respectively.

¹⁶ As previously noted, the data collection and recording process may have limitations which could result in variations in the figures provided, including the ages of the victims, such as whether they are older children or adults.

¹⁷ It should be noted that the COVID-19 pandemic and measures to address it affected both the volume and nature of cases dealt with by courts. As such, care should be taken in comparing data from the final quarter of the assessment period with those preceding.

¹⁸ The 13-year period has been divided into three groupings of 4, 4, and 5 years, respectively. This breakdown accommodates the fact that the period cannot be evenly split into equal parts, and the final 5-year grouping includes the COVID-19 pandemic year (2020/21) to allow for better alignment with recent sentencing patterns and account for any potential pandemic-related disruption.

Table 1: Number of disposals per year (total section 1 offences)

Year	Number of disposals
2011/12	5
2012/13	23
2013/14	35
2014/15	64
2015/16	45
2016/17	44
2017/18	51
2018/19	89
2019/20	71
2020/21	70
2021/22	111
2022/23	139
2023/24	175
Total	922

18. Over the 13-year period, total section 1 rape offences increased overall. Peaks were seen in 2014/15 (64) and 2018/19 (89), compared to lower numbers in surrounding years. In the most recent three years of this assessment period, 2021/22, 2022/23 to 2023/24, there has been a steadier increase, with further peaks of 111, 139, and 175 sentences imposed for section 1 offences, respectively.

Number of offences: Section 1 offences recorded without the child aggravation¹⁹

19. Of the 793 section 1 rape offences committed against adults (i.e. recorded without the child aggravation), there was an approximate average of 61, and approximate median of 57 disposals per year over the 13-year period. The lowest total of section 1 offences recorded without the child aggravation was in 2011/12 (5), while the highest occurred in 2023/24 (147). The mean number of disposals observed in each four/five-year period²⁰ within the 13-year period shows an increase, with an approximate average of 28, 49, and 97 disposals imposed during 2011/12 to 2014/15, 2015/16-2018/19, and 2019/20 to 2023/24, respectively.
20. Over the 13-year period, section 1 rape offences recorded without the child aggravation increased overall. Peaks were seen in 2014/15 (57) and 2018/19 (76), compared to lower numbers in surrounding years. In the most recent three years of this assessment period, 2021/22, 2022/23 to 2023/24, there has been a steadier increase, with further peaks of 99, 123 and 147 sentences imposed for section 1 offences, respectively.

¹⁹ Although the age of 16 threshold used for common law offences recorded with the child aggravation is generally assumed to be equally applicable for section 1 offences, limitations in data collection and recording make it difficult to definitively determine the age of the victim. Additionally, as the definition of a child varies depending on the context and the specific offence in question, the data presented under section 1 offences recorded without and with the child aggravation are stated as such and do not explicitly state 16 as the age threshold in this assessment.

²⁰ The 13-year period has been divided into three groupings of 4, 4, and 5 years, respectively. This breakdown accommodates the fact that the period cannot be evenly split into equal parts, and the final 5-year grouping includes the COVID-19 pandemic year (2020/21) to allow for better alignment with recent sentencing patterns and account for any potential pandemic-related disruption.

Table 2: Number of disposals per year (section 1 offences without the child aggravation)

Year	Number of disposals
2011/12	5
2012/13	21
2013/14	30
2014/15	57
2015/16	35
2016/17	41
2017/18	44
2018/19	76
2019/20	57
2020/21	58
2021/22	99
2022/23	123
2023/24	147
Total	793

Number of offences: Section 1 offences recorded with the child aggravation

21. Of the 129 section 1 rape offences recorded with the child aggravation, there was an approximate average of 10, and approximate median of 10 disposals per year over the 13-year period. There were few section 1 offences recorded with the child aggravation during 2011/12, 2012/13, to 2013/14, with 7 offences recorded across the combined years.²¹ The combined figures for 2016/17 and

²¹ Figures for 2011/12, 2012/13, to 2013/14 are provided as an aggregate due to the small numbers during these years, as providing disaggregated figures could potentially disclose the identities of those involved.

2017/18 were also relatively low with 10 offences across these years²² while the highest occurred in 2023/24 (28). The mean number of disposals observed in each four/five-year period²³ within the 13-year period shows an increase, with an average of 4, 8, and 16 disposals imposed during 2011/12 to 2014/15, 2015/16 to 2018/19, and 2019/20 to 2023/24, respectively.

22. There was an overall rise in section 1 rape offences recorded with the child aggravation over the 13-year period. However, there was a noticeable decrease in 2015/16 to 2017/18²⁴ before rising again to, 13, and 14 disposals in 2018/19 and 2019/20, respectively. Subsequently, there was a more moderate decline to 12 disposals in both 2020/21 and 2021/22, before rising to 16 disposals in 2022/23 and 28 disposals in 2023/24.

²² Specific figures for 2016/17 to 2017/18 are presented as an aggregate due to the small numbers during these years, which could potentially reveal identifying information of the individuals involved.

²³ The 13-year period has been divided into three groupings of 4, 4, and 5 years, respectively. This breakdown accommodates the fact that the period cannot be evenly split into equal parts, and the final 5-year grouping includes the COVID-19 pandemic year (2020/21) to allow for better alignment with recent sentencing patterns and account for any potential pandemic-related disruption.

²⁴ Specific figures for this year are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

Table 3: Number of disposals per year (section 1 offences with the child aggravation)

Year	Number of disposals
2011/12 / 2012/13 / 2013/14	7
2014/15	7
2015/16	10
2016/17 / 2017/18 ²⁵	10
2018/19	13
2019/20	14
2020/21	12
2021/22	12
2022/23	16
2023/24	28
Total	129

Number of offences: Total common law offences²⁶

23. Out of the 773 total common law offences, the average number disposed of by the courts was approximately 59 over the 13-year period, with a median of 51. The lowest total of common law rape sentences imposed was recorded in 2011/2012 (32), while the highest occurred in 2014/2015 (98). The mean number of disposals observed in each four/five-year period²⁷ within the 13-year

²⁵ Specific figures for this year are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

²⁶ Common law rape offences included in this analysis will most likely pertain to non-recent offences predating the statutory offences of rape. There are some limitations to distinguishing between common law offences committed against adults versus children with complete accuracy. Due to the way the data are recorded, it is not always possible to distinguish between offences committed against an adult or a child, and the age of the child is not available in the data. Disaggregated totals for common law offences committed against adults and children are provided but should accordingly be treated with a degree of caution. See paragraph 13.

²⁷ The 13-year period has been divided into three groupings of 4, 4, and 5 years, respectively. This breakdown accommodates the fact that the period cannot be evenly split into equal parts, and the

period shows an increase, with an average of 53, 62, and 63 disposals imposed during 2011/12 to 2014/15, 2015/16 to 2018/19, and 2019/20 to 2023/24, respectively.

24. There has been less of an upward trend in total common law offences compared with section 1 offences over the 13-year period. 2014/15 remains the year with the highest number of total common law offences (98), with the second highest number recorded in 2021/22 (88). However, this decreased to 46 (2022/23), and then increased again to 84 (2023/24) in the most recent two years of the 13-year period.

final 5-year grouping includes the COVID-19 pandemic year (2020/21) to allow for better alignment with recent sentencing patterns and account for any potential pandemic-related disruption.

Table 4: Number of disposals per year (total common law offences)

Year	Number of disposals
2011/12	32
2012/13	41
2013/14	39
2014/15	98
2015/16	47
2016/17	51
2017/18	76
2018/19	75
2019/20	60
2020/21	36
2021/22	88
2022/23	46
2023/24	84
Total	773

Number of offences: Common law offences recorded without the child aggravation

25. The annual average of the 416 common law offences recorded without the child aggravation over the 13-year period was approximately 32, with a median of 30 over the same 13-year period. The lowest total was recorded in 2013/14 (8), while the highest occurred in 2014/15 (66). There has been a decrease in mean number of disposals during each four/five-year period²⁸ within the 13 years, with

²⁸ The 13-year period has been divided into three groupings of 4, 4, and 5 years, respectively. This breakdown accommodates the fact that the period cannot be evenly split into equal parts, and the

an average of 34 (2011/12 to 2014/15), 31 (2015/16 to 2018/19), and 31 (2019/20 to 2023/24), respectively.

26. The lowest and highest number of common law offences recorded without the child aggravation occurred in consecutive years between 2013/14 (8) to 2014/15 (66). The later years do not show a clear trend of increase or decrease.

final 5-year grouping includes the COVID-19 pandemic year (2020/21) to allow for better alignment with recent sentencing patterns and account for any potential pandemic-related disruption.

Table 5: Number of disposals per year (common law offences without the child aggravation)

Year	Number of disposals
2011/12	32
2012/13	30
2013/14	8
2014/15	66
2015/16	26
2016/17	22
2017/18	37
2018/19	40
2019/20	21
2020/21	14
2021/22	43
2022/23	22
2023/24	55
Total	416

Number of offences: Common law offences recorded with the child aggravation

27. Of the 357 common law offences recorded with the child aggravation, there was an average of 27 disposals per year over the 13-year period, and a median of 29 disposals. There were no common law offences recorded with the child aggravation in 2011/12. The next lowest total was recorded in 2012/13 (11), while the highest occurred in 2021/22 (45). The mean number of disposals

observed in each four/five-year period²⁹ within the 13-year period shows an increase, with an average of 19, 31, and 32 disposals imposed during 2011/12 to 2014/15, 2015/16 to 2018/19, and 2019/20 to 2023/24, respectively.

28. There has been an increase in common law rape offences recorded with the child aggravation over the 13-year period. However, there was a dip from 32 in 2014/15 to 21 in 2015/16, before rising again until 2020/21 and 2022/23, where there were decreases to 22 and 24, respectively. Additionally, there was a more moderate dip to 35 disposals in 2018/19 compared to the years both preceding and following (39 in both 2017/18 and 2019/20).

²⁹ The 13-year period has been divided into three groupings of 4, 4, and 5 years, respectively. This breakdown accommodates the fact that the period cannot be evenly split into equal parts, and the final 5-year grouping includes the COVID-19 pandemic year (2020/21) to allow for better alignment with recent sentencing patterns and account for any potential pandemic-related disruption.

Table 6: Number of disposals per year (total common law offences with the child aggravation)

Year	Number of disposals
2011/12	0
2012/13	11
2013/14	31
2014/15	32
2015/16	21
2016/17	29
2017/18	39
2018/19	35
2019/20	39
2020/21	22
2021/22	45
2022/23	24
2023/24	29
Total	357

Offender and victim demographics

29. This section covers the demographics of offenders sentenced for rape offences, namely, the age profiles and the Scottish Index of Multiple Deprivation (SIMD) decile classification³⁰ of offenders. Insufficient data are available to allow for

³⁰[Scottish Index of Multiple Deprivation 2020 \(Scottish Government 2020\)](#) states that SIMD is a tool for identifying the places in Scotland where people are experiencing disadvantage across different aspects of their lives. SIMD gives a ranking for each small area, or data zone, which shows how deprived that area is compared to other areas. Changes in the rank for one area may be due to other areas becoming more or less deprived.

analysis of offenders' ethnic group and are therefore not included. As with the figures regarding the number of offences, the offender demographics data for section 1 offences are provided separately from common law offences.³¹ Similarly, the disaggregated child aggravation data are presented for illustrative purposes only, and comparisons should be avoided.³² Details on victim demographics are provided to the extent possible, however this information is not included in the SCTS data and is therefore limited by how such data are recorded and reported elsewhere.

Offender demographics: Total section 1 offences

30. Almost all of the offenders involved in the 922 section 1 offences were male. This differs from the general offending population where, according to the Criminal Proceedings in Scotland, 2022-23 bulletin (Scottish Government 2024), males accounted for 83% of all convictions.³³ While it is possible for females to be convicted of rape offences,³⁴ the occurrence of female offenders in such cases is minimal. To protect the anonymity of the individuals involved, these figures are not disclosed in this assessment.
31. Out of the 922 total section 1 rape offences, the average age of individuals over the 13-year period receiving a disposal for these offences was 36 years, with a median of 33 years. Approximately 58% of the disposals for all section 1 offences in the 13-year period were imposed on offenders between 31-60 years of age. Approximately 38% of the offenders were aged 30 or under. Approximately 1% (8) of the 922 were under 18, while 7% (64) were between 18-20 years old. About 12% (110) were within the 21-24 age group, and 18% (169) were aged between 25-30. The highest number of disposals, accounting for 30% (274) were imposed on offenders aged between 31-40. Individuals in the 41-50 age group (170), accounted for 18%. Those aged 51-60 made up 10% of disposals imposed (89). Those over 60 accounted for 4% (38) of the disposals imposed on offenders for section 1 offences. These figures are

³¹ See footnote 9.

³² See footnotes 12-16.

³³ [Criminal Proceedings in Scotland, 2022-23 \(Scottish Government 2024\)](#). See paragraph 8 of this impact assessment and associated footnotes on differences between the figures provided by SCTS and those presented in the Criminal Proceedings dataset.

³⁴ At common law, and under s293 of the [Criminal Procedure \(Scotland\) Act 1995](#) for statutory offences, when someone acts with another person or other people as part of a common criminal purpose, they can be found to be responsible for the crime which is committed, regardless of the part which they played. This might include, for example, assisting with or participating in the commission of the offence in some way. This is sometimes called 'acting in concert', or 'art and part' guilt. Because of this, and because of the terms of the offence under the 2009 Act, it is possible for someone of either gender or sex to be convicted of the offence of rape.

