



# Guideline on sentencing offences of rape of a young child

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## Introduction

1. This document fulfils the Scottish Sentencing Council's statutory duty<sup>1</sup> to provide an assessment of the costs and benefits to which the implementation of the sentencing guideline for sentences of offences of rape of a young child<sup>2</sup> is likely to give rise, and an assessment of the likely impact of the guideline on the criminal justice system in general.
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 18 of the Sexual Offences (Scotland) Act 2009 (rape of a young child)
  - the common law offence of rape where the victim is a young child (a child under the age of 13).
3. As the core approach to sentencing for each offence is similar, this assessment considers the impacts holistically. Consideration has been given to whether there are any offence specific impacts, and none have been identified. It should be noted that the data on the common law offences available to the Scottish Sentencing Council (hereafter 'the Council') do not always distinguish between the ages of victims, encompassing both those under the age of 16 and those

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<sup>1</sup> Under Section 4 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

<sup>2</sup> The Council is developing two separate sentencing guidelines for offences of rape: a sentencing guideline for offences of rape and a sentencing guideline for offences of rape of a young child. The Council has prepared a separate draft impact assessment for the sentencing guideline for offences of rape. 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 on the [principles and purposes of sentencing](#), on [the sentencing process](#) and, if it is applicable, on [sentencing young people](#). 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.

over the age of 16. This therefore does not allow for meaningful comparisons between common law offences and the statutory offences of rape of a young child and rape (under section 1 of the Sexual Offences (Scotland) Act 2009, in respect of which the Council has prepared a separate guideline and impact assessment). Due to these limitations inherent in the data on the common law offences, we advise against direct comparisons with section 1 or section 18 data.

### **Rationale and aims of the new guideline**

4. The Criminal Justice and Licensing (Scotland) Act 2010<sup>3</sup> contains provision enabling the Council to prepare guidelines with regards to the sentencing of particular offences.
5. The key aims of the guideline on sentencing offences of rape of a young child are:
  - To increase public knowledge in 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, would increase public understanding of sentencing practice.
  - 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 of a young child.
  - 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 of

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<sup>3</sup> Under section 3(3)(c) of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

a young child by the Sentencing Council of England and Wales as a cross-check.

- To promote greater consistency and predictability in the sentencing of these offences.
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:
- 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 rape of a young child
  - The media.

## Current sentencing practice

8. Data presented here on offences of rape of a young child, 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.<sup>4</sup> As such, there may be minor differences between the figures given here and those presented in the most recent Scottish Government Criminal

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<sup>4</sup> Data reported here were provided by the 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. Please take care drawing conclusions from these data. These data should **only** be used for the purpose of considering the impact assessment on the guideline on sentencing offences of rape of a young child 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.

Proceedings dataset.<sup>5</sup> The decision to use the SCTS data was based upon the availability of more detailed demographic information which enables the Council to better 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 (hereafter ‘the Act’). 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.<sup>6</sup> Offences which took place before that date may be prosecuted as the common law offence of rape.<sup>7</sup> In all cases the maximum sentence is life imprisonment or an order for lifelong restriction (OLR).<sup>8</sup>

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<sup>5</sup> The Scottish Government releases statistical data on offences dealt with by courts, sentencing outcomes and characteristics of convicted offenders in its Criminal Proceedings statistical bulletin. The most recent dataset available is the [Criminal Proceedings in Scotland 2021-22](#) bulletin. Within the Criminal Proceedings dataset, conviction rates for rape are calculated by dividing the number of people convicted by the number of people proceeded against. The figures are given at charge level (i.e. each offence charged is counted and thus an offender with multiple charges will be counted multiple times). Where a person is proceeded against for more than one crime or offence in a single proceeding, only the main charge is counted, while figures for all offences are given at case level (i.e. offenders are counted only once per case, regardless of the number of offences or charges involved. It is worth noting that a single case may involve multiple offenders). Unless otherwise noted, the data provided by the SCTS and used in this assessment are given at charge code disposal level (i.e. number of disposals per charge code). This means that each case may involve more than one charge or disposal, resulting in offenders being counted more than once depending on the number of disposals per case. The data in this impact assessment are therefore not strictly comparable with those in the Criminal Proceedings dataset.

