

Guideline on sentencing rape offences

Draft 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 for offences of rape² 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 1 of the Sexual Offences (Scotland) Act 2009 (rape)
 - the common law offence of rape.
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 aged under 16 and those aged over 16. This therefore does not allow for meaningful comparisons between common law offences and the statutory offences of rape and 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). Due to these limitations inherent in the data on the common law

¹ Under section 4 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

² 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 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 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.

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 2010³ 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 rape offences 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.
 - 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 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.

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

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 an offence of rape
- 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.⁴ As such, there may be minor differences between the figures given here and those presented in the most recent Scottish Government Criminal Proceedings dataset.⁵ The decision to use the SCTS data was based upon the availability of

⁴ 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 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.

⁵ 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.

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.⁶ Offences which took place before that date may be prosecuted as the common law offence of rape.⁷ In all cases the maximum sentence is life imprisonment or an order for lifelong restriction (OLR).⁸
10. This analysis focusses solely on offences prosecuted under section 1 of the Act and the common law offence of rape.⁹
11. The figures provided reflect the total cases with disposals imposed for offences sentenced under section 1 of the Act over a 12 year period, between the financial years of 2011/2012 and 2022/2023.

⁶ See the draft impact assessment for the guideline on sentencing offences of rape of a young child.

⁷ 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 \(Scottish Sentencing Council 2021\)](#).

⁸ 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.

⁹ 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 \(Scottish Sentencing Council 2023\)](#).

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. Disaggregated totals for section 1 offences committed against adults and children are provided but should accordingly be treated with a degree of caution.¹⁰
13. Data regarding the common law offence of rape over the same 12 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.¹¹ To address this challenge, the figures are presented in a similar manner to the section 1 rape offences – first as an overall total, 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).

¹⁰ Section 1 rape 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. 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.

¹¹ 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 footnote 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 the SCTS show that there have been a total of 747 offences disposed of by the courts under section 1 of the Act between 2011/2012 and 2022/2023.
15. 646 of the section 1 offences were recorded without the child aggravation and therefore would pertain to offences committed against individuals aged 16 and over.¹² The remaining 101 of the 747 section 1 rape offences were recorded with the child aggravation.
16. 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 1 offences

17. Of the 747 section 1 rape offences, the average number disposed of by the courts annually over the 12 year period was approximately 62, with a median of 58. The lowest total of rape sentences imposed was recorded in 2011/2012 (5), while the highest occurred in 2022/2023 (139).¹³ The mean number of disposals observed in each four year period within the 12 year period shows an increase, with an average of 32, 57, and 98 disposals imposed in 2011/2012-2014/2015, 2015/2016-2018/2019, and 2019/2020-2022/2023, respectively.

¹² 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.

¹³ 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. Over the 12 year period, total section 1 rape offences increased overall. Peaks were seen in 2014/2015 (64) and 2018/2019 (89), compared to lower numbers in surrounding years. In the most recent two years of this assessment period, 2021/2022 and 2022/2023, there has been a steadier increase, with further peaks of 111 and 139 sentences imposed for section 1 offences, respectively.

Number of offences: Section 1 offences recorded without the child aggravation¹⁴

19. Of the 646 section 1 rape offences committed against adults (i.e. recorded without the child aggravation), there was an approximate average of 54, and approximate median of 51 disposals per year over the 12 year period. The lowest total of section 1 offences recorded without the child aggravation was in 2011/2012 (5), while the highest occurred in 2022/2023 (123). The mean number of disposals observed in each four year period within the 12 year period shows an increase, with an approximate average of 28, 49, and 84 disposals imposed during 2011/2012-2014/2015, 2015/2016-2018/2019, and 2019/2020-2022/2023, respectively.

20. Over the 12 year period, section 1 rape offences recorded without the child aggravation increased overall. Peaks were seen in 2014/2015 (57) and 2018/2019 (76), compared to lower numbers in surrounding years. In the most recent two years of this assessment period, 2021/2022 and 2022/2023, there has been a steadier increase, with further peaks of 99 and 123 sentences imposed for section 1 offences, respectively.

¹⁴ 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 with the child aggravation are stated as such and do not explicitly state 16 as the age threshold in this assessment.

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

21. Of the 101 section 1 rape offences recorded with the child aggravation, there was an approximate average of 8, and approximate median of 9 disposals per year over the 12 year period. There were no section 1 offences recorded with the child aggravation in 2011/2012. The next lowest total was recorded in 2012/2013, closely followed by 2016/2017,¹⁵ while the highest occurred in 2022/2023 (16). The mean number of disposals observed in each four year period within the 12 year period shows an increase, with an average of 4, 8, and 14 disposals imposed during 2011/2012-2014/2015, 2015/2016-2018/2019, and 2019/2020-2022/2023, respectively.