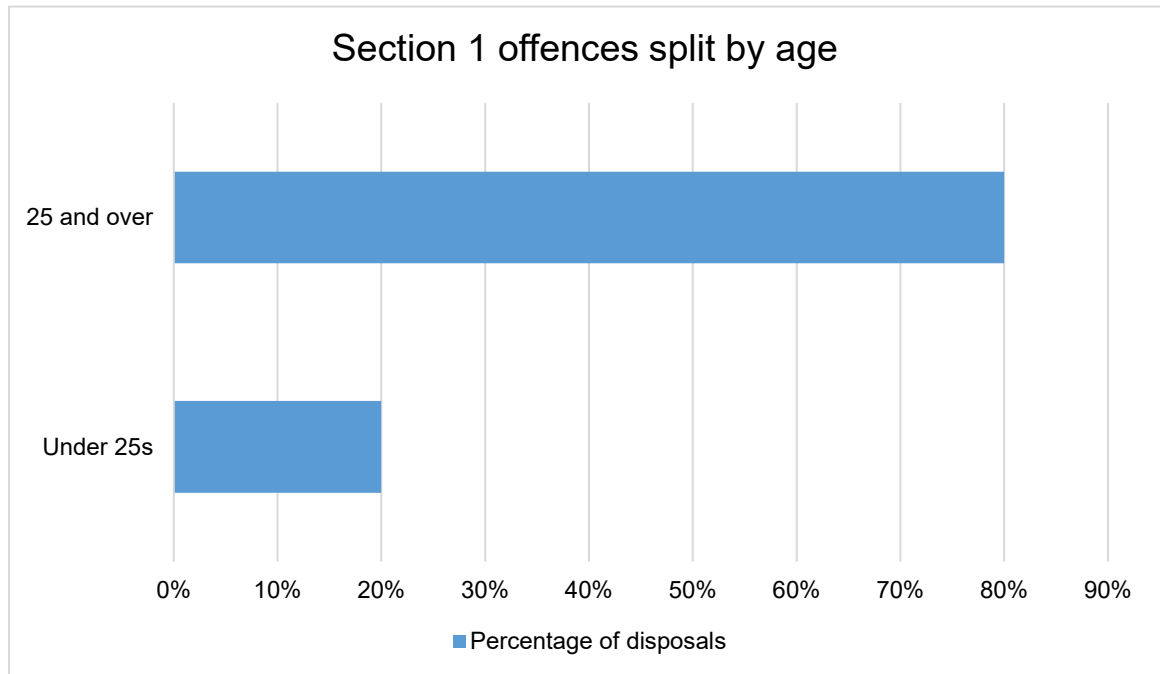
summarised below (and in the following paragraphs corresponding to the relevant offences). Also provided is a table of total disposals categorised by age of offender, and a bar chart illustrating disposals grouped into those aged under 25 and those aged 25 and over.

Table 7: Total disposals by age of offender over the 13-year period (total section 1 offences)

Age Bracket	Number of disposals	Percentage %
Under 18	8	1%
18-20	64	7%
21-24	110	12%
25-30	169	18%
31-40	274	30%
41-50	170	18%
51-60	89	10%
60+	38	4%
Total	922	100%

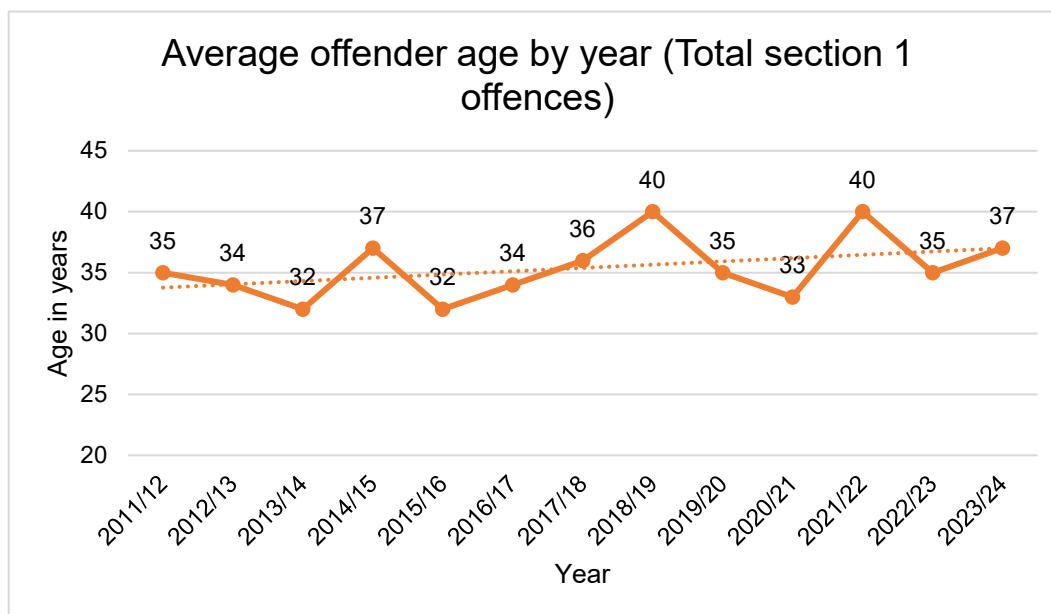


Figure 1: Disposals by age group over the 13-year period: under 25 and 25 and over (total section 1 offences)



32. Out of the 922 total section 1 rape offences, the average annual age of individuals receiving a disposal for these offences do not show a direct increase or decrease among the 13 years. The eldest average age occurred both in 2018/19 and 2021/22 at 40 years old, with the youngest occurring in 2013/14 and 2015/16 at 32 years old.

Figure 2: Average offender age by year over the 13-year period (total section 1 offences)



33. The SIMD decile classification of offenders' home addresses – where available³⁵ – suggests that a majority of offenders who have received disposals for rape offences come from the most deprived deciles. With the exception of a minimal increase in decile 4, there is a steady downward trend in numbers of disposals imposed on offenders in the most to least deprived decile. The 1st to 5th deciles accounted for 74% of section 1 disposals imposed on offenders in the 13-year period, and 26% of section 1 disposals imposed on offenders were in the 6th to 10th deciles.

Offender demographics: Section 1 offences recorded without the child aggravation

34. Out of the 793 section 1 rape offences recorded without the child aggravation, the average age of individuals receiving disposals for these offences over the 13-year period was 36 years, with a median of 34 years. Approximately 61% of the disposals for these offences in the 13-year period were imposed on offenders aged between 31-60. Approximately 36% of the offenders were aged

³⁵ Data were unavailable for approximately 31% of the total section 1 disposals included in the 13-year period. Figures are calculated based on the remaining 69% of available data.

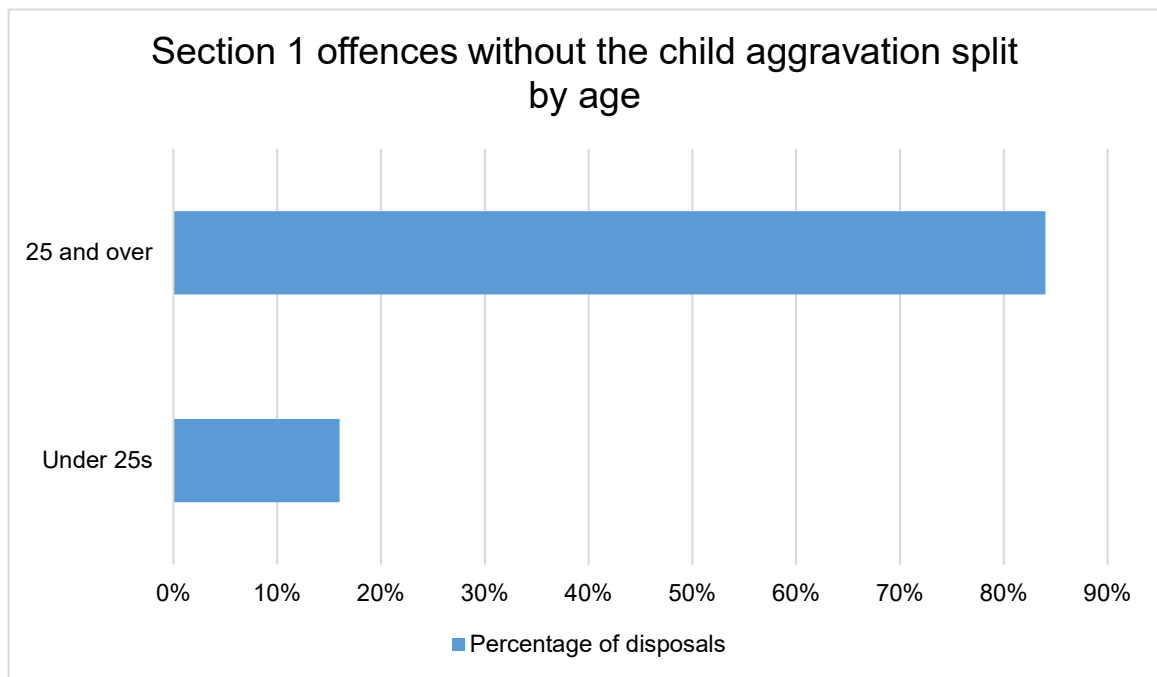
30 or under. 5% (37) of the 793 were in the under 18, or 18-20 age group.³⁶ About 11% (91) were within the 21-24 age group, and 20% (157) were aged between 25-30. The highest number of disposals, accounting for 32% (253) were imposed on offenders aged between 31-40. There were 152 disposals in the 41-50 age group, accounting for 19%. 51-60-year-olds made up 9% of the amount of disposals (75) and those over 60 accounted for 4% (28) of the disposals imposed on offenders for section 1 offences recorded without the child aggravation.

Table 8: Total disposals by age of offender over the 13-year period (section 1 offences without the child aggravation)

Age Bracket	Number of disposals	Percentage%
Under 18/18-20	37	5%
21-24	91	11%
25-30	157	20%
31-40	253	32%
41-50	152	19%
51-60	75	9%
60+	28	4%
Total	793	100%

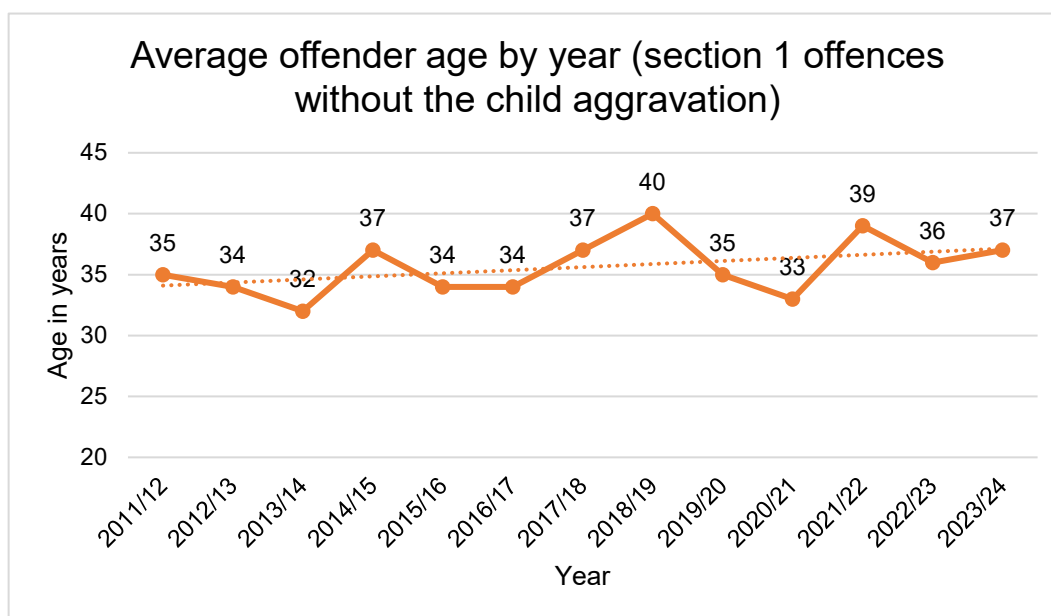
³⁶ Specific figures for the under 18 and 18-20 age groups are provided as an aggregate due to the small numbers in the under 18 group, as providing disaggregated figures could potentially disclose the identities of those involved.

Figure 3: Disposals by age group over the 13-year period: under 25 and 25 and over (section 1 offences without the child aggravation)



35. Out of the 793 section 1 rape offences recorded without the child aggravation, the average age of individuals receiving disposals for these offences over the 13-year period shows no clear pattern. The eldest average age occurred in 2018/2019 at 40 years old, and the youngest occurred in 2013/14 at 32 years old.

Figure 4: Average offender age by year over the 13-year period (section 1 offences without the child aggravation)



36. The available SIMD data for section 1 offences recorded without the child aggravation³⁷ suggests a majority of offenders receiving disposals for these offences come from the most deprived deciles. With the exception of a minimal increase in decile 4, there is a steady downward trend in numbers of disposals imposed in the most deprived to least deprived decile. The 1st to 5th deciles accounted for 74% of section 1 disposals recorded without the child aggravation and 26% were imposed on offenders in the 6th to 10th deciles.

Offender demographics: Section 1 offences recorded with the child aggravation

37. Out of the 129 section 1 rape offences recorded with the child aggravation, the average age of individuals receiving disposals for these offences over the 13-year period was 35 years, with a median of 29 years. Approximately 41% of the disposals for these offences in the 13-year period were imposed on offenders between 31-60 years of age. Approximately 51% of the offenders were aged 30 or under. Approximately 5% (7) were under 18, and 22% (28) were in the 18-20 age group, comprising the age group with highest number of disposals. About 15% (19) were within the 21-24 age group, and 9% (12) were aged between 25-30. 31-40-year-olds accounted for 16% (21) of disposals, and 41-50 year-olds

³⁷ Approximately 30% of the SIMD data for section 1 offences recorded without the child aggravation were unavailable. Figures are calculated based on the remaining 70% of available data.

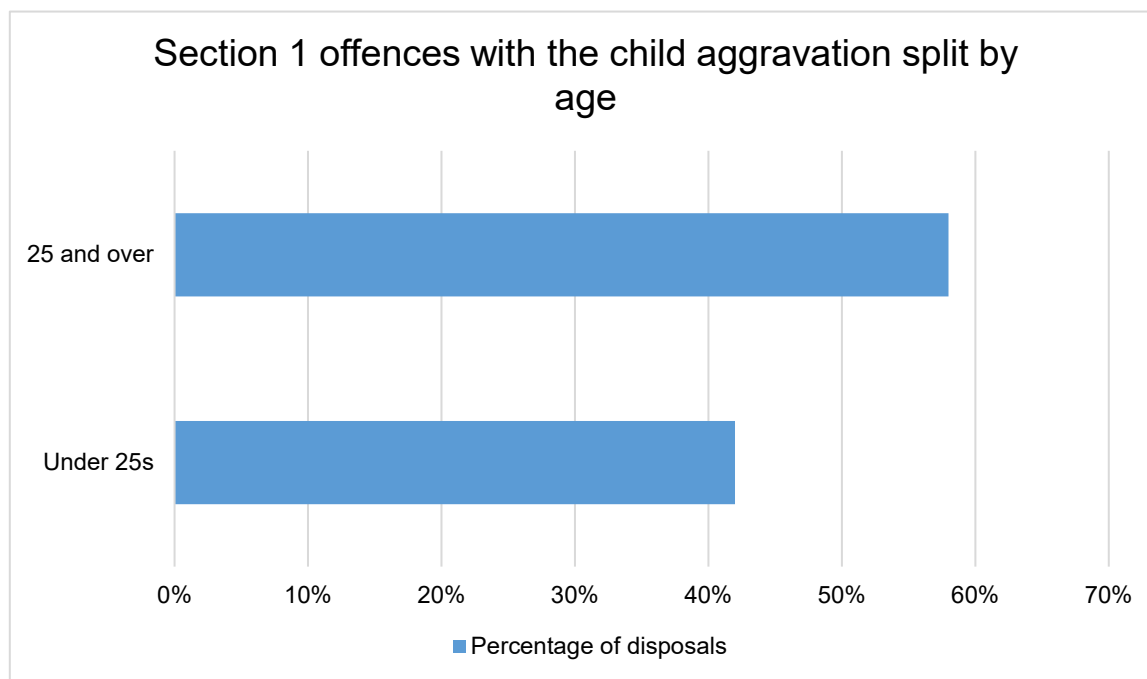
accounted for 14% (18). The 51-60 age group accounted for 11% of disposals (14) and the 60 and over age group accounted for 8% (10 disposals).