<sup>6</sup> See the draft impact assessment for guideline on sentencing offences of rape.

<sup>7</sup> 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 \(Scottish Sentencing Council 2021\)](#).

<sup>8</sup> 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.

10. This analysis focusses solely on offences prosecuted under section 18 of the Act and the common law offence of rape where the victim is a young child (under the age of 13).<sup>9</sup>
11. The figures provided reflect the total cases with disposals imposed for offences sentenced under section 18 of the Act over a 12 year period, between the financial years of 2011/2012 and 2022/2023.
12. Data regarding the common law offences of rape over the same 12 year period are also included. However, it is important to note that there are limitations to distinguishing between common law offences committed against a young child, older child, or adult.<sup>10</sup> This is because the definition of child is different depending on both the circumstances of its use and the offence that it relates to.<sup>11</sup> As with the child aggravation used for recording rape offences against children under section 1 of the Act,<sup>12</sup> there are similar limitations to distinguishing between common law offences committed against adults versus children with complete accuracy.<sup>13</sup> To address this challenge, the figures are presented separately – first by providing the overall total of section 18 offences,

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<sup>9</sup> 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, but additionally 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 \(Scottish Sentencing Council 2023\)](#).

<sup>10</sup> 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.

<sup>11</sup> Offences committed against children 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. This means that there may be no distinction between young child or older child victims. Therefore, it is not always possible to accurately disaggregate cases sentenced under common law rape offences by adult versus child.

<sup>12</sup> See sentencing guideline for offences of rape.

<sup>13</sup> Official data collection and reporting of criminal proceedings, convictions, and sentencing of common law rape offences are subject to similar limitations to those previously noted which should be taken into consideration. The common law offences against children are recorded using the age of 16 as a threshold and no distinction between young child or older child victims is recorded.

followed by common law offences recorded without the child aggravation (i.e. committed against individuals aged 16 and over), followed by common law offences recorded with the child aggravation (i.e. committed against children under the age of 16).<sup>14</sup>

*Number of offences: Total section 18 and common law offences*

13. Data provided by the SCTS show that there have been a total of 113 statutory offences of rape of a young child disposed of by the courts between 2011/2012 and 2022/2023.

14. There have been a total of 689 common law offences of rape disposed of by the courts between 2011/2012 and 2022/2023. Of these, 361 were recorded without the child aggravation (i.e. committed against individuals aged 16 and over), and 328 were recorded with the child aggravation (i.e. committed against a child under the age of 16).

*Number of offences: Total section 18 offences*

15. Of the 113 section 18 rape offences, the average number disposed of by the courts annually over the 12 year period was approximately 9, with a median also of 9 disposals. There is a slight increase in the average number of disposals after the first four years of the 12 year period, with an average of 7 disposals in 2011/2012-2014/2015. This is followed by an average of 11 disposals during 2015/2016-2018/2019, and then a slight dip to 10.5 for the last 4 years.

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<sup>14</sup> As it is not always possible to accurately disaggregate cases sentenced under common law rape offences from other sexual offences, whether against children or adults, the overall totals for the common law offences of rape are provided, followed by the totals disaggregated by totals for illustrative purposes only. However, there are limitations to the accuracy of estimations and comparisons should be avoided.



16. From 2011/2012-2015/2016, there was a consistent rise in the number of disposals for rape of a young child under section 18, ranging from 1 to 13 during this period. The trend shifted in 2016/2017 with 7 disposals, followed by an increase in disposals in 2017/2018 and 2018/2019 (8 and 15 disposals, respectively). Subsequently, there were decreases in disposals in 2019/2020 (8 disposals) and 2020/2021 (6 disposals). The peak number of disposals occurred in 2018/2019 and 2021/2022, with 15 disposals during each of those years.<sup>15</sup>

*Number of offences: Total common law offences*

17. Out of the 689 total common law offences, the average number disposed of by the courts annually was approximately 57, with a median of 49. 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 year period within the 12 year period shows an increase in 2015/2016-2018/2019 but then a decrease in more recent years, with an average of 52, 62, and 58 disposals imposed during 2011/2012-2014/2015, 2015/2016-2018/2019, and 2019/2020-2022/2023, respectively.

