

Revised sentencing guidelines on rape and rape of a young child

Impact assessment

Submitted to the High Court of Justiciary August 2026

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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 revised sentencing guidelines on the offences of rape, and rape of a young child, are likely to give rise, and an assessment of the likely impact of the revised guidelines on the criminal justice system generally.
2. The revised guidelines have been prepared to align with the implementation of the provisions of the Victims, Witnesses and Justice Reform (Scotland) Act 2025,² concerning changes to the imposition of non-harassment orders (NHOs)³ for rape offences covered by the Council's rape guidelines.⁴
3. These provisions will apply to offenders who are sentenced on or after the coming into force date of the provisions, and who have been convicted of one of the following offences:
 - an offence under section 1 of the Sexual Offences (Scotland) Act 2009 (rape)
 - an offence under section 18 of the Sexual Offences (Scotland) Act 2009 (rape of a young child)
 - the common law offence of rape⁵

¹ Under sections 3-5 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#). In particular, under s3(6)(b) of that Act the Council may prepare revised sentencing guidelines; and under s3(7) the requirements of s5(a) and (b) to prepare these assessments also apply to such revised guidelines.

² [Victims, Witnesses, and Justice Reform \(Scotland\) Act 2025](#).

³ 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.

⁴ 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. 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 foundational 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.

⁵ 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 offence.

Background

4. On 1 September 2026, [Section 107 of the 2025 Act](#) will come into force. This amends [s234AZA of the 1995 Act](#), which presently makes specific provision in relation to the imposition of NHOs in domestic abuse cases. The effect of this amendment is to expand the scope of s234AZA to include, *inter alia*, offences to which [s288C of the 1995 Act](#) applies. In turn s288C applies, *inter alia*, to the offences covered by the Council's s1 and s18 rape guidelines, and therefore puts them on the same footing as domestic abuse offences for the purposes of consideration of the imposition of an NHO.
5. 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 for the victim to be protected from harassment or further harassment by such an order.
6. Where the offence is one to which the aggravation in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 applies (offence aggravated by involving abuse of the partner or ex-partner of the person committing it), and the court is making an NHO in respect of the victim, the court must in addition include, in the NHO, provision in respect of a child usually residing with the offender, or the victim, or both the offender and the victim, unless it concludes that there is no need for any such child to be protected from harassment or further harassment by such an order.
7. [Section 108 of the 2025 Act](#) will also amend s234AZA of the 1995 Act. This amendment applies only to domestic abuse cases and will therefore also affect rape offences which are aggravated by domestic abuse. The effect of this amendment is to require a court, in considering whether to make a non-harassment order in a domestic abuse case, to have regard to any prior bail conditions imposed on the person preventing contact with the victim.
8. As a result, these amendments may affect both the frequency with which NHOs are imposed, and the factors taken into account by courts when considering NHOs in relevant rape cases, with potential implications for sentencing practice. Accordingly, the Council has revised its guidelines in relation to rape offences, but only insofar as they pertain to the imposition of NHOs. The guidelines are otherwise unchanged.
9. This impact assessment considers the impact of the amendments to the guidelines themselves, and not the impact of the underlying legislative change.

While the legislative change may influence sentencing practice, the guidelines will only reflect that change and are not expected to drive substantive change in themselves.

10. This document provides an overview of the current and past use of NHOs in rape cases over the preceding five years.

Current sentencing practice

11. Data presented here on NHOs for disposals under rape offences 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
12. It should be noted that the data used in this impact assessment differs from that used in the October 2025 impact assessments in respect of the Council's guidelines on rape, and on rape of a young child. This dataset is restricted to a five-year period and reflects only NHO figures extracted from a live database. As such, direct comparisons should not be made.

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 of 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 2023-24 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 2009 section 1, and Sexual Offences (Scotland) Act 2009 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 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.