Table 9: Total disposals by age of offender over the 13-year period (section 1 offences with the child aggravation)

Age Bracket	Number of disposals	Percentage%
Under 18	7	5%
18-20	28	22%
21-24	19	15%
25-30	12	9%
31-40	21	16%
41-50	18	14%
51-60	14	11%
60+	10	8%
Total	129	100%



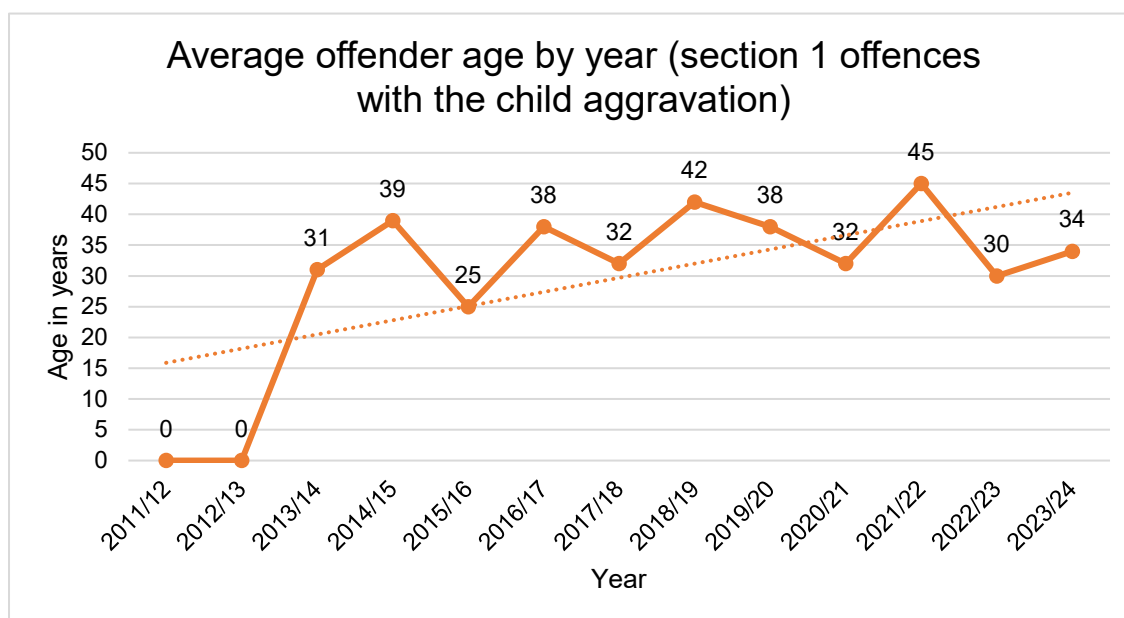
Figure 5: Disposals by age group over the 13-year period: under 25 and 25 and over (section 1 offences with the child aggravation)



38. Out of the section 1 rape offences recorded without the child aggravation, the highest average age occurred in 2021/22 at 45 years old, and the youngest occurred in 2015/16 at 25 years old.³⁸

³⁸ Figures for 2011/12 and 2012/13 are not provided due to the small numbers during these years, as providing figures could potentially disclose the identities of those involved.

Figure 6: Average offender age by year over the 13-year period (section 1 offences with the child aggravation)



39. The available SIMD data for section 1 offences recorded with the child aggravation³⁹ suggests a majority of offenders receiving disposals for these offences come from the most deprived deciles, with the highest number of disposals imposed on offenders in the 1st (27%) and 3rd (20%) deciles. The 1st to 5th deciles accounted for 77% of section 1 disposals recorded with the child aggravation and 23% were imposed on offenders in the 6th to 10th deciles.

Offender demographics: Total common law offences⁴⁰

40. All of the 773 offenders receiving disposals for common law offences of rape were male.

41. Out of the 773 total common law rape offences, the average age of individuals receiving disposals for these offences over the 13-year period was 51 years, with a median age of 52 years. The majority of disposals were imposed on

³⁹ Approximately 38% of the SIMD data for section 1 offences recorded with the child aggravation were unavailable. Figures are calculated based on the remaining 62% of available data.

⁴⁰ Common law rape offences included in this analysis will most likely pertain to non-recent offences predating the statutory offences of rape. There are some limitations to distinguishing between common law offences committed against adults versus children with complete accuracy. Due to the way the data are recorded, it is not always possible to distinguish between offences committed against an adult or a child, and the age of the child is not available in the data. Disaggregated totals for common law offences committed against adults and children are provided but should accordingly be treated with a degree of caution. See paragraph 13.

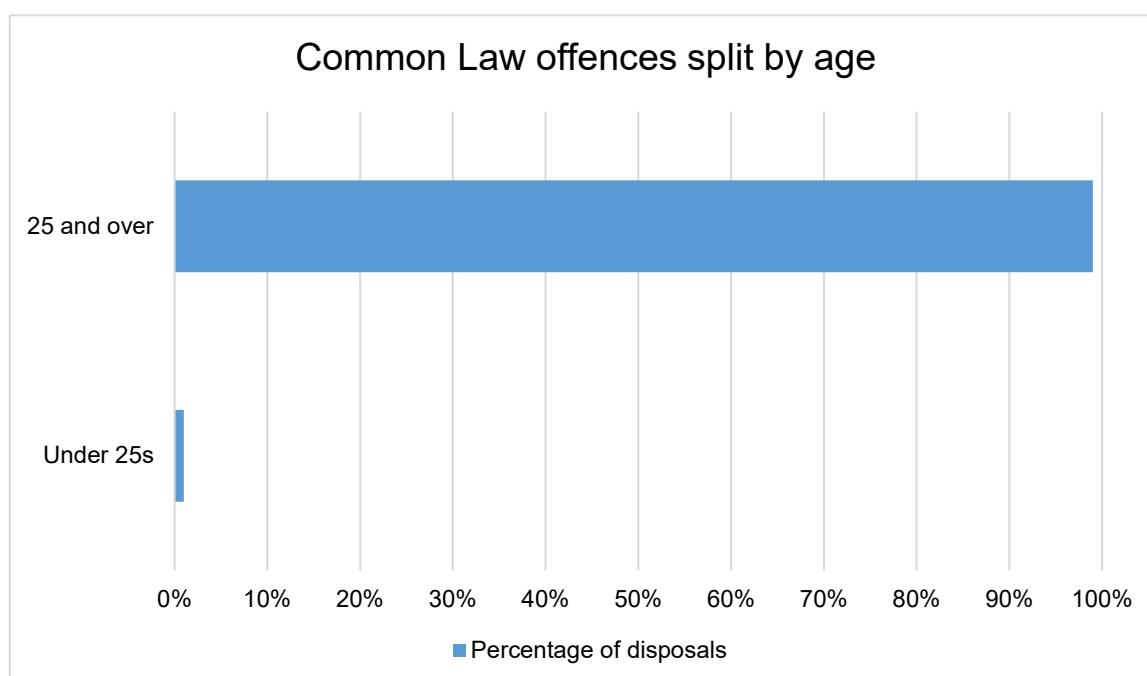
offenders over 31, accounting for approximately 93%. 69% of the disposals for all common law rape offences were imposed on offenders between 31-60 years of age. 8% of the offenders were aged 30 or under and 1% (11) were under 25, combining the under 18, 18-20, and 21-24 age groups.⁴¹ About 6% (49) of the disposals were imposed on offenders aged between 25-30. The highest number of disposals (224) were imposed on offenders in the 51-60 age group, accounting for 29%. This is followed by offenders 41-50 years of age (190), 60+ (186), and 31-40 (113) age groups, accounting for 25%, 24%, and 15% respectively. Those over 60 accounted for a much higher percentage in common law offences compared to the total section 1 offences (24% compared with 4%).

⁴¹ The figures for the under 18, 18-20, and 21-24 age groups are presented as an aggregate due to the small numbers, which could potentially disclose the identities of those involved.

Table 10: Total disposals by age of offender over the 13-year period (total common law offences)

Age Bracket	Number of disposals	Percentage %
Under 18/18-20/21-24	11	<2%
25-30	49	6%
31-40	113	15%
41-50	190	25%
51-60	224	29%
60+	186	24%
Total	773	100%⁴²

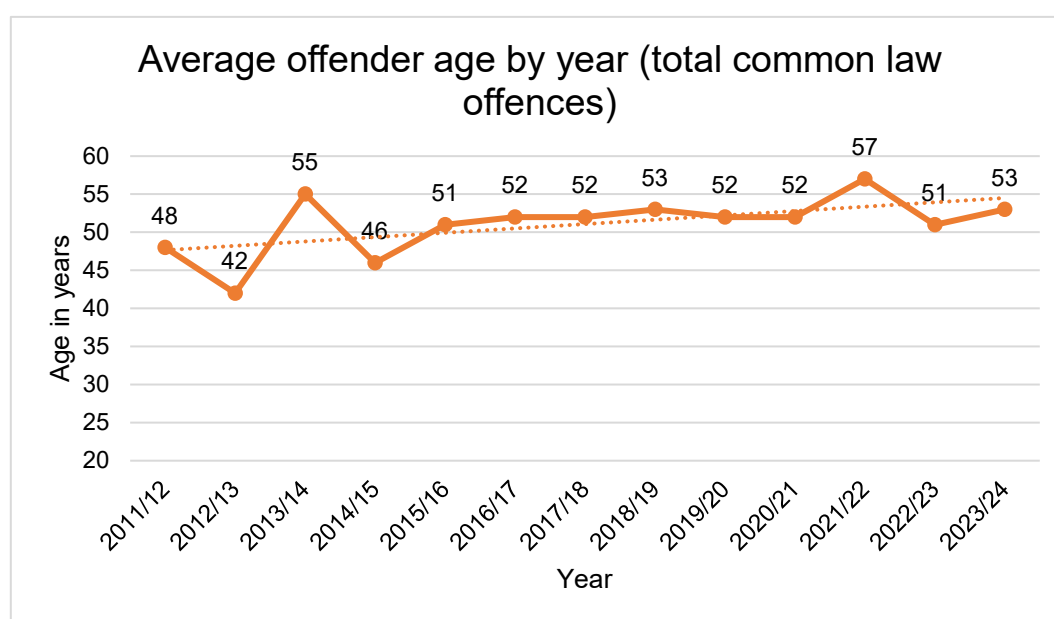
Figure 7: Disposals by age group over the 13-year period: under 25 and 25 and over (total common law offences)



⁴² Percentages may not sum to 100% due to rounding and the use of approximate figures that are too low to disclose.

42. Out of the total common law offences, the average age of offenders remains higher than those in section 1 offences, and remains fairly consistent with 10 of the 13 years having an average within the 50s. The eldest average age occurred in 2021/22 at 57 years old, and the youngest occurred in 2012/13 at 42 years old.

Figure 8: Average offender age by year over the 13-year period (total common law offences)



43. Of the total common law offences with SIMD data available,⁴³ 78% of common law disposals were imposed on offenders from the 1st to 5th deciles (most deprived) and 22% of disposals were imposed on offenders in the 6th to 10th deciles (least deprived).

Offender demographics: Common law offences recorded without the child aggravation

44. Out of the 416 common law rape offences recorded without the child aggravation, the average age of individuals receiving disposals for these offences was 48 years, with a median of 49 years. 79% of the disposals for these offences in the 13-year period were imposed on offenders between 31-60 years of age. 10% of the offenders were aged 30 or under, approximately 2%

⁴³ Approximately 30% of the SIMD data for all common law offences were unavailable. Figures are calculated based on the remaining 70% of available data.

were in the combined under 18, 18-20, or 21-24 age groups,⁴⁴ and 8% (32) were aged between 25-30. The highest number of disposals, accounting for 31% (128) were imposed on offenders aged between 41-50. The next highest number of disposals (119) were imposed on offenders aged between 51-60. This was followed by individuals in the 31-40 age group (77), accounting for 29% and 19%, respectively. Those over 60 accounted for 13% (52) of the disposals imposed on offenders for common law offences recorded without the child aggravation.

Table 11: Total disposals by age of offender over the 13-year period (common law offences without the child aggravation)

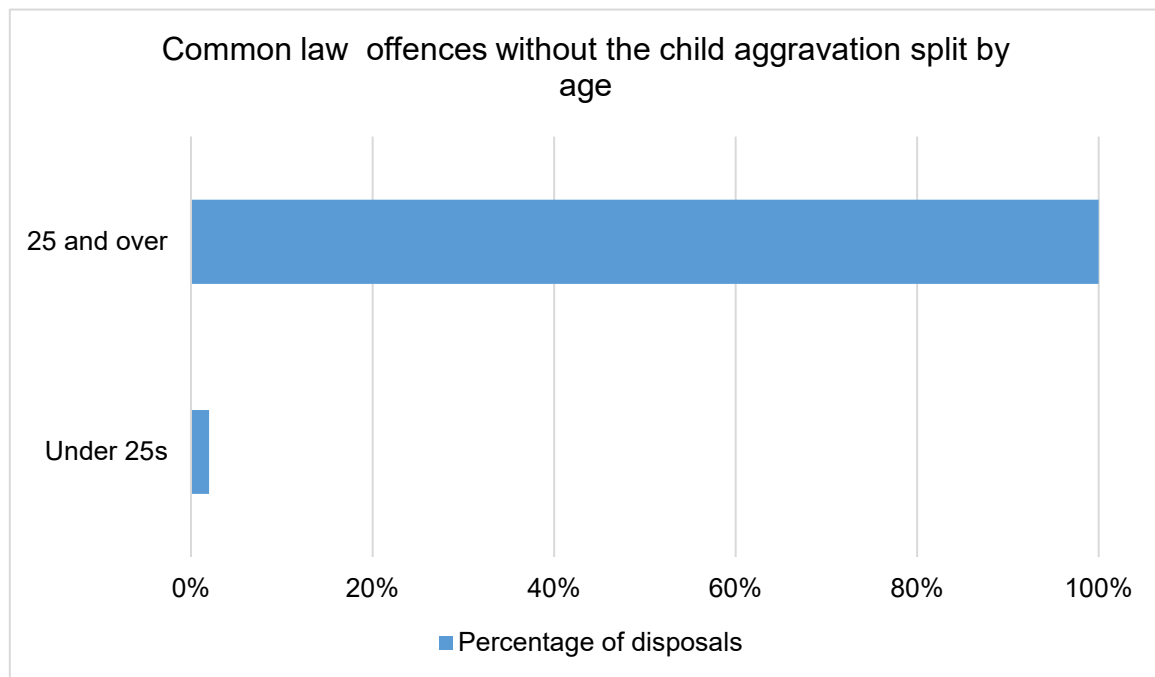
Age Bracket	Number of disposals	Percentage %
Under 18/18-20/21-24	8	2%
25-30	32	8%
31-40	77	19%
41-50	128	31%
51-60	119	29%
60+	52	13%
Total	416	102%⁴⁵

⁴⁴ The figures for the under 18, 18-20, and 21-24 age groups are presented as an aggregate due to the small numbers, which could potentially disclose the identities of those involved.