18. 2014/2015 remains the year with the highest number of total common law offences (98), with the second highest number recorded in 2021/2022 (88). However, this decreased to 46 in the most recent year of the 12 year period (2022/2023).

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<sup>15</sup> 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.

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

19. The annual average of the 361 common law offences recorded without the child aggravation was approximately 30, with a median of 28. The lowest total was recorded in 2013/2014 (8), while the highest occurred in 2014/2015 (66). There has been a decrease in mean number of disposals during each four year period within the 12 years, with an average of 34 (2011/2012-2014/2015), 31 (2015/2016-2018/2019), and 25 (2019/2020-2022/2023), respectively.
20. The lowest and highest number of common law offences recorded without the child aggravation occurred in consecutive years between 2013/2014 (8) and 2014/2015 (66). There was a general decline over the subsequent years, with the exception of increases in 2017/2018 (37), 2018/2019 (40), and 2021/2022 (43).

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

21. Of the 328 common law offences recorded with the child aggravation, there was an average of 27 disposals per year over the 12 year period, and a median of 30 disposals. There were no common law offences recorded with the child aggravation in 2011/2012. The next lowest total was recorded in 2012/2013 (11), while the highest occurred in 2022/2023 (45). The mean number of disposals observed in each four year period within the 12 year period shows an increase, with an average of 19, 31, and 33 disposals imposed during 2011/2012-2014/2015, 2015/2016-2018/2019, and 2019/2020-2022/2023, respectively.
22. There has been an increase in common law rape offences recorded with the child aggravation over the 12 year period. However, there was a dip from 32 in 2014/2015, to 21 in 2015/2016 before rising again until 2020/2021 and

2022/2023, where there were decreases to 22 and 24, respectively.

Additionally, there was a more moderate dip to 35 disposals in 2018/2019 compared to the years both preceding and following (39 in both 2017/2018 and 2019/2020).

### *Offender demographics*

23. This section covers the demographics of offenders sentenced for rape of a young child offences, namely, the age profiles and the Scottish Index of Multiple Deprivation (SIMD) decile classification<sup>16</sup> of offenders. Insufficient data are available to allow for analysis of offenders' ethnic group and are therefore not included. Data on victim demographics are provided.

#### *Offender demographics: Total section 18 offences*

24. All of the offenders involved in the 113 section 18 offences were male.<sup>17</sup> This differs from the general offending population where in 2021-22, for example, males accounted for 83% of all convictions.<sup>18</sup>

25. For section 18 offences, the under 18 age group had the highest number of disposals per age group (29 out of 113), accounting for 26% of the disposals

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<sup>16</sup> [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.

<sup>17</sup> While it is possible for women to be convicted of rape offences, the occurrence of female offenders in such cases is minimal. 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.

<sup>18</sup> [Criminal Proceedings in Scotland, 2021-22](#). See paragraph 8 of this impact assessment and associated footnotes on the differences between the figures provided by the SCTS and those presented in the Criminal Proceedings dataset.

over the 12 year period. 25-30 year olds had the smallest number of disposals (8%). Offenders in the age groups of 18-20 and 31-40 each had 13 disposals over the 12 year period (12%). The 41-50 age group, and 51-60 age group each had 14 disposals over the 12 year period, also at a rate of 12%. There were 10 disposals for offenders in the 21-24 age group, accounting for 9% of disposals, and 11 disposals imposed on offenders over the age of 60, accounting for 10% of disposals imposed over the 12 year period.

26. The SIMD decile classification of offenders' home address – where available<sup>19</sup> – suggests that a majority of offenders convicted of rape of a young child offences come from the most deprived deciles. 74% of disposals sentenced under section 18 of the Act were imposed on offenders in the 1st through 5th deciles and 26% of disposals imposed on offenders in the 6<sup>th</sup> through 10<sup>th</sup> deciles.