22. There was an overall rise in section 1 rape offences recorded with the child aggravation over the 12 year period. However, there was a noticeable decrease in 2016/2017¹⁶ before rising again to 7, 13, and 14 disposals in 2017/2018, 2018/2019, and 2019/2020, respectively. Subsequently, there was a more moderate decline to 12 disposals in both 2020/2021 and 2021/2022, before rising to 16 disposals in 2022/2023.

Number of offences: Total common law offences

23. 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.

¹⁵ Specific figures for these years are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

¹⁶ Specific figures for this year are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

24. There has been less of an upward trend in total common law offences compared with section 1 offences. 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).

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

25. 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.

26. 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

27. 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.

28. 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

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 classification¹⁷ 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 1 offences

30. Almost all of the offenders involved in the 747 section 1 offences were male. This differs from the general offending population where in 2021-22, for example, males accounted for 83% of all convictions.¹⁸ While it is possible for females to be convicted of rape offences,¹⁹ the occurrence of female offenders

¹⁷ [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.

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

¹⁹ 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

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 747 total section 1 rape offences, the average age of individuals convicted for these offences was 36 years, with a median of 33 years. Approximately 56% of the disposals for all section 1 offences in the 12 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 747 were under 18, while 7% (49) were between 18-20 years old. About 12% (89) were within the 21-24 age group, and less than 20% (146) were between 25-30. The highest number of disposals, accounting for 29% (218) were imposed on offenders between 31-40. Individuals in the 41-50 age group (133), accounted for 18%. Those aged 51-60 made up 10% of disposals imposed (71). Those over 60 accounted for 4% (33) of the disposals imposed on offenders for section 1 offences.

32. The SIMD decile classification of offenders' home address – where available²⁰ – suggests that a majority of offenders convicted of 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 through 5th deciles accounted for 77% of section 1 disposals imposed on offenders in the 12 year period and 23% of section 1 disposals imposed on offenders were in the 6th through 10th deciles.

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.

²⁰ Data were unavailable for approximately 29% of the total section 1 disposals included in the 12 year period. Figures are calculated based on the remaining 71% of available data.

Offender demographics: Section 1 offences recorded without the child aggravation

33. Out of the 646 section 1 rape offences recorded without the child aggravation, the average age of individuals convicted for these offences was 36 years, with a median of 33 years. Approximately 59% of the disposals for these offences in the 12 year period were imposed on offenders between 31-60 years of age. Approximately 37% of the offenders were aged 30 or under. 5% (33) of the 646 were in the under 18, or 18-20 age group.²¹ About 11% (73) were within the 21-24 age group, and 21% (134) were between 25-30. The highest number of disposals, accounting for 31% (202) were imposed on offenders between 31-40. There were 118 disposals in the 41-50 age group, accounting for 18%. 51-60 year olds made up 10% of the amount of disposals (62) and those over 60 accounted for 4% (24) of the disposals imposed on offenders for section 1 offences recorded without the child aggravation.

34. The available SIMD data for section 1 offences recorded without the child aggravation²² suggests a majority of offenders convicted of 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 through 5th deciles accounted for 76% of section 1 disposals recorded without the child aggravation and 24% were imposed to offenders in the 6th through 10th deciles.

Offender demographics: Section 1 offences recorded with the child aggravation

35. Out of the 101 section 1 rape offences recorded with the child aggravation, the average age of individuals convicted for these offences was 35 years, with a

²¹ Specific figures for the under 18 and 18-20 age groups are provided as an aggregate due to the small sample size of the under 18 group as providing disaggregated figures could potentially disclose the identities of those involved.

²² Approximately 28% of the SIMD data for section 1 offences recorded without the child aggravation were unavailable. Figures are calculated based on the remaining 72% of available data.

median also of 35 years. Approximately 40% of the disposals for these offences in the 12 year period were imposed on offenders between 31-60 years of age. Approximately 51% of the offenders were aged 30 or under. Approximately 7% (7) were under 18, and 17% (17) were in the 18-20 age group, comprising the age group with highest number of disposals. About 16% (16) were within the 21-24 age group, and 12% (12) were between 25-30. 31-40 year olds accounted for 16% (16) of disposals, and 41-50 year olds accounted for 15% (15 disposals). The 51-60 and 60 and over age groups each accounted for 9% (9) of the disposals imposed on offenders for section 1 offences recorded with the child aggravation.