⁴⁵ Percentages may not sum to 100% due to rounding and the use of approximate figures that are too low to disclose.

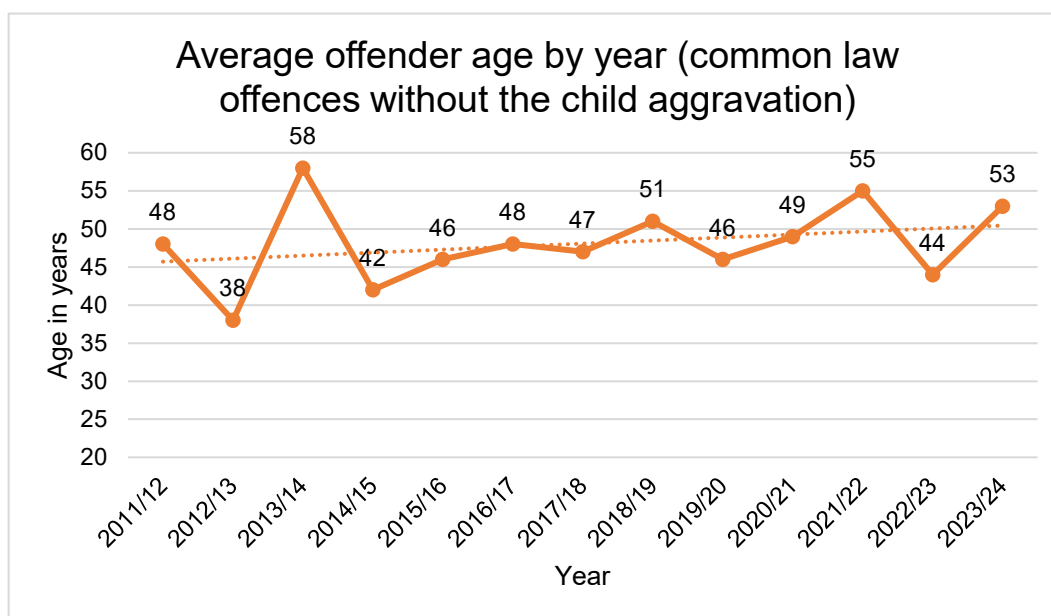


Figure 9: Disposals by age group over the 13-year period: under 25 and 25 and over (common law offences without the child aggravation)



45. Out of the common law offences without the child aggravation, the average age of offenders does not show a general increase or decrease across the 13 years. The eldest average age occurred in 2013/14 at 58 years old, and the youngest occurred in 2012/13 at 38 years old.

Figure 10: Average offender age by year over the 13-year period (common law offences without the child aggravation)



46. The available SIMD data for common law offences recorded without the child aggravation⁴⁶ suggests a majority of offenders receiving disposals for these offences come from the most deprived deciles. With the exception of a minimal increase in the 3rd and 4th deciles, there is a steady downward trend in numbers of disposals imposed in the most to least deprived decile. 72% of disposals under common law without the child aggravation were imposed on offenders in the 1st to 5th deciles (most deprived) with the remaining 28% imposed on offenders in the 6th to 10th deciles (least deprived).

Offender demographics: Common law offences recorded with the child aggravation

47. Out of the 357 common law rape offences recorded with the child aggravation, the average age of individuals receiving disposals for these offences over the 13-year period was 56 years, with a median of 57 years. Approximately 56% of the disposals for these offences in the 13-year period were imposed on offenders between 31-60 years of age. Approximately 6% of the offenders were aged 30 or under. Among these, there were very few disposals in the under 18, 18-20, and 21-24 age groups, with none in the 21-24 age group, and a slight

⁴⁶ Approximately 30% of the SIMD data for common law offences recorded without the child aggravation were unavailable. Figures are calculated based on the remaining 70% of available data.

increase in the 25-30 age group, resulting in a combined total of 6% (20) across all four age groups.⁴⁷ The highest number of disposals, accounting for 38% (134) were imposed on offenders over 60. The next highest number of disposals (105) were imposed on offenders aged between 51-60 (29%). This was followed by individuals in the 41-50 age group (62), accounting for 17%. Those aged between 31-40 accounted for 10% (36) of the disposals imposed on offenders for common law offences recorded with the child aggravation.

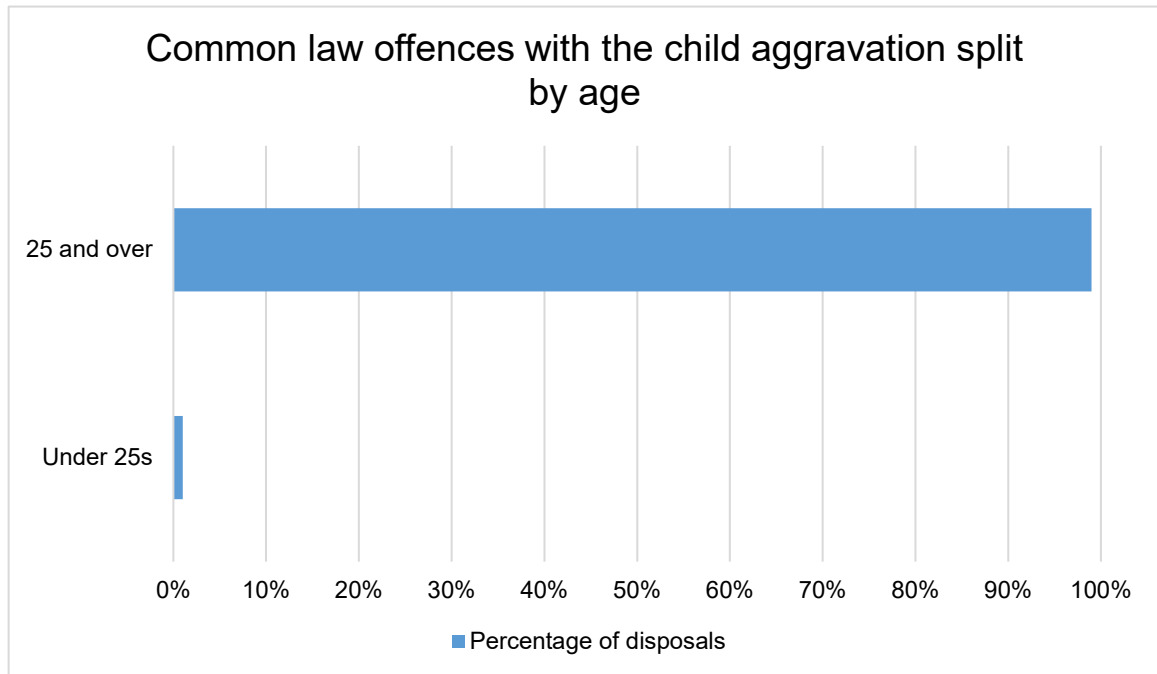
Table 12: Total disposals by age of offender over the 13-year period (common law offences with the child aggravation)

Age Bracket	Number of disposals	Percentage %
Under 18/18-20/21-24/25-30	20	6%
31-40	36	10%
41-50	62	17%
51-60	105	29%
60+	134	38%
Total	357	100%

⁴⁷ Specific figures for individuals in the under 18, 18-20, 21-24, and 25-30 age groups are not provided due to the small numbers, which could potentially disclose the identities of those involved. The figures are presented as an aggregate.

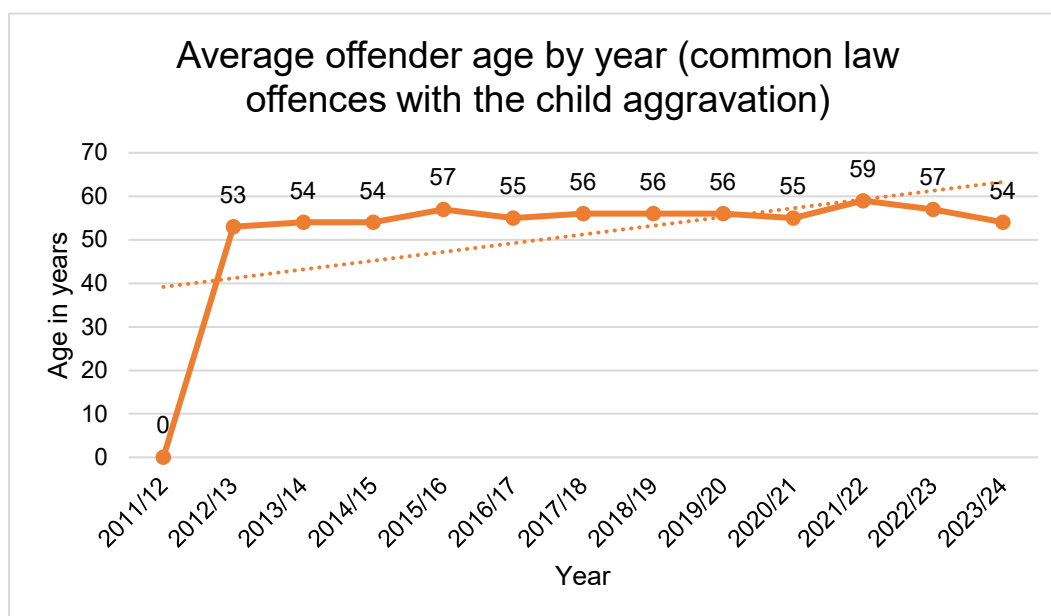


Figure 11: Disposals by age group over the 13-year period: under 25 and 25 and over (common law offences with the child aggravation)



48. The average age of offenders for common law offences with the child aggravation remains fairly steady over the 13 years, with the youngest occurring in 2012/23 (53 years) and the eldest occurring in 2021/22 (59 years). There were 0 offences in 2011/12.

Figure 12: Average offender age by year over the 13-year period (common law offences with the child aggravation)



49. The available SIMD data for common law offences recorded with the child aggravation⁴⁸ suggests a majority of offenders receiving disposals for these offences come from the most deprived deciles. There is a steady downward trend in numbers of disposals imposed on offenders in the most to least deprived decile. The 1st to 5th deciles (most deprived) accounted for 85% of common law disposals recorded without the child aggravation and 15% were imposed on offenders in the 6th to 10th deciles (least deprived).

Victim demographics

50. Data provided by SCTS do not contain information on victim demographics. Other data sources providing statistics on victims typically categorise data under broader classifications of sexual crimes, such as serious sexual assault. The following is provided for illustrative purposes only as it does not exclusively focus on offences of rape.

51. According to the Scottish Crime and Justice Survey (SCJS) covering the period 2018-20,⁴⁹ women are more likely than men to have experienced serious sexual assault, since the age of 16. The SCJS found that since the age of 16, 3.6% of

⁴⁸ Approximately 30% of the SIMD data for common law offences recorded with the child aggravation were unavailable. Figures are calculated based on the remaining 70% of available data.

⁴⁹ [Scottish Crime and Justice Survey \(SCJS\) 2019/20 in Main findings \(Scottish Government 2021\)](#)

adults in Scotland have experienced at least one type of serious sexual assault, and 6.1% of women reported having experienced at least one form of serious sexual assault in their lifetime, compared to 0.8% of men. Almost a quarter of those who had experienced forced sexual intercourse since the age of 16 (22%) said the most recent (or only) incident of forced sexual intercourse was reported to the police. The most common reason given for not reporting forced sexual intercourse was fear of making matters worse (38%).

52. Additionally, the SCJS identified that those residing in the most deprived areas of Scotland were more likely to experience serious sexual assault compared to those in less deprived areas.

53. The specific age of the victim cannot generally be determined from most administrative data sources. However, a significant portion of sexual crimes recorded by the police involve victims under the age of 18, making up at least 34% of the total recorded sexual crimes in 2024-25.⁵⁰

54. The extent to which additional demographic data, including ethnicity data on victims, is systematically recorded varies across administrative sources in Scotland. Underreporting further increases limitations in understanding victim demographics.

Disposals⁵¹

55. This section covers disposal information for rape offences, namely, the custodial type and length. As with the figures regarding the number of offences, and offender demographics, the disposal data for section 1 offences are provided separately from common law offences.⁵² Similarly, the disaggregated child

⁵⁰ [Recorded crime in Scotland, 2024-25 \(Scottish Government 2025\)](#)

⁵¹ The sentencing data provided by SCTS and included in this assessment represent the final custodial sentences imposed, which may reflect reductions for guilty pleas where the court has taken into account the requirements of section 196 of the Criminal Procedure (Scotland) Act 1995. Accordingly, these figures may not necessarily correspond to the headline sentences. The headline sentence is the sentence selected by the court which takes into account the seriousness of the offence and any aggravating and mitigating factors. It does not take into account any adjustment of the sentence for other reasons, such as a reduction in recognition of a plea of guilty, and may therefore not be the final sentence imposed by the court. Since approximately 11% of the cases in the dataset involved guilty pleas, these reductions may result in slightly lower recorded sentences as compared to the headline sentences. As a result, the figures reported likely underestimate the original headline sentences, meaning that the custodial sentence lengths of the headline sentences may be longer than those shown in the data. This context should be considered when comparing the sentencing data with the guideline ranges, which are based on headline sentences.

⁵² See footnote 9.

aggravation data are presented for illustrative purposes only, and comparisons should be avoided.⁵³

Disposals: Total section 1 offences

56. In the period examined, over 99% of the 922 section 1 disposals were custodial (that is, consisting of imprisonment or detention in a young offenders institution (YOI). Of the custodial disposals, 849 (96%) involved offenders aged 21 or over at the time of conviction.⁵⁴ Among the disposals involving custody, there were 155 indeterminate⁵⁵ sentences (including life imprisonment and OLRs). The vast majority of the 155 lifelong sentences consisted of OLRs. The data regarding disposals constituting less than 1% (including life imprisonment as referenced previously and community disposals) have been excluded here to minimise potential for disclosing details that may identify the individuals involved.⁵⁶

57. There were 762 total determinate section 1 custodial disposals, excluding life imprisonment and OLRs.⁵⁷ The average number of imprisonment days over the 13-year period for these was 2211 days, equivalent to approximately 6 years.