Offender demographics: Total common law offences

27. All of the 689 offenders convicted of common law offences of rape were male.

28. Out of the 689 total common law rape offences, the average age of individuals convicted for these offences was 51 years, with a median of 52 years. The majority of disposals were imposed on offenders over 31, accounting for approximately 91%. 67% of the disposals for all common law rape offences were imposed on offenders between 31-60 years of age. 9% of the offenders were aged 30 or under and fewer than 2% were in the under 18, 18-20, and 21-24 age groups.<sup>20</sup> About 7% (48) of the disposals were imposed on offenders between 25-30. The highest number of disposals (200) were imposed on offenders in the 51-60 age group, accounting for 29%. This is followed by

<sup>19</sup> Data were unavailable for approximately 35% of the disposals included in the 12 year period. Figures are calculated based on the remaining 65% of available data.

<sup>20</sup> The exact figures for individuals in the under 18, 18-20, and 21-24 age groups are not provided due to the small sample size, which could potentially disclose the identities of those involved.

offenders in the over 60 (165), 41-50 (162), and 31-40 (103) age groups, accounting for 24%, 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%).

29. Of the total common law offences with SIMD data available,<sup>21</sup> 81% of common law disposals were imposed on offenders from the 1<sup>st</sup> through 5<sup>th</sup> deciles and 19% of disposals were imposed on offenders in the 6<sup>th</sup> through 10<sup>th</sup> deciles.

Offender demographics: Common law offences recorded without the child aggravation

30. Out of the 361 common law rape offences recorded without the child aggravation, the average age of individuals convicted for these offences was 50 years, with a median of 48 years. 77% of the disposals for these offences in the 12 year period were imposed on offenders between 31-60 years of age. 11% of the offenders were aged 30 or under, 2% were in the under 18, 18-20, or 21-24 age groups,<sup>22</sup> and 9% (32) were between 25-30. The highest number of disposals, accounting for 29% (104) were imposed on offenders between 41-50. The next highest number of disposals (101) were imposed on offenders between 51-60, which was followed by individuals in the 31-40 age group (74), accounting for 28% and 20%, respectively. Those over 60 accounted for 12% (42) of the disposals imposed on offenders for common law offences recorded without the child aggravator.

<sup>21</sup> Approximately 29% of the SIMD data for all common law offences were unavailable. Figures are calculated based on the remaining 71% of available data.

<sup>22</sup> Specific figures for individuals in the under 18, 18-20, and 21-24 age groups are not provided due to the small sample size, which could potentially disclose the identities of those involved.

31. The available SIMD data for common law offences recorded without the child aggravation<sup>23</sup> suggests a majority of offenders convicted of these offences come from the most deprived deciles. With the exception of a minimal increase in the 3<sup>rd</sup> and 4<sup>th</sup> deciles, there is a steady downward trend in numbers of disposals imposed on offenders in the most to least deprived decile. The 1<sup>st</sup> through 5<sup>th</sup> deciles accounted for 75% of common law disposals recorded without the child aggravation and 25% were imposed on offenders in the 6<sup>th</sup> through 10<sup>th</sup> deciles.

Offender demographics: Common law offences recorded with the child aggravation

32. Out of the 328 common law rape offences recorded with the child aggravation, the average age of individuals convicted for these offences was 56 years, with a median of 57 years. Approximately 57% of the disposals for these offences in the 12 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 a small number of charges against individuals in the under 18 and 18-20 age groups, no charges in the 21-24 age group, and 5% (16) in the 25-30 age group.<sup>24</sup> The highest number of disposals, accounting for 38% (123) were imposed on offenders over 60. The next highest number of disposals (99) were imposed on offenders between 51-60 (30%). This was followed by individuals in the 41-50 age group (58), accounting for 18%. Those between 31-40 accounted for 9% (29) of the disposals imposed on offenders for common law offences recorded without the child aggravation.

<sup>23</sup> Approximately 29% of the SIMD data for common law offences recorded without the child aggravation were unavailable. Figures are calculated based on the remaining 71% of available data.

<sup>24</sup> Specific figures for individuals in these age groups are not provided due to the small sample size, which could potentially disclose the identities of those involved.