Number of offences

13. 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
14. This analysis¹⁰ focuses solely on offences prosecuted under section 1 and section 18 of the Act¹¹ over a 5-year period, between the financial years of 2021/22 to 2025/26.
15. While the amendment to section 234AZA of the 1995 Act requires courts to have regard to any prior bail conditions restricting contact with the victim, information on such bail conditions is not available within the dataset used for this impact assessment. Consequently, this assessment does not take account of the background to, or nature of, any prior bail conditions when considering the operation of NHOs.
16. The data are not intended, and should not be used, to predict any impacts of legislative amendments; rather, they are presented with the aim to identify, to the extent possible, the impact, if any, of the amendments made to the guidelines as a result of the legislative change.

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 data presented here are retrospective and analysed holistically for the purposes of assessing potential costs and benefits and the impact of the guidelines 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" \(Scottish Sentencing Council\)](#).

¹¹ Common law rape offences are not included in this analysis as they will most likely pertain to non-recent offences and are therefore less prevalent within the data considered.

NHOs: Total section 1 offences

17. Of the total section 1 disposals in the past 5 years, 1054 received an NHO. This increased over the 5-year period, with 359 disposals receiving an NHO in 2024/25, and 372 receiving one in 2025/26.¹²

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

Year	Number of NHOs	Percentage %
2021/22	45	4%
2022/23	77	7%
2023/24	201	19%
2024/25	359	34%
2025/26	372	35%
Total	1054	100%¹³

NHOs: Total section 18 offences

18. The number of NHOs for the total number of section 18 disposals has also increased in the past 5 years. 24 disposals received an NHO in 2024/25, and 18 received one in 2025/26.

¹² 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 is different from the original rape impact assessments, and therefore a direct comparison is not possible.

¹³ Totals may not equal 100% due to rounding.

Table 2: Number of NHOs per year (total section 18 offences)

Year	Number of NHOs	Percentage %
2021/22	0	0%
2022/23	0	0%
2023/24	5	11%
2024/25	24	51%
2025/26	18	38%
Total	47	100%.¹⁴

¹⁴ Totals may not equal 100% due to rounding.

Key assumptions and potential changes to sentencing

19. In assessing the impact of these amendments on NHOs in relation to the guidelines, the Council considers how, if at all, it will influence sentencing, the business of the courts, the operation of the wider criminal justice system, and society in general.
20. This impact assessment does not attempt to include any future changes to sentencing behaviours that are not a result of the guidelines.
21. The Council does not anticipate any direct impact from the guidelines. Based on the available data, it is not possible to say with any certainty, the extent of any impacts on costs or benefits aside from enhancing consistency and transparency by providing additional information in relation to NHOs.

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
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Guideline Title(s):

(Revised)

Guideline on sentencing rape offences and

Guideline on sentencing rape of a young child offences

2: Body responsible for completing the Equality Impact Assessment
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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.

The revised guidelines have been prepared to align with the implementation of the provisions of the Victims, Witnesses and Justice Reform (Scotland) Act 2025, concerning changes to the imposition of non-harassment orders (NHOs) for rape offences covered by the Council's rape guidelines.

Outcomes:

The Council's intention is that the amended 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.

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.

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

Alongside the public consultation, published 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.

The revised impact assessment considers the impact of the amendments to the guidelines themselves, and not the impact of the underlying legislative change. While the legislative change may influence sentencing practice, the guidelines will only reflect that change and are not expected to drive substantive change in themselves. The revised impact assessment provides an overview of the current and past use of NHOs in rape cases over the preceding five years.

Are there gaps in information that make it difficult or impossible to form an opinion on how the revised guidelines and impact assessment 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?

Although some relevant data about NHOs is available, it is not always consistently recorded, structured, or shared across administrative organisations. This limits the ability to draw definitive conclusions in NHO use and to identify any differences in access, uptake or outcomes across population 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.

Is there any evidence that the proposed changes will have a positive impact on different groups of people and/or promote equality of opportunity?

The guidelines' amendments are intended solely to reflect the legislative change and provide guidance and 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.

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, LBGTQ+ 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.

The Council has engaged with relevant stakeholder groups for the purpose of this impact assessment on the amended guidelines. There is no evidence to suggest that these amendments would have any impact on equality considerations.

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.

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.

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

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](#).

X

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June 2026

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ISBN: 978-1-912442-88-1

August 2026