⁵³ See footnotes 12-15.

⁵⁴ YOIs provide custodial facilities, generally, for offenders up to the age of 21, though placement decisions are governed by statutory and administrative rules rather than sentencing decisions. Some young offenders may transition from YOIs to the adult prison estate depending on various factors. Due to limitations in the available data, it is not always possible to distinguish YOI detentions from other custodial sentences precisely. For the purposes of this assessment, this has been carried out by age.

⁵⁵ These are sentences classified as indeterminate, indicating a lack of a specified release date. While there is a minimum term required to be served in prison, there are limitations to accurately assessing the imprisonment component for the purposes of this assessment. Indeterminate sentences, do not include a fixed term of custody. In such cases, offenders will receive a minimum period of time which they must serve in custody (known as the punishment part) before they can be considered for release into the community.

⁵⁶ The sample size on disposals for lifelong sentences for section 1 offences is low, therefore exact figures are not provided to minimise the potential for disclosing the identities of the individuals involved. Additionally, as previously mentioned, each case may entail multiple disposals, leading to potential duplication of offender counts based on the number of disposals per case, which therefore increases the potential for identification.

⁵⁷ The figures provided cover determinate sentences, apart from extended sentences, and exclude indeterminate sentences, namely life imprisonment and OLRs. A determinate sentence is a custodial sentence where the court fixes the length of the sentence. This is the maximum period that the offender could serve in prison, or in a young offenders institution. In most cases the offender will not spend the whole of this period in custody, but will serve part of the sentence in the community on license. The figures provided do not include extended sentences due to the challenges in distinguishing the custodial term from the extension period in the available dataset. Indeterminate sentences are excluded due to the complexities of interpreting the punishment part of those sentences for the purposes of this analysis. Unless otherwise stated, all data presented in the following sections refer to determinate sentences only and exclude extended and indeterminate sentences for the reasons set out here.

The average number of imprisonment days for custodial disposals (excluding life imprisonment and OLRs) over the 13-year period where offenders were under the age of 21 was 1670 days, equivalent to approximately 4.6 years. Under 25-year-olds had an average duration length of 4.9 years, and over 25s average 6.4 years. In cases where a community payback order (CPO) with an unpaid work or other activity requirement was imposed, the number of hours of unpaid work to be carried out was always between 200 and 300.⁵⁸

Table 13: Determinate custodial disposals by sentence length over the 13-year period in age groups (total section 1 offences)

Age Group	Average custody length in days	Average custody length in years
Under 21	1670	4.6
Under 25	1797	4.9
25 and over	2335	6.4

58. Approximately 152 (20%) of the total number of overall determinate section 1 custodial disposals (excluding life imprisonment and OLRs) were for up to 2 years or 2-4 years.^{59 60} The highest number of disposals involving custody fell into the 4-6 year bracket (342 disposals; 45%), followed by the 6-8 year bracket (176 disposals; 23%) and 66 disposals (9%) were for 8-10 years' imprisonment. Additionally, there were 26 disposals (3%) with a duration of 10 years or more.

⁵⁸ Due to the small number of community disposals included in the sample, this figure may be negligible.

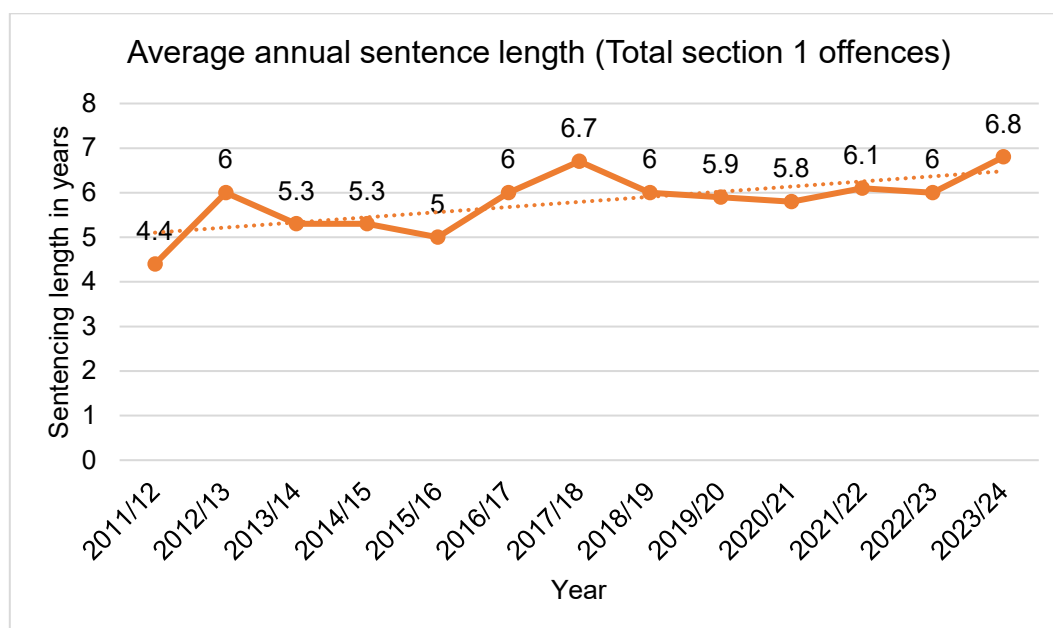
⁵⁹ Figures for 0-2 years and 2-4 years are provided as aggregate, as the figures for 0-2 years are too low to disclose without risking anonymity.

⁶⁰ The duration thresholds provided by SCTS and presented in these sections of this assessment exclude the lower bound of each range but include the upper bound. For example, the 0-2 years range includes all sentences up to and including 2 years. The 2-4 years range includes sentences over 2 years (excluding exactly 2 years) up to and including 4 years. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively. This approach to presenting sentence length data is used to remain consistent with the way SCTS data is provided.

Table 14: Determinate custodial disposals by sentence length over the 13-year period (total section 1 offences)

Custody length	Number of disposals	Percentage %
0-2/2-4 years ⁶¹	152	20%
4-6 years	342	45%
6-8 years	176	23%
8-10 years	66	9%
10 years +	26	3%
Total	762	100%

Figure 13: Average annual sentence length of determinate custodial disposals by year over the 13-year period (total section 1 offences)



⁶¹ Figures for 0-2 years and 2-4 years are provided as aggregate, as the figures for 0-2 years are too low to disclose without risking anonymity.

59. Of the 922 total section 1 disposals, 331 received an NHO.⁶² This increased over the 8-year period, with 73 disposals receiving an NHO in 2022/23, and 200 receiving one in 2023/24.⁶³

Table 15: Number of NHOs per year (total section 1 offences)

Year	Number of NHOs	Percentage %
2016/17	6	2%
2017/18	1	0%
2018/19	2	1%
2019/20	7	2%
2020/21	4	1%
2021/22	38	11%
2022/23	73	22%
2023/24	200	60%
Total	331	100%

Disposals: Section 1 offences recorded without the child aggravation

60. Over 99%⁶⁴ of the 793 section 1 offences recorded without the child aggravation were custodial (consisting of imprisonment or detention in a YOI). Of these, 755 (95%) disposals involved offenders aged 21 or over at the time of conviction

⁶² A non-harassment order (NHO) restricts offenders convicted of offences involving causing alarm or distress from certain behaviours, such as contacting or approaching the victim. NHOs can last for a set or indeterminate period and may be imposed alongside or instead of other sentences or disposals.

⁶³ Data reported here were provided by SCTS and are drawn from live management information databases. Although every effort has been made to ensure the data presented here are accurate, it is not possible to undertake quality assurance to the same level as for national statistics. Care should be exercised drawing conclusions from these data. These data should **only** be used for the purpose of considering the impact assessment on the guideline on sentencing rape offences as set out in this document. These data should **not** be compared to other datasets, as frames of reference and approaches to classification will differ. Please also note that the dataset used for NHOs is separate from the main dataset, and therefore a direct comparison is not possible. This also outlines why this dataset begins in 2016/17, and not 2013/14.

⁶⁴ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

over the 13-year period. Among the custodial disposals, there were 145 indeterminate sentences (including life imprisonment and OLRs), the vast majority of which were OLRs.⁶⁵

61. There were 647 total determinate section 1 custodial disposals recorded without the child aggravation, excluding life imprisonment and OLRs over the 13-year period. The average number of imprisonment days for these was 2225 days, equivalent to approximately 6.1 years. The average number of imprisonment days for custodial disposals (excluding life imprisonment and OLRs) where offenders were under the age of 21 was 1710 days, equivalent to approximately 4.7 years. Under 25-year-olds had an average duration length of 5.1 years, and those 25 and over had an average of 6.3 years.

Table 16: Determinate custodial disposals by sentence length over the 13-year period in age groups (section 1 offences without the child aggravation)

Age Group	Average custody length in days	Average custody length in years
Under 21	1710	4.7
Under 25	1854	5.1
25 and over	2314	6.3

62. 11 determinate disposals for custodial offences recorded without the child aggravation (excluding life imprisonment and OLRs) were for up to 2 years,⁶⁶ while 103 disposals (16%) were for 2-4 years. The highest number of disposals fell into the 4-6 years bracket (303 disposals; 47%), followed by the 6-8 years bracket (156 disposals; 24%). 53 disposals (8%) were for 8-10 years' imprisonment. Additionally, there were 21 disposals (3%) with a duration of 10 years or more.

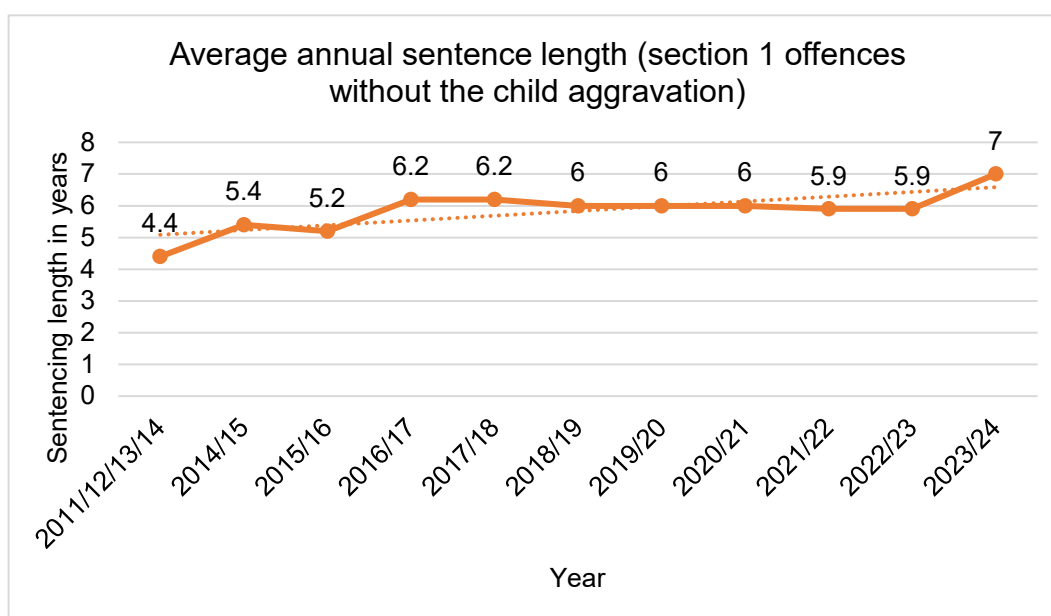
⁶⁵ Specific figures for lifelong sentences are not provided due to the potential for disclosing identifying information.

⁶⁶ The duration thresholds provided by SCTS and presented in these sections of this assessment exclude the lower bound of each range but include the upper bound. For example, the 0-2 years range includes all sentences up to and including 2 years. The 2-4 years range includes sentences over 2 years (excluding exactly 2 years) up to and including 4 years. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively. This approach to presenting sentence length data is used to remain consistent with the way SCTS data is provided.

Table 17: Determinate custodial disposals by sentence length over the 13-year period (section 1 offences without the child aggravation)

Custody length	Number of disposals	Percentage %
0-2 years	11	<2%
2-4 years	103	16%
4-6 years	303	47%
6-8 years	156	24%
8-10 years	53	8%
10 years +	21	3%
Total	647	≈100%⁶⁷

Figure 14: Average annual sentence length of determinate custodial disposals by year over the 13-year period (section 1 offences without the child aggravation) ⁶⁸



⁶⁷ Percentages may not sum to 100% due to rounding and the use of approximate figures that are too low to disclose.

⁶⁸ The figures for 2011/12, 2012/13 and 2013/2014 are presented as an aggregate due to the small numbers, which could potentially disclose the identities of those involved.

63. Of the 793 section 1 disposals without a child aggravation, 301 received an NHO. This increased over the 8-year time frame, increasing to 35 in 2021/22, 69 in 2022/23 and 179 in 2023/24.

Table 18: Number of NHOs per year (section 1 offences without the child aggravation)

Year	Number of NHOs	Percentage %
2016/17	6	2%
2017/18	1	0%
2018/19	2	1%
2019/20	6	2%
2020/21	3	1%
2021/22	35	12%
2022/23	69	23%
2023/24	179	59%
Total	301	100%

Disposals: Section 1 offences recorded with the child aggravation

64. Approximately 89%⁶⁹ of the 129 section 1 offences recorded with the child aggravation involved custody (excluding life imprisonment and OLRs) over the 13-year period. Of these 115 disposals, 84 (73%) disposals involved offenders aged 21 or over at the time of conviction.

65. The average number of imprisonment days for the determinate sentences (excluding life imprisonment and OLRs) over the 13-year period was 2136 days, equivalent to approximately 5.9 years. The average number of imprisonment days for custodial disposals (excluding life imprisonment and OLRs) where offenders were under the age of 21 was 1622 days, equivalent to approximately

⁶⁹ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

4.4 years. Under 25-year-olds had an average duration length of 4.5 years, and those 25 and over had an average of 6.9 years.

Table 19: Determinate custodial disposals by sentence length over the 13-year period in age groups (section 1 offences with the child aggravation)

Age Group	Average custody length in days	Average custody length in years
Under 21	1622	4.4
Under 25	1655	4.5
25 and over	2505	6.9

66.33% (38) of the total number of determinate custodial section 1 disposals recorded with the child aggravation (excluding life imprisonment and OLRs) were for up to 2 years or 2-4 years.^{70 71} The highest number of disposals fell into the 4-6 years bracket (39 disposals; 34%). 20 disposals were recorded in the 6-8 years bracket (17%), and 13 disposals (11%) were for 8-10 years' imprisonment. Additionally, there were 5 disposals (4%) with a duration of 10 years or more.