33. The available SIMD data for common law offences recorded with the child aggravation<sup>25</sup> suggests a majority of offenders convicted of 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 1<sup>st</sup> through 5<sup>th</sup> deciles accounted for 87% of common law disposals recorded without the child aggravation and 13% were imposed on offenders in the 6<sup>th</sup> through 10<sup>th</sup> deciles.

#### *Victim demographics*

34. Data provided by the 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. According to the most recent Scottish Crime and Justice Survey,<sup>26</sup> women are more likely than men to have experienced serious sexual assault, both since the age of 16. Additionally, those residing in the most deprived areas of Scotland had a higher likelihood of experiencing serious sexual assault compared to those in other parts of the country. The specific age of the victim cannot generally be determined from the data. However, a significant portion of sexual crimes recorded by the police involve victims under the age of 18, making up at least 37% of the total recorded sexual crimes in 2021-22.<sup>27</sup>

#### *Disposals<sup>28</sup>*

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<sup>25</sup> Approximately 29% of the SIMD data for common law offences recorded with the child aggravation were unavailable. Figures are calculated based on the remaining 71% of available data.

<sup>26</sup> [Scottish Crime and Justice Survey \(SCJS\) 2019/20: Main Findings \(Scottish Government\)](#)

<sup>27</sup> [Recorded crime in Scotland, 2020-21 \(Scottish Government 2022\)](#)

<sup>28</sup>. Because of the way sentencing data are recorded it is likely that a number of the sentences included in the presented figures involved a reduction for a guilty plea. It should be noted that the



Disposals: Section 18 offences

35. In the period examined, the majority of disposals (81%) sentenced under section 18 of the Act involved a period of imprisonment, with 81 imprisonment disposals and 10 OLRs. The remaining 22 disposals (19%) were community-based sentences. Removing duplicate cases<sup>29</sup> resulted in 18 cases with community-based sentences, all involving offenders in the under 18 (13) or 18-20 (5) age groups. The majority of these cases (13) took place during or before 2015/2016. Due to the infrequency of such disposals since 2016, it is not considered that they are indicative of current practice.
36. The mean average duration of the 81 section 18 imprisonment disposals (excluding OLRs<sup>30</sup>), was 2106 days (5.8 years). The average number of imprisonment days for custodial disposals (excluding OLRs) where the offender was under the age of 21 was 1194 days, equivalent to approximately 3.3 years.
37. For all section 18 offences involving imprisonment (but excluding OLRs), there were 20 disposals (25%) with imprisonment lengths of 2-4 years,<sup>31</sup> 28 disposals (35%) with imprisonment lengths of 4-6 years, and 15 disposals (19%) with imprisonment lengths of 6-8 years. Approximately 6% of the disposals involved

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numbers shown would only represent the headline figure if no reduction was made. Given that a significant portion of the data includes a reduction for a guilty plea, the true average headline sentence would be likely to be somewhat higher than the sentences indicated in the data.

<sup>29</sup> As previously mentioned, the figures provided by the SCTS are based on charge level data and classified by date of disposal. This means that each case may involve multiple disposals, resulting in offenders being counted more than once depending on the number of disposals per case.

<sup>30</sup> 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.

<sup>31</sup> The duration threshold includes everything up to, but not including the 2 year threshold itself. 2-4 years includes a sentence of 2 years up to 4 years, not including the 4 year threshold. It will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively.



custodial sentences between 6 months and 2 years.<sup>32</sup> 9 disposals (11%) were for 8-10 years, and 4 disposals (5%) exceeded 10 years.

38. The average sentence length for section 18 disposals increased over the 12 year period, with average sentence lengths of 3.6 years between 2011/2012-2014/2015, 5.5 years between 2015/2016-2018/2019, and 6.9 years between 2019/2020-2022/2023.

*Disposals: Total common law offences*

39. In respect of common law offences, 100% of the disposals involved a sentence of imprisonment. Of these, approximately 99%<sup>33</sup> of the disposals involved offenders aged 21 or over at the time of conviction, with the remaining likely to have involved detention in a Young Offenders' Institution (YOI).<sup>34</sup> There were 108 lifelong sentences (accounting for 16% of the total number of common law disposals), with the majority consisting of OLRs. Data on the remaining lifelong sentences are not included here to minimise potential for disclosing identifying details.