36. The available SIMD data for section 1 offences recorded with the child aggravation²³ suggests a majority of offenders convicted of these offences come from the most deprived deciles, with the highest number of disposals imposed on offenders in the 1st (31%) and 3rd (22%) deciles. The 1st through 5th deciles accounted for 77% of section 1 disposals recorded with the child aggravation and 23% were imposed on offenders in the 6th through 10th deciles.

Offender demographics: Total common law offences

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

38. 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.²⁴ About 7% (48) of the disposals were imposed on offenders

²³ Approximately 37% of the SIMD data for section 1 offences recorded with the child aggravation were unavailable. Figures are calculated based on the remaining 63% of available data.

²⁴ 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.

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 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%).

39. Of the total common law offences with SIMD data available,²⁵ 81% of common law disposals were imposed on offenders from the 1st through 5th deciles and 19% of disposals were imposed on offenders in the 6th through 10th deciles.

Offender demographics: Common law offences recorded without the child aggravation

40. 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,²⁶ 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. This 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.

²⁵ Approximately 29% of the SIMD data for all common law offences were unavailable. Figures are calculated based on the remaining 71% of available data.

²⁶ 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.

41. The available SIMD data for common law offences recorded without the child aggravation²⁷ suggests a majority of offenders convicted of 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. The 1st through 5th deciles accounted for 75% of common law disposals recorded without the child aggravation and 25% were imposed on offenders in the 6th through 10th deciles.

Offender demographics: Common law offences recorded with the child aggravation

42. 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.²⁸ 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.

43. The available SIMD data for common law offences recorded with the child aggravation²⁹ suggests a majority of offenders convicted of these offences

²⁷ 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.

²⁸ 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.

²⁹ 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.

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 through 5th deciles accounted for 87% of common law disposals recorded without the child aggravation and 13% were imposed on offenders in the 6th through 10th deciles.

Victim demographics

44. 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,³⁰ 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 2021-22.³¹

Disposals³²

Disposals: Total section 1 offences

45. In the period examined, over 99% of the 747 section 1 disposals consisted of imprisonment or detention in a Young Offenders' Institution (YOI). Of the

³⁰ [Scottish Crime and Justice Survey \(SCJS\) 2019/20 in Main findings \(Scottish Government 2021\)](#)

³¹ [Recorded crime in Scotland, 2020-21 \(Scottish Government 2022\)](#)

³² 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 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.

custodial disposals, 689 (93%) involved offenders aged 21 or over at the time of conviction – the remaining therefore may include a small amount of YOI disposals.³³ Among the disposals involving imprisonment, there were 130 lifelong sentences (including life imprisonment and OLRs). The vast majority of the 130 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.³⁴

46. There were 613 total section 1 custodial disposals, excluding life imprisonment and OLRs.³⁵ The average number of imprisonment days for these was 2149 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 1716 days, equivalent to approximately 4.7 years. The community disposal hours were all between 200-300.³⁶

47. Approximately 2%³⁷ of the total number of overall section 1 disposals involving imprisonment (excluding life imprisonment and OLRs) were for up to 2 years,³⁸ while approximately 115 disposals (19%) were for 2-4 years. The highest

³³ 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.

³⁴ The sample size on disposals for lifelong sentences 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.

³⁵ 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.

³⁶ Due to the small number of community disposals included in the sample, this figure may be negligible.

³⁷ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

³⁸ 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. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively.

number of imprisonment disposals fell into the 4-6 year bracket (287 disposals; 47%), followed by the 6-8 year bracket (134 disposals; 22%) and 50 disposals (8%) were for 8-10 years' imprisonment. Additionally, there were 17 disposals (3%) with a duration of 10 years or more.

Disposals: Section 1 offences recorded without the child aggravation

48. Over 99%³⁹ of the 646 section 1 offences recorded without the child aggravation consisted of imprisonment or detention in a YOI. Of these, 612 (95%) disposals involved offenders aged 21 or over at the time of conviction. Among the disposals involving imprisonment, there were 127 lifelong sentences (including life imprisonment and OLRs), the vast majority of which were OLRs.⁴⁰
49. There were 518 total section 1 custodial disposals recorded without the child aggravation excluding life imprisonment and OLRs. The average number of imprisonment days for these was 2141 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 1713 days, equivalent to approximately 4.7 years.
50. Just under 2%⁴¹ of the total number of section 1 disposals for offences recorded without the child aggravation involving imprisonment (but excluding life imprisonment and OLRs) were for up to 2 years,⁴² while 88 disposals (17%) were for 2-4 years. The highest number of disposals fell into the 4-6 years bracket (255 disposals; 49%), followed by the 6-8 years bracket (115 disposals;

³⁹ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

⁴⁰ Specific figures for lifelong sentences are not provided due to the potential for disclosing identifying information.