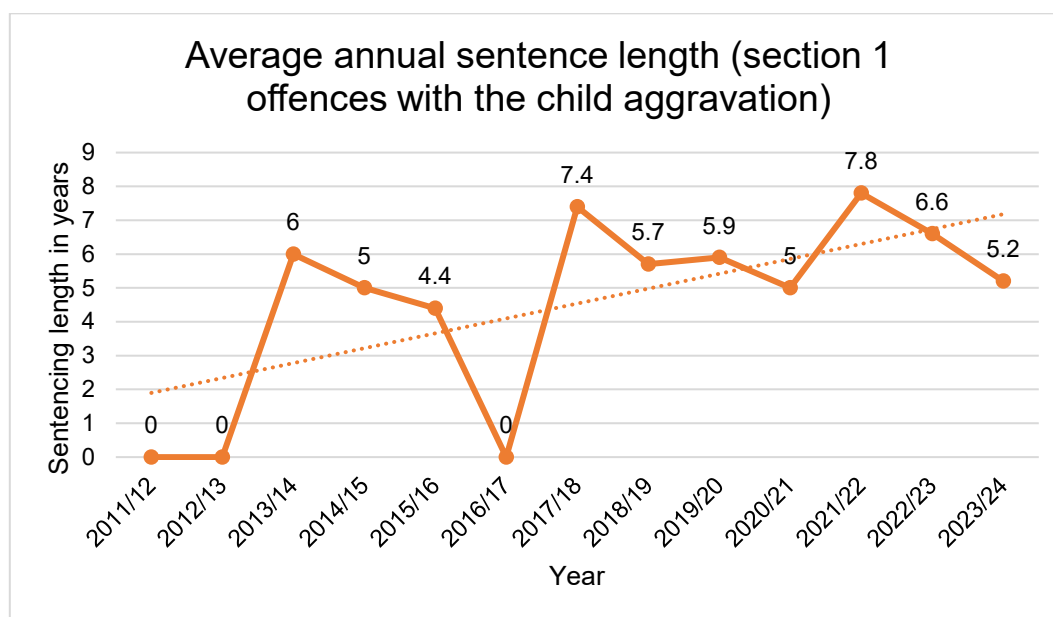
⁷⁰ Figures for 0-2 years and 2-4 years are presented as an aggregate as the exact figures are too low to disclose without risking identification.

⁷¹ The duration thresholds provided by SCTS and presented in these sections of this assessment exclude the lower bound of each range but include the upper bound. For example, the 0-2 years range includes all sentences up to and including 2 years. The 2-4 years range includes sentences over 2 years (excluding exactly 2 years) up to and including 4 years. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively. This approach to presenting sentence length data is used to remain consistent with the way SCTS data is provided.

Table 20: Determinate custodial disposals by sentence length over the 13-year period (section 1 offences with the child aggravation)

Custody length	Number of disposals	Percentage %
0-2/2-4 years	38	33%
4-6 years	39	34%
6-8 years	20	17%
8-10 years	13	11%
10 years +	5	4%
Total	115	99%⁷²

Figure 15: Average annual sentence length of determinate custodial disposals by year over the 13-year period (section 1 offences with the child aggravation)⁷³



⁷² Percentages may not sum to 100% due to rounding and the use of approximate figures that are too low to disclose.

⁷³ Figures for 2011/12, 2012/13 and 2016/17 are not provided due to the small numbers during these years, as providing figures could potentially disclose the identities of those involved.

67. Of the 129 section 1 disposals with a child aggravation, 29 received an NHO. There were no NHOs from 2016/17-2018/19, increasing to 1 in 2019/20, 1 in 2020/21, 3 in 2021/22, 4 in 2022/23, and 20 in 2023/24.

Table 21: Number of NHOs per year (section 1 offences with the child aggravation)

Year	Number of NHOs	Percentage %
2016/17	0	0%
2017/18	0	0%
2018/19	0	0%
2019/20	1	3%
2020/21	1	3%
2021/22	3	10%
2022/23	4	14%
2023/24	20	69%
Total	29	100%

Disposals: Total common law offences ⁷⁴

68. In respect of common law offences, 100% of the disposals involved a sentence of custody over the 13-year period (a sentence of imprisonment or detention in a young offenders institution). Of these, approximately 99%⁷⁵ of the disposals involved offenders aged 21 or over at the time of conviction.⁷⁶ There were 128

⁷⁴ Data for common law offences are provided separately from section 1 offences. Common law rape offences included in this analysis will most likely pertain to non-recent offences predating the statutory offences of rape. There are some limitations to distinguishing between common law offences committed against adults versus children with complete accuracy. Due to the way the data are recorded, it is not always possible to distinguish between offences committed against an adult or a child, and the age of the child is not available in the data. Disaggregated totals for common law offences committed against adults and children are provided but should accordingly be treated with a degree of caution. See paragraph 13.

⁷⁵ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

⁷⁶ YOIs provide custodial facilities, generally, for offenders up to the age of 21, though placement decisions are governed by statutory and administrative rules rather than sentencing decisions. Some young offenders may transition from YOIs to the adult prison estate depending on various factors.

indeterminate sentences (accounting for 17% of the total number of common law disposals), with the majority consisting of OLRs. Data on the indeterminate sentences are not included here to minimise potential for disclosing identifying details.

69. Of the 773 determinate common law sentences, there were 645 custodial disposals, excluding life imprisonment and OLRs. The average number of imprisonment or detention days for these over the 13-year period was 3095 days, equivalent to approximately 8.5 years. The average number of days for custodial disposals (excluding life imprisonment and OLRs) where the offender was under the age of 21 was 1612 days, equivalent to approximately 4.4 years. Under 25-year-olds had an average duration length of 4.3 years, and those 25 and over had an average of 8.5 years.

Table 22: Determinate custodial disposals by sentence length over the 13-year period in age groups (total common law offences)

Age Group	Average custody length in days	Average custody length in years
Under 21	1612	4.4
Under 25	1582	4.3
25 and over	3117	8.5

70. There were 645 determinate common law custodial disposals, excluding life imprisonment and OLRs. Of these, 7 disposals (1%) were for up to 2 years⁷⁷ imprisonment while 40 disposals (6%) were for 2-4 years. The highest number of disposals fell into the 6-8 years bracket (170 disposals; 26%), followed by the 4-6 years bracket (151 disposals; 23%). Additionally, 141 disposals (22%) were for 8-10 years' imprisonment, and there were 136 disposals (21%) with a duration of 10 years or more.

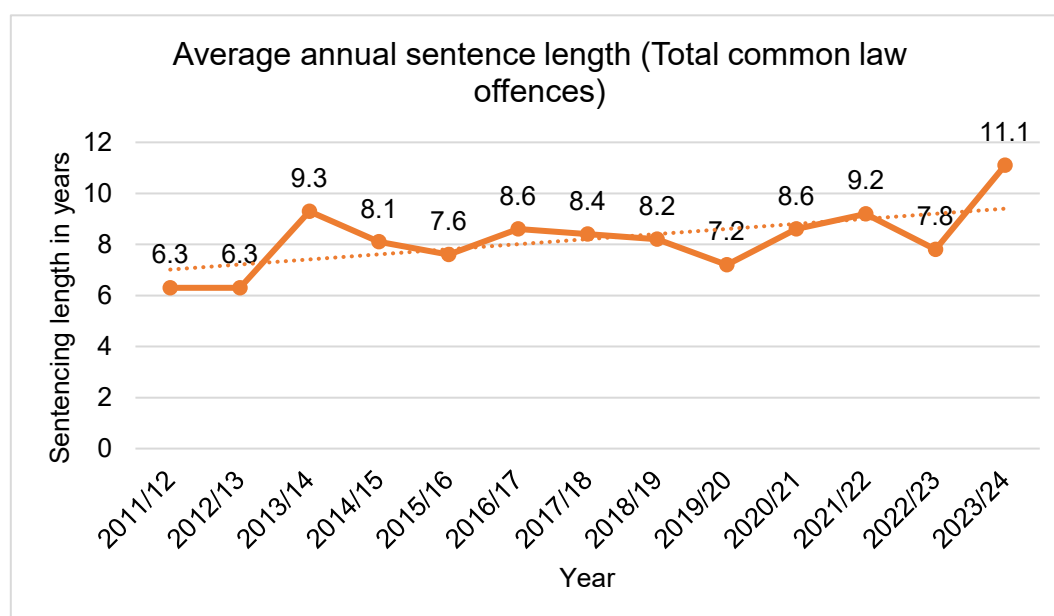
Due to limitations in the available data, it is not always possible to distinguish YOI detentions from other custodial sentences precisely. For the purposes of this assessment, this has been carried out by age.

⁷⁷ The duration thresholds provided by SCTS and presented in these sections of this assessment exclude the lower bound of each range but include the upper bound. For example, the 0-2 years range includes all sentences up to and including 2 years. The 2-4 years range includes sentences over 2 years (excluding exactly 2 years) up to and including 4 years. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively. This approach to presenting sentence length data is used to remain consistent with the way SCTS data is provided.

Table 23: Determinate custodial disposals by sentence length over the 13-year period (total common law offences)

Custody length	Number of disposals	Percentage %
0-2 years	7	1%
2-4 years	40	6%
4-6 years	151	23%
6-8 years	170	26%
8-10 years	141	22%
10 years+	136	21%
Total	645	99%⁷⁸

Figure 16: Average annual sentence length of determinate custodial disposals by year over the 13-year period (total common law offences)



⁷⁸ Percentages may not sum to 100% due to rounding and the use of approximate figures that are too low to disclose.

71. Of the 773 total common law disposals, 79 received an NHO. There were no NHOs from 2016/17-2020/21, increasing to 9 in 2021/22, 13 in 2022/23 and 57 in 2023/24.

Table 24: Number of NHOs per year (total common law offences)

Year	Number of NHOs	Percentage %
2016/17	0	0%
2017/18	0	0%
2018/19	0	0%
2019/20	0	0%
2020/21	0	0%
2021/22	9	11%
2022/23	13	16%
2023/24	57	72%
Total	79	100%

Disposals: Common law offences recorded without the child aggravation

72. In common law offences without the child aggravation, 100% (416) of disposals involved a period of custody. Approximately 99%⁷⁹ of these involved offenders aged 21 or over at the time of conviction. There were 113 indeterminate sentences (accounting for 27% of the 416 common law disposals recorded without the child aggravation), with the majority consisting of OLRs. Data on the remaining indeterminate sentences are not included here to minimise potential for disclosing identifying details.

73. Of the 416 total common law offences recorded without the child aggravation, there were 303 determinate custodial disposals, excluding life imprisonment and OLRs. The average number of imprisonment days for these over the 13-year period was 3143 days, equivalent to approximately 8.6 years. The average

⁷⁹ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

number of days for custodial disposals (excluding life imprisonment and OLRs) where the offender was under the age of 21 was 1338 days, equivalent to approximately 3.7 years. Under 25-year-olds had an average duration length of 3.9 years, and those 25 and over had an average of 8.7 years.

Table 25: Determinate custodial disposals by sentence length over the 13-year period in age groups (common law offences without the child aggravation)

Age Group	Average custody length in days	Average custody length in years
Under 21	1338	3.7
Under 25	1430	3.9
25 and over	3178	8.7

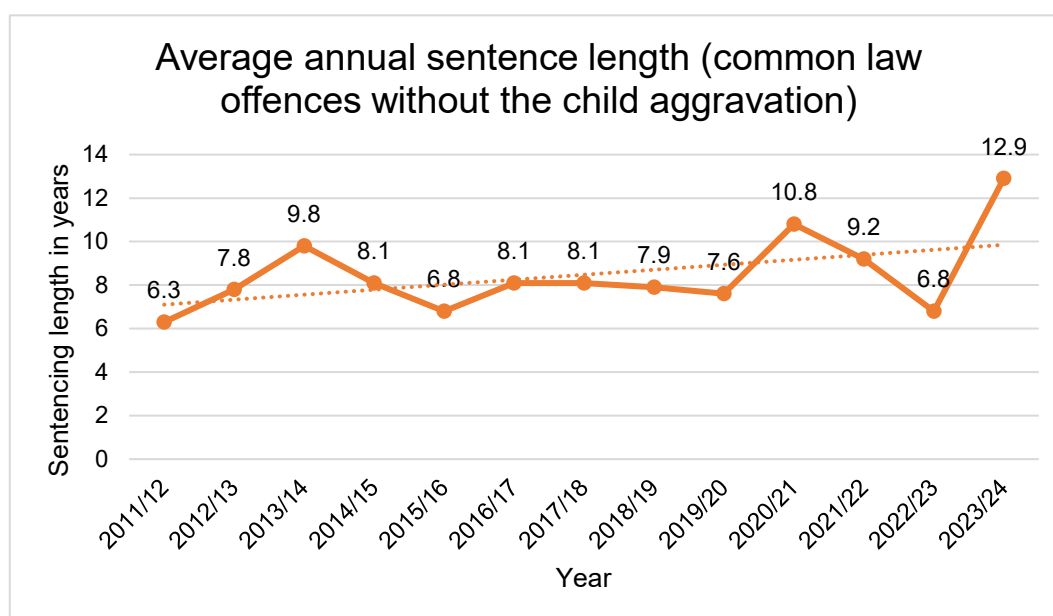
74. There were 303 determinate common law disposals recorded without the child aggravation involving custody (excluding life imprisonment and OLRs). Of these, 6 disposals (2%) were for up to 2 years⁸⁰ imprisonment while 22 disposals (7%) were for 2-4 years. The highest number of disposals fell into the 6-8 years bracket (73 disposals; 24%), followed by the 4-6 years bracket (72 disposals; 24%). 69 disposals (23%) were for 8-10 years' imprisonment, and 61 disposals (20%) consisted of imprisonment with a duration of 10 years or more.

⁸⁰ The duration thresholds provided by SCTS and presented in these sections of this assessment exclude the lower bound of each range but include the upper bound. For example, the 0-2 years range includes all sentences up to and including 2 years. The 2-4 years range includes sentences over 2 years (excluding exactly 2 years) up to and including 4 years. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively. This approach to presenting sentence length data is used to remain consistent with the way SCTS data is provided.

Table 26: Determinate custodial disposals by sentence length over the 13-year period (common law offences without the child aggravation)

Custody length	Number of disposals	Percentage %
0-2 years	6	2%
2-4 years	22	7%
4-6 years	72	24%
6-8 years	73	24%
8-10 years	69	23%
10 years+	61	20%
Total	303	100%

Figure 17: Average annual sentence length of determinate custodial disposals by year over the 13-year period (common law offences without the child aggravation)



75. Of the 416 common law disposals without a child aggravation, 65 received an NHO. There were no NHOs from 2016/17-2020/21, increasing to 8 in 2021/22, 12 in 2022/23 and 45 in 2023/24.