40. Of the 689 common law imprisonment disposals, there were 581 custodial disposals excluding life imprisonment and OLRs. The average number of imprisonment days for these was 2988 days, equivalent to approximately 8.2 years. The average number of imprisonment 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.

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<sup>32</sup> The disaggregated number of disposals in the 6-12 months and 1-2 years length brackets are not provided due to the small sample size, which could potentially disclose the identities of those involved.

<sup>33</sup> Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

<sup>34</sup> YOIs provide custodial facilities, generally, for offenders up to the age of 21. Due to limitations in data recording, it is not always possible to disaggregate YOI disposals. For the purposes of this assessment, this has been carried out by age.

41. There were 581 common law disposals involving imprisonment, but excluding life imprisonment and OLRs. Of these, 7 disposals (1%) were for up to 2 years imprisonment while 38 disposals (7%) were for 2-4 years. The highest number of disposals fell into the 6-8 years bracket (153 disposals; 26%), followed by the 4-6 years bracket (140 disposals; 24%). Additionally, 124 disposals (21%) were for 8-10 years' imprisonment, and there were 119 disposals (20%) with a duration of 10 years or more.

*Disposals: Common law offences recorded without the child aggravation*

42. In common law offences without the child aggravation, 100% (361) of disposals take the form of a period of imprisonment. Approximately 99%<sup>35</sup> of these involved offenders aged 21 or over at the time of conviction, with the remaining likely involving detention in a YOI. There were 96 lifelong sentences (accounting for 27% of the 361 common law disposals recorded without the child aggravation), with the majority consisting of OLRs. Data on the remaining lifelong sentences are not included here to minimise potential for disclosing identifying details.

43. Of the 361 total common law offences recorded without the child aggravation, there were 265 custodial disposals excluding life imprisonment and OLRs. The average number of imprisonment days for these was 2917 days, equivalent to approximately 8 years. The average number of imprisonment 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.

44. There were 265 common law disposals recorded without the child aggravation involving imprisonment (but excluding life imprisonment and OLRs). Of these, 6 disposals (2%) were for up to 2 years imprisonment while 21 disposals (8%)

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<sup>35</sup> Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

were for 2-4 years. The highest number of disposals fell into the 4-6 years bracket (71 disposals; 27%), followed by the 6-8 years bracket (61 disposals; 23%). 58 disposals (22%) were for 8-10 years' imprisonment, and 48 disposals (18%) consisted of imprisonment with a duration of 10 years or more.

*Disposals: Common law offences recorded with the child aggravation*

45. In common law offences with the child aggravation, 100% (328) of disposals take the form of a period of imprisonment. Of these, approximately 99% of the disposals involved offenders aged 21 or over at the time of conviction, with the remaining likely involving detention in a YOI. Among the disposals involving imprisonment, approximately 4%<sup>36</sup> consisted of lifelong sentences, all of which were OLRs.
46. Of the 328 common law disposals recorded with the child aggravation, there were 316 custodial disposals excluding OLRs. The average number of imprisonment days for these was 3048 days, equivalent to approximately 8.4 years. The average number of imprisonment days for custodial disposals (excluding OLRs) where the offender was under the age of 21 was 1886 days, equivalent to approximately 5.2 years.
47. Less than 1%<sup>37</sup> of the 316 common law disposals recorded with the child aggravation involving imprisonment (but excluding OLRs), were for up to 2 years' imprisonment, while 17 disposals (5%) were for 2-4 years. The highest number of disposals fell into the 6-8 years bracket (92 disposals; 29%), followed by the 10+ years bracket (71 disposals; 22%). 69 disposals (22%) were for 4-6 years' imprisonment and 66 disposals (21%) involved imprisonment of 8-10 years.

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<sup>36</sup> Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

<sup>37</sup> Exact figures are not provided due to the potential for disclosing identifying information.

## Key assumptions

48. 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.
49. 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.
50. 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).
51. It is assumed that the guideline will influence judicial approaches to sentencing and promote greater consistency in approach.
52. It is assumed that the guideline will not generally result in an overall change in sentencing practice.