⁴¹ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

⁴² 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. This will be the same for 4-6 years, 6-8 years, and 8-10 years, respectively.

22%). 38 disposals (7%) were for 8-10 years' imprisonment. Additionally, there were 13 disposals (3%) with a duration of 10 years or more.

Disposals: Section 1 offences recorded with the child aggravation

51. Approximately 94%⁴³ of the 101 section 1 offences recorded with the child aggravation, and excluding life imprisonment and OLRs, consisted of imprisonment. Of these, 74 (78%) disposals involved offenders aged 21 or over at the time of conviction.

52. The average number of imprisonment days (excluding life imprisonment and OLRs) for these was 2188 days, equivalent to approximately 6 years. The average number of imprisonment days for custodial disposals (excluding life imprisonment and OLRs) where offenders were under the age of 21 was 1721 days, equivalent to approximately 4.7 years.

53. Under 1%⁴⁴ of the total number of section 1 disposals recorded with the child aggravation that involved imprisonment (but excluding life imprisonment and OLRs) were for up to 2 years,⁴⁵ while approximately 27 disposals (28%) were for 2-4 years. The highest number of disposals fell into the 4-6 years bracket (32 disposals; 34%). 19 disposals were recorded in the 6-8 years bracket (20%), and 12 disposals (13%) were for 8-10 years' imprisonment. Additionally, there were 4 disposals (4%) with a duration of 10 years or more.

⁴³ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

⁴⁴ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

⁴⁵ 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. The same will be for 4-6 years, 6-8 years, and 8-10 years, respectively.

Disposals: Total common law offences

54. In respect of common law offences, 100% of the disposals involved a sentence of imprisonment. Of these, approximately 99%⁴⁶ of the disposals involved offenders aged 21 or over at the time of conviction, with the remaining likely to have involved detention in a YOI. 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.
55. 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.
56. 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

57. In common law offences without the child aggravation, 100% (361) of disposals take the form of a period of imprisonment. Approximately 99%⁴⁷ of these

⁴⁶ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

⁴⁷ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

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.

58. 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.

59. 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%) 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

60. 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%⁴⁸ consisted of lifelong sentences, all of which were OLRs.

⁴⁸ Specific figures are not disclosed due to the small sample size, which could potentially reveal identifying information of the individuals involved.

61. 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.
62. Less than 1%⁴⁹ 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.

Key assumptions

63. 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.
64. 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

⁴⁹ Exact figures are not provided due to the potential for disclosing identifying information.

about them. To account for this, where an estimate of change is required, this impact assessment considers costs based on indicative levels of change.

65. 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).

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

67. 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

68. Data were analysed to examine the potential impact of the guideline in relation to the sentences imposed for offences of rape. This involved a review of a selected sample⁵⁰ of recordings of court proceedings obtained through a court recording system⁵¹ to assess the potential impact of the 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.

⁵⁰ 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.

⁵¹ The court recording system employed by the SCTS is used to create, store and playback audio recordings of court proceedings.

Changes to sentencing

Approaches to sentencing

69. The guideline will promote greater consistency in approaches to sentencing.
70. 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.
71. 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 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

72. 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.
73. 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

74. The Council does not expect any impacts on first instance court business as a result of the guideline.
75. 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 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.
76. 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.
77. 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

78. 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

79. 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.
80. 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 rape offences will disproportionately apply to male offenders more than the overall offending population.
81. The Council does not feel that this disproportion will have an impact on the equal administration of justice in Scotland.
82. Insufficient data are available to address other protected characteristics with regards to this guideline.

Cost and Benefits

Costs

83. 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 2020.⁵² Scottish Government analysis on costs in 2022/23 showed the average prisoner place per annum costs £44,620.⁵³

84. 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 2019/2020.⁵⁴ 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 (7,506).⁵⁵

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

86. 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.

87. 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.

⁵² [Scottish Budget: 2023 to 2024](#) in Chapter 8 Justice & Veterans (Scottish Government)

⁵³ [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.

⁵⁴ [Scottish prison population: statistics 2019 to 2020](#) in Introduction (Scottish Government)

⁵⁵ [Scottish Prison Population Statistics 2022-23](#) in Key Findings (Scottish Government)

Benefits

88. 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.
89. The guideline will also promote greater consistency and predictability in sentencing, contributing to one of the Council's statutory objectives.

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