Table 27: Number of NHOs per year (common law offences without the child aggravation)

Year	Number of NHOs	Percentage %
2016/17	0	0%
2017/18	0	0%
2018/19	0	0%
2019/20	0	0%
2020/21	0	0%
2021/22	8	12%
2022/23	12	18%
2023/24	45	69%
Total	65	100%

Disposals: Common law offences recorded with the child aggravation

76. In common law offences with the child aggravation, 100% (357) of disposals involved a period of custody. Of these, approximately 99% of the disposals involved offenders aged 21 or over at the time of conviction. Among the disposals involving custody, approximately 4%⁸¹ consisted of indeterminate sentences, all of which were OLRs.

77. Of the 357 common law disposals recorded with the child aggravation, there were 342 determinate custodial disposals (the remaining 15 were OLRs). The average number of days for these over the 13-year period was 3052 days, equivalent to approximately 8.4 years. The average number of days for custodial disposals (excluding OLRs) over the 13-year period where the offender was under the age of 21 was 1886 days, equivalent to approximately 5.2 years. Under 25-year-olds had an average duration length of 5.2 years, and those 25 and over had an average of 8.4 years.

⁸¹ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

Table 28: Determinate custodial disposals by sentence length over the 13-year period in age groups (common law offences with the child aggravation)

Age Group	Average custody length in days	Average custody length in years
Under 21	1886	5.2
Under 25	1886	5.2
25 and over	3063	8.4

78. Of the 342 determinate common law disposals involving custody (excluding OLRs), 19 disposals (6%) were for up to 2 years⁸² or between 2-4 years' imprisonment.⁸³ The highest number of disposals fell into the 6-8 years bracket (97 disposals; 28%), followed by the 4-6 years age bracket (79 disposals; 23%), and then the 10+ years bracket (75 disposals, 22%). 72 disposals (21%) involved imprisonment of 8-10 years.

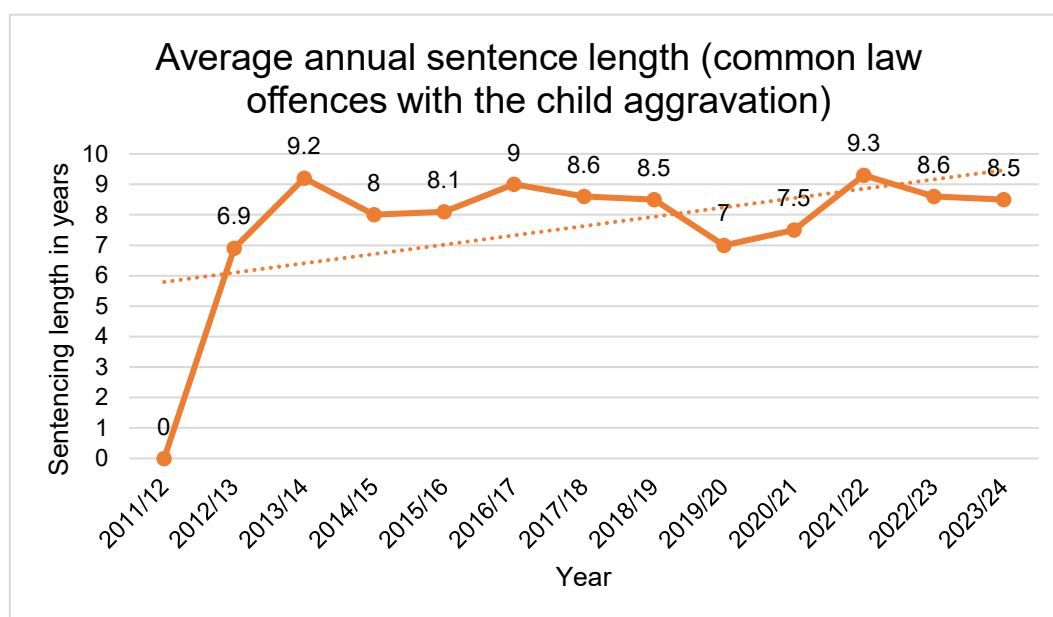
⁸² The duration thresholds provided by SCTS and presented in these sections of this assessment exclude the lower bound of each range but include the upper bound. For example, the 0-2 years range includes all sentences up to and including 2 years. The 2-4 years range includes sentences over 2 years (excluding exactly 2 years) up to and including 4 years. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively. This approach to presenting sentence length data is used to remain consistent with the way SCTS data is provided.

⁸³ Figures for 0-2 years and 2-4 years are provided as aggregate, as the figures for 0-2 years are too low to disclose without risking anonymity.

Table 29: Determinate custodial disposals by sentence length over the 13-year period (common law offences with the child aggravation)

Custody length	Number of disposals	Percentage %
0-2/2-4 years	19	6%
4-6 years	79	23%
6-8 years	97	28%
8-10 years	72	21%
10 years +	75	22%
Total	342	100%

Figure 18: Average annual sentence length of determinate custodial disposals by year over the 13-year period (common law offences with the child aggravation)⁸⁴



79. Of the 357 common law disposals with the child aggravation, 14 received an NHO. There were no NHOs from 2016/17-2020/21, increasing to 1 in 2021/22, 1 in 2022/23 and 14 in 2023/24.

⁸⁴ Figures for 2011/12 are not provided due to the small numbers during this year, as providing figures could potentially disclose the identities of those involved.

Table 30: Number of NHOs per year (common law offences with the child aggravation)

Year	Number of NHOs	Percentage %
2016/17	0	0%
2017/18	0	0%
2018/19	0	0%
2019/20	0	0%
2020/21	0	0%
2021/22	1	7%
2022/23	1	7%
2023/24	12	86%
Total	14	100%

Key assumptions

80. In assessing the impact of any new guideline, the Council considers how, if at all, it will affect sentencing, the business of the courts, the operation of the wider criminal justice system and society in general. Such assessments are based upon research and analysis conducted during the creation of the guideline, consultation with external stakeholders, including judges, and, where appropriate, relevant experiences in other jurisdictions.
81. This assessment also requires certain assumptions to be made regarding sentencers' behaviour in response to the new guideline as it is not possible to predict how it will impact sentencing across all possible scenarios. Where possible, these assumptions will be based upon previous evidence and experiences, but this evidence base is limited. As a result, assumptions regarding the impact of the guideline must have a large degree of uncertainty about them. To account for this, where an estimate of change is required, this impact assessment considers costs based on indicative levels of change.
82. This impact assessment does not attempt to include any future changes to sentencing behaviours that are not a result of the implementation of the

guideline (e.g. historical trends in sentencing, changes to the presumption against short sentences, or the impacts of other guidelines unless specifically considered with reference to interaction with this guideline).

83. It is assumed that the guideline will influence judicial approaches to sentencing and promote greater consistency in approach.

84. It is assumed that the guideline will not generally result in an overall change in sentencing practice.

Impact on criminal justice system as a result of implementing the new guideline

85. In addition to examining sentencing patterns over the aforementioned 13-year period, supplementary analysis was carried out in accordance with stages 1 to 4 of the Council's [guideline development methodology](#), including a review of existing sentencing data for offences of rape along with an illustrative analysis of potential costs and benefits, as outlined in this impact assessment. Further research was conducted through consultation exercises. Additionally, the Council commissioned comprehensive studies to gather evidence on the sentencing of offences involving rape as part of its methodology.

Potential changes to sentencing

Approaches to sentencing

86. The guideline will promote greater consistency in approaches to sentencing.

87. The guideline sets out an approach for sentencers to assess the overall seriousness of an offence based on the features that may indicate the levels of culpability and harm involved, in order to determine a suitable sentencing range. As a result of the comprehensive analysis and overall engagement, research, and review process, the guideline has been amended in a number of ways since it was publicly consulted on. The sentencing ranges have been changed to start at 5 years' imprisonment for rape (an increase from the lowest point of 4 years set out in the public consultation). Some of the mid ranges have been increased within the guideline. The highest point of the sentencing range remains at 13 years. The options of extended sentences and OLRs (a form of life sentence) remain.

88. The Council considers that sentencing ranges are broadly consistent with current sentencing practice as elucidated by the Appeal Court.⁸⁵
89. This guideline should be read alongside the Council's guidelines '[Principles and purposes of sentencing](#)' and '[The sentencing process](#)'. It should also be read along with any other guidelines which apply to the case, or to the offender. Details of guidelines in force can be found [on the Council's website](#).
90. A court must have regard to any sentencing guidelines which are applicable to the case under consideration at the time when the court is sentencing the offender, such as the Council's guideline on [sentencing young people](#).⁸⁶ This may result in the selected sentence falling outwith the sentencing range originally identified.
91. In addition, the guideline codifies the factors which are considered by the Council to be aggravating or mitigating factors versus those which fall to be considered as part of the assessment of seriousness of the offence as set out at step 1 of [the sentencing process guideline \(Scottish Sentencing Council 2021\)](#). While the Council does not expect any change in sentencing outcomes as a result of this codification, it will result in a greater degree of consistency in the way which courts consider these factors, potentially resulting in clearer sentencing decisions and improved public understanding.
92. It is possible that any change in approach to sentencing for rape offences may result in a change to some sentencing outcomes in individual cases, but the Council does not anticipate an overall change to sentencing outcomes in general as a consequence of the guideline. While a slight increase in disposals imposed with custodial sentence lengths at the lower end of the ranges may occur, particularly where current disposals fall below the lowest point set out in the guideline, any such increases appear consistent with recent appeal cases. Additionally, individual case circumstances continue to be a factor in sentencing decisions.
93. It may be the case that sentencers interpret the guideline in a different fashion than that intended by the Council, which could result in the guideline having unexpected consequences for sentencing practice which cannot be predicted.

⁸⁵ For example, most recently in *HMA v MacGregor* [2025] HCJAC 28.

⁸⁶ The sentencing young people guideline provides that the nature and duration of a sentence imposed on a young person should be different from that which might be imposed on an older person being sentenced for the same, or a similar, offence; and that a custodial sentence for a young person should be shorter than that for an older person who is to be sentenced for the same, or a similar, offence. The guideline addresses the consideration of the offender's culpability, but does not alter the sentencer's consideration of the level of harm caused. The 'sentencing young people guideline' will only apply to rape offences when the offender is 24 years or under at the time of conviction.

The Council has taken steps to mitigate this risk by engaging with members of the judiciary to estimate any likely changes in practice.

Changes to sentencing practice

94. The increase in the lower point to 5 years' imprisonment, along with adjustments to mid range levels, reflects the outcome of an extensive consultation and review process. The guideline sets out an approach determining a suitable sentencing range based on the features that may indicate the levels of culpability and harm involved.
95. Accordingly, there may be implications for disposals that would previously have resulted in shorter custodial sentences, particularly at the lower end of the ranges. However, all disposals, including extended sentences and OLRs, remain in place for addressing the most serious offences.
96. In relation to non-harassment orders (NHOs), the guideline includes explanation on their use in rape cases, and restates the existing legislative requirements pertaining to them. Accordingly, no significant changes are expected in the frequency or application of NHOs as a result of the guideline, though the guideline may promote greater consistency in their use.
97. However, the law on this matter is set to change when certain provisions in the Victims, Witnesses, and Justice Reform (Scotland) Bill⁸⁷ which was passed by the Scottish Parliament on 17 September 2025, come into force. These provisions put sexual offences listed in section 288C of the 1995 Act,⁸⁸ which includes those covered by this guideline, on the same footing as domestic abuse offences for the purposes of consideration of an NHO. The effect of this is that the court must, for all offences of rape (whether in a domestic abuse context or not), consider the imposition of an NHO without the need for a Crown motion to that effect; and must impose an NHO unless it is satisfied that there is no need to do so. Once these provisions come into effect, it will be open to the Council to consider whether to submit revised guidelines to the High Court for its approval.
98. While the guideline is expected to improve consistency and clarity, any changes to sentence lengths are likely to affect only certain cases, as current sentencing practices are already broadly aligned with the new guideline.

Changes to court business

⁸⁷ [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#)

⁸⁸ Section 288C of the [Criminal Procedure \(Scotland\) Act 1995](#)

99. The Council does not expect any impacts on first instance court business as a result of the guideline.
100. Engagement with members of the judiciary has suggested that a proportion of sentencers have consulted the Sentencing Council for England and Wales' 2014 [definitive guidelines on rape offences](#). Use of the England and Wales guideline tended to be as a reference only and not for determination of sentence. There is a recognition of this guideline's limitations in respect of Scottish cases.
101. It is possible that, by codifying the factors associated with any assessment of seriousness, the introduction of the guideline *may* increase the number of appeals against sentence, with appeals being lodged due to a court's perceived failure to take the guideline into account. It is not possible to estimate the degree, if any, of this change. Conversely, it is also possible that the number of appeals may decrease as a result of increased consistency in approaches to sentencing and increased transparency in how any given sentence was reached. As the guideline broadly reflects current practice and recent appellate judgments any impact on sentences or appeals is likely to be low.
102. It may be the case that as the number of potentially applicable guidelines increases, courts begin to see an impact on the duration of sentencing hearings as a result of having to consider multiple guidelines before imposing sentence. Any increase in relation to the guideline is expected to be very minimal and limited to the early stages of guideline use. It is anticipated that courts will incorporate the guideline into their sentencing approach quickly and no substantive changes will be observed over the longer term.

Changes to the provision of disposals

103. The Council's analysis indicates that the guideline appears to be broadly in line with current sentencing practice. This suggests there would be no significant impact on approaches to sentencing or the provision of disposals.

Impacts on equality in the criminal justice system

104. This assessment includes an Equality Impact Assessment (EqIA), which is provided in Annex A. The EqIA examines potential impacts of the guideline on

protected characteristics under the Public Sector Equality Duty,⁸⁹ ensuring thorough consideration of equality issues.

105. The Council considers that increased consistency and predictability in sentencing reduces the potential for discrimination. This approach is founded on a consideration of offender-centric culpability and victim-focused harm in determining seriousness, with the aim of promoting consistency and thereby mitigating potential discrimination.
106. Although both men and women are victims of rape, male offenders are much more prevalent. This assessment has noted that the demographic make-up of offenders receiving disposals for rape offences differs somewhat from the general offending population, as offenders sentenced for rape are almost exclusively male. This means that in providing greater consistency and predictability in sentencing, the introduction of a guideline for the sentencing of rape offences will disproportionately apply to male offenders more than the overall offending population.
107. The Council does not feel that this disproportion will have an impact on the equal administration of justice in Scotland.
108. Insufficient data are available to address other protected characteristics with regards to this guideline.