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

53. Data were analysed to examine the potential impact of the guideline in relation to the sentences imposed for offences of rape of a young child. This involved a review of a selected sample<sup>38</sup> of recordings of court proceedings obtained through a court recording system<sup>39</sup> to assess the potential impact of the new guideline on determining the headline sentence. If there was an assumed impact, the estimated average degree of change in the number and length of disposals would then be projected to current sentencing data.

### *Changes to sentencing*

#### Approaches to sentencing

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

55. 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.

56. In addition, the guideline codifies the factors which are considered by the Council to be aggravations or mitigations 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](#). While the Council does not expect any change in sentencing outcomes as a result of this codification, it will ensure

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<sup>38</sup> Data from appeal cases were included in the sample when known. It should be noted that appeal case data are not recorded for the purposes of research and analysis. Data from appeal cases are obtained from live management information databases that are primarily used for the processing of court business. This means that the available appeals data are based upon the classifications used on that system. Data from appeal cases have been taken into account where available.

<sup>39</sup> The court recording system employed by the SCTS is used to create, store and playback audio recordings of court proceedings.

that courts consider these factors at the same stage across all cases, potentially resulting in clearer sentencing decisions and improved public understanding.

*Potential changes to sentencing practice*

57. It is possible that any change in approach to sentencing for offences of rape of a young child 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.
58. 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. 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 court business*

59. The Council does not expect any impacts on first instance court business as a result of the guideline.
60. Engagement with members of the judiciary has suggested that a proportion of sentencers have consulted the Sentencing Council for England and Wales' [definitive guideline on rape of a child under 13 offences](#). This 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.
61. 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.

62. 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*

63. The Council's analysis indicates that the guideline appears to be broadly in line with current sentencing practice and there is unlikely to be any increase in the number of disposals or changes to the length of custodial disposals. This suggests there would be no significant impact on approaches to sentencing.

#### *Impacts on equality in the criminal justice system*

64. 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-focussed harm in determining seriousness, with the aim of promoting consistency and thereby mitigating potential discrimination.
65. 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 convicted of 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 offences of rape of a young child will disproportionately apply to male offenders more than the overall offending population.

66. The Council does not feel that this disproportion will have an impact on the equal administration of justice in Scotland.

67. Insufficient data are available to address other protected characteristics with regards to this guideline.

## Cost and Benefits

### Costs

68. Any changes to average custodial sentence lengths arising from the guideline would result in a consequent increase or decrease in the costs associated with imprisonment for those convicted of these offences. For the 2022/23 budget, Scotland allocated around £3 billion for criminal justice, including an allocation of £476 million in prison services. This represents an increase of 8% since 2020.<sup>40</sup> Scottish Government analysis on costs in 2022/23 showed the average prisoner place costs per annum £44,620.<sup>41</sup>

69. 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.<sup>42</sup> The average daily prison population in 2022/23 was 7,426. This

<sup>40</sup> [Scottish Budget: 2023 to 2024](#) in Chapter 8 Justice & Veterans (Scottish Government)

<sup>41</sup> [Scottish Prison Service Annual Report and Accounts 2022-2023](#), APPENDIX 9a. This excludes capital charges, exceptional payments and the cost of the Court Custody and Prison Escort contract. The actual annual average cost per prisoner place, calculated on a resource accounting basis (including depreciation and impairment charges), in 2022-23 was £50,578.

<sup>42</sup> [Scottish prison population: statistics 2019 to 2020](#) in Introduction (Scottish Government)



was a 1% decrease from the average daily prison population in 2021-22 (7,506).<sup>43</sup>

70. As the guideline broadly reflects the Council's understanding of current sentencing practice, no additional costs or increases to the prison population are anticipated.
71. 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.
72. 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*

73. The guideline is intended to increase transparency and understanding of how courts reach a sentence in cases involving rape of a young child. 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.

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<sup>43</sup> [Scottish Prison Population Statistics 2022-23](#), in Key Findings, (Scottish Government)

74. The guideline will also promote greater consistency in sentencing, contributing to one of the Council's statutory objectives.

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