Costs and benefits

Costs

109. While the Council does not anticipate an overall change to sentencing outcomes as a result of the guideline, should any modest changes to custodial sentence lengths arise, particularly at the lower end of the sentencing ranges, they may have some influence on corresponding impact on prison costs. However, any such costs are likely to be limited and consistent with current sentencing trends. Any changes to average custodial sentence lengths, whether arising from the guideline or other external factors, would result in a consequent increase or decrease in the costs associated with imprisonment for those convicted of these offences. It is possible that sentencing lengths, and therefore

⁸⁹ The [Public Sector Equality Duty](#) (or general duty) in the Equality Act 2010 came into force in 2011. It means Scottish public authorities must have 'due regard' to the need to: eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. In 2012 Scottish Ministers made regulations that placed specific duties on Scottish public bodies to help them meet the general duty. These are also known as the [Scottish Specific Duties](#).

related costs, may remain unchanged. However, to provide a comprehensive assessment, an indicative consideration of possible cost impacts is included, however this is provided solely for illustrative purposes and should be interpreted with caution.

110. For the 2023/24 budget, Scotland allocated around £3 billion for criminal justice, including an allocation of £540.8 million in prison services. This represents an increase from previous years (£476.4 million and £460.2 million in 2022-23 and 2021-22, respectively).⁹⁰ According to the Scottish Prison Service Annual Report 2022-23, the average annual cost of a prisoner place was £44,677. This figure covers day-to-day operating and exceptional payments, but does not include some additional costs such as capital charges or the Court Custody and Prison Escort contract, which covers prisoner transport. When these are accounted for, the total annual cost per prisoner place increases to £50,578.⁹¹
111. The Scottish Prison Service annual population data showed an increase in both 2018/19 and 2019/20, with an average daily prison population of 8,198 in 2019/2020. The average daily prison population in 2022/23 was 7,426. This was a 1% decrease from the average daily prison population in 2021/22 (7506). The average daily prison population in 2023/24 was 7860. This is an increase of 5.8% from the previous year (7428) and the highest level since 2019/20 (8198).⁹²
112. To assess any potential impact of increased prison costs linked to the guideline, should it occur, data were analysed to estimate the effect of a hypothetical 5%, 10%, and 15% increase in custodial sentence lengths on overall prison expenditure. Data from the 2023/24 period was selected as it is the most recent and most reflective of current sentencing practice, providing a more accurate basis for estimating future costs. Based on the most recent available data for 2023/24, the average custodial sentence length for total section 1 offences was 2469 days (6.8 years), with 149 custodial disposals in the year period. These were attributed to 105 individuals (some of whom may have had multiple disposals).⁹³ To arrive at these estimates, total prison days were calculated by multiplying individuals (105) by average sentence length (2469 days), to identify a baseline of annual prison days (259,245 total days). This was followed by converting the baseline into 'prisoner years' (total days

⁹⁰ [Scottish Budget: 2023 to 2024 \(Scottish Government 2022\)](#)

⁹¹ [Scottish Prison Service Annual Report and Accounts 2022-2023 \(Scottish Prison Service 2023\)](#)

⁹² [Scottish Prison Population Statistics 2023-24 \(Scottish Government 2024\)](#)

⁹³ See Footnote 7.

divided by 365), resulting in approximately 710 prisoner years as a baseline measure of prison demand as of 2023/24.

113. Under a hypothetical 10% increase ($10\% \times 259,245$), this would result in approximately an additional 25925 prison days, or approximately 71 additional 'prisoner years' ($25,925 \div 365$). This would be approximately £3.1 million additional prison costs per year based on the 2022/23 average daily cost of £122 per prisoner place. Proportionally, a 5% increase would add around £1.5million, and a 15% increase could add up to £4.7 million annually.⁹⁴
114. Applying these calculations to average sentence lengths from earlier years with shorter prison lengths suggests similar increases. For instance, using data from 2011/12 where average custodial sentence length was 1624 days (4.4 years) shows that a hypothetical 10% increase would have resulted in additional costs of around £99,000 annually. These illustrative comparisons highlight that rising average sentence lengths over time increase baseline prison demand and associated costs.
115. However, applying this calculation across the full 13-year period shows greater fluctuations to the baseline figures. For example, the average custodial sentence length for total section 1 offences over the 13 years was 2211 days (6 years), with 762 custodial disposals (excluding life sentences and OLRs). These were attributed to 603 individuals (some of whom may have had multiple disposals). Calculation of total prison days by multiplying individuals (603) by average sentence length (2211 days), results in a baseline of 1,333,233 prison days. Converting the baseline into 'prisoner years' (total days divided by 365), results in approximately 3653 prisoner years as a baseline measure of prison demand. This is divided by 13, which results in 281 prisoner years annually over the 13-year period.⁹⁵
116. The above analyses are intended solely to illustrate how average prison lengths can influence overall prison costs and should **not** be interpreted as predictions of future costs. Any anticipated change to costs related to sentencing outcomes as a result of the guideline, should they occur, are

⁹⁴ Cost estimates are calculated from the Scottish Prison Service Annual Report 2022-23. This has the most recently published data available; however, it is likely to differ from figures that would be calculated using data from the 2023/24 year. This brings limitations to the accuracy of the cost estimates.

⁹⁵ This hypothetical calculation assumes that the frequency of custodial disposals remains the same each year. As the existing data over the 13-year period demonstrates, the number of disposals fluctuates over time, meaning this approach does not reflect actual disposal counts. The analysis is intended to illustrate how average prison lengths can influence overall prison costs and does not assume that past sentencing patterns remain constant.

estimated with low levels of confidence, given cross-justice data limitations. Given the significant nature of potential impacts, should any occur, there is a need for follow-up to closely monitor changes retrospectively based on real-world data.

117. A number of limitations are noted as follows.
118. The analyses do not assume that past sentencing patterns remain constant, as can be seen by the differences between custodial disposals from 2011/12, and 2023/24.
119. It is important to emphasise that these estimates are based on determinate sentences only, apart from extended sentences, and exclude prisoners serving life sentences and OLRs. While a hypothetical 10% increase offers a useful initial estimate of potential cost impacts, it assumes a uniform increase across all sentences. This simplification does may not fully reflect the variability in sentencing lengths.
120. Additionally, the analyses rely on average custody lengths and disposal counts, without accounting for actual time served, early release or parole, or remand considerations.
121. Cost estimates are based on average daily costs and do not account for any individual or operational factors, or fluctuations in sentencing patterns.
122. If the number of individuals convicted of rape increased, and/or the length of sentences issued to individuals increased thus driving the overall prison population upward, it is worth noting that the operational and financial implications of even small shifts would be significant. This is because individuals in Scottish Prison Service's care that have been convicted of sex offences require additional, costly inputs in order to progress them along their custodial journey. This is partly due to the nature of their sentence type (i.e. they may require high levels of psychology and social work input), but also reflects the fact that sex offenders may often be older and bring with them complex health and social care needs.
123. As the guideline broadly reflects the Council's understanding of current sentencing practice, no additional costs or increases to the prison population are anticipated as a result of the guideline.
124. As mentioned previously, a possibility exists for an increase in appeals, with an attendant increase in resources required to sift and hear these appeals, as

well as in legal fees for such actions (both privately and publicly funded). However, such an increase is not certain to occur, and the level is impossible to estimate. Similarly, any decrease would have a commensurate cost saving associated with it but is equally difficult to estimate. This impact is shared with previous guidelines and, as in the impact assessments for those guidelines, arises from the same aspect of codification of previously unwritten practice.

125. Although it is not possible to provide a cost estimate at this stage, we anticipate that any additional costs as a result of appeals would be minimal.

Benefits

126. The guideline is intended to increase transparency and understanding of how courts reach a sentence in cases involving offences of rape. As with the Council's previous guidelines, the increased transparency associated with this guideline is expected to provide the wider public with a greater understanding of the sentencing process, with a particular focus on understanding the features involved in determining seriousness in cases where circumstances can vary widely.
127. The guideline will also promote greater consistency and predictability in sentencing, contributing to one of the Council's statutory objectives.

ANNEX A: EQUALITY IMPACT ASSESSMENT (EqIA)

Initial Screening Questionnaire and Full Assessment

An Equality Impact Assessment is a tool designed to help managers assess services, policies, processes or projects, to establish how they may impact on groups of people. As well as being good practice, the Scottish Sentencing Council has a statutory duty to consider the impact on protected characteristics groups.

The equality impact assessment consists of **two stages**. The outcome of stage one – the initial screening questionnaire – will determine whether stage two – the full equality impact assessment – is required.

Stage One - Initial Screening Questionnaire

Equality Impact Assessments can be used to assess a wide range of documents or activities including policies, processes, projects or services.

All of the aforementioned must be subjected to an initial screening questionnaire. Once completed, the questionnaire will indicate whether the corresponding document/activity has the potential to impact negatively on protected characteristics groups. It is good practice to complete the questionnaire as early in the development process as possible. Doing so may help to identify potential issues, allowing the policy owner to consider and address these at an early stage.

The initial screening questionnaire should be treated as a living document that can evolve as the document/activity develops. If undertaken at an early stage, as recommended, it may not be possible to complete the document in full to begin with. Similarly, it may be necessary to amend the document at a later stage.

Where no negative impact or a low negative impact is identified there is no need to complete a full equality impact assessment.

EQUALITY IMPACT ASSESSMENT – INITIAL SCREENING

1: Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

Guideline Title:

Guideline on sentencing rape offences

2: Body responsible for completing the Equality Impact Assessment

Scottish Sentencing Council Secretariat

3: Evidence Gathering and Analysis

What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims:

The Scottish Sentencing Council aims, under [law](#), to:

- promote consistency in sentencing
- assist the development of [sentencing policy](#)
- promote greater awareness and understanding of sentencing.

As part of its development of sentencing guidelines on rape offences, the Council held a public consultation on two draft sentencing guidelines from 25 July to 18 October 2024. One guideline relates to offences of rape under section 1 of the Sexual Offences (Scotland) Act 2009; and the common law offence of rape. The other guideline relates to offences of rape of a young child under section 18 of the Sexual Offences (Scotland) Act 2009 (defined as a child ‘who has not attained the age of 13 years’); and the common law offence of rape where the victim is a young child (a child under the age of 13). The consultation process informed the production of the guidelines on sentencing rape offences.

Outcomes:

In preparing the guidelines, the Council has had regard to its statutory duties set out in the [Public Sector Equality Duty](#) (or general duty) in the Equality Act 2010.

The Council's intention is that the guidelines will result in:

- relevant and up to date guidance on sentencing rape offences
- consistency of approach to sentencing rape offences
- increased public understanding of sentencing and in particular sentencing for rape offences.

What existing sources of information will you use to help you identify the likely equality on different groups of people?

Alongside the public consultation, impact assessments, and this EqIA, the Council carried out analyses in accordance with stages 1 to 4 of the Council's [sentencing guideline development methodology](#) including a review of existing sentencing data for offences of rape, as outlined in this impact assessment. Further research was conducted through engagement with sentencers and via public consultations and judicial engagement. Additionally, the Council commissioned comprehensive studies to gather evidence on the sentencing of offences related to rape as part of its methodology.

Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people? If so, what are the gaps in the information and how and when do you plan to collect additional information?

There are gaps in available information that hinder a comprehensive understanding of how the proposals may impact different groups, particularly beyond the specified protected characteristics. While we acknowledge that socio-economic factors (e.g. low income, material deprivation, caring responsibilities, social class) can intersect with protected characteristics and contribute to additional inequalities, data on these factors remains limited.

Although some relevant data is available, it is not always consistently recorded, structured, or shared across administrative organisations. This limits our ability to draw definitive conclusions, especially regarding intersectionality and the varied experiences within and between groups.

The Council remains committed to ongoing engagement with stakeholders and to monitoring the impact of these guidelines over time. The Council will seek opportunities to collaborate with justice sector partners to improve data quality, comparability, and accessibility, with the goal of developing a more comprehensive understanding of how different groups may be affected in practice.

Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a positive impact on any of these different groups of people and/or promote equality of opportunity?

The sentencing guidelines are intended to promote equality of opportunity and positively impact a diverse range of groups. By offering clear, relevant, and current guidance, the revised guidelines aim to ensure greater consistency in sentencing for rape offences. They have been developed with input from a wide array of stakeholders and are designed to be useful to sentencers, legal practitioners, justice administrators, victims and their families, support organisations, the accused, the public, and the media.

It is the responsibility of the Crown Office and Procurator Fiscal Service to determine which charges are brought forward. In certain cases, offences may include statutory aggravations, such as situations where the victim is a partner or former partner, or when the offence is motivated by prejudice based on characteristics such as religion or race, thereby increasing the seriousness of the offence. Other proposed features from the consultation are, in the opinion of the Council, already addressed in the guidelines. Additionally, the Scottish Government has indicated its intention to include 'sex' as a protected characteristic under the Hate Crime and Public Order (Scotland) Act, which may further emphasise the recognition of the seriousness of such offences in the future.

4: Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

Have you sought the views of equality or consultation groups, or other individuals/groups who may be able to provide insight or feedback?

Yes

If feedback was received, what did you learn and how did this shape the guidelines?

Consultation feedback and discussions with stakeholder groups highlighted several areas where further work could help promote equality, particularly in recognising the impact of offences on individuals with protected characteristics.

There were suggestions for additional aggravating factors that may better reflect the seriousness of offending where there is intent to target victims based on specific vulnerabilities or characteristics. For example, there was recommendation to distinguish between a victim who is vulnerable at the time of the offence and a victim who has been specifically targeted because of that vulnerability. Similarly, it was suggested that discrimination based on race, sex, LGBTQ+ status, neurodivergence, or mental health should be explicitly recognised as an aggravating factor where relevant.

In response, the Council considered how these issues are addressed within the guidelines. While some suggestions were identified as already incorporated under existing features, others contributed to refining and clarifying the language used. Overall, the feedback enhanced the Council's understanding of how sentencing can more explicitly consider equality-related impacts and informed the development of the guidelines.

Is there any evidence that proposed changes will have an adverse equality impact on any of these different groups of people?

There is no evidence that the guidelines will negatively affect any protected groups in terms of equality. Conversely, the changes aim to promote fairness and consistency, with careful consideration of the diverse experiences of victims and offenders. Although both men and women can be victims of rape offences, there are some offences where only a male can be the offender (e.g. the offence of rape as defined by penile penetration), and many other offences where offenders are predominantly male.

Is there any evidence that the proposed changes have no equality impacts?

There is no evidence to suggest that the proposed changes will have an equality impact. However, it is not possible to say with certainty that no impact exists. The Council has taken care to consider equality-related issues throughout the development of the guidelines, including feedback from stakeholders and consultation responses. Where relevant, changes have been made to promote fairness and consistency, and reflect the diverse experiences of victims and offenders.

5: Outcome

Is a full Equality Impact Assessment Required?

No

Based on this assessment there is **no requirement** to complete a full equality impact assessment

X

If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check the work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor, evaluate, or review your proposals and when the review will take place.

The Council has established a phased approach to monitoring and reviewing guidelines outlined in Stage 8 of the Council's [guideline development methodology](#).

Approved by: Ondine Tennant, Director of the Scottish Sentencing Council Secretariat

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