

Victims, Witnesses, and Justice Reform (Scotland) Bill: factsheet

Sexual offences court

This page provides more information on the proposal in the Victims, Witnesses, and Justice Reform (Scotland) Bill to establish the Sexual Offences Court.

It covers:

- what the Sexual Offences Court is
- background to the proposal
- improvements to the experience of complainers
- jurisdiction of the Sexual Offences Court
- judges of the Sexual Offences Court
- sentencing powers of the Sexual Offences Court
- legal representation in the Sexual Offences Court
- self-representation in the Sexual Offences Court

What the Sexual Offences Court is

The Bill proposes to establish the Sexual Offences Court, a new criminal court for Scotland separate from the sheriff courts and the High Court. It would have Scotland-wide jurisdiction to hear cases involving serious sexual offences including rape.

At the moment, serious sexual offence cases can generally be heard either in the sheriff court or the High Court. It is largely a matter for prosecutors' judgment as to which court is more appropriate (although cases involving rape must always be prosecuted in the High Court). The Sexual Offences Court would allow these cases to be brought together and heard in the same specialist environment.

The Sexual Offences Court would embed specialism from the outset to:

- develop best practice in dealing with pre-trial and trial procedures in a way that better recognises and adapts to trauma
- use available resources more flexibly to contribute to reducing delay and increasing efficiency in these cases
- support complainers to give their best evidence
- improve judicial case management and
- require specialist trauma-informed training for all personnel, judges and legal professionals appearing in the court

Background to the proposal

Complainers in sexual offence cases often say that they found it very difficult to be a part of the court process. Victims and survivors report that delays in cases coming to trial, stress associated with giving evidence and the experience of giving evidence itself, all contribute towards an experience which they not only find very difficult but which re-traumatises them.

We must ensure that we have an effective system of prosecution of cases involving serious sexual offences if victims are to have the confidence to come forward to hold those who commit such offences to account.

The [Lord Justice Clerk's Review into Improving the Management of Sexual Offence Cases](#) (known as "the Lady Dorrian Review Group") published a report in March 2021. The Group was established because of the need to improve the court experience for complainers and the need to develop a more sustainable model of prosecuting sexual offences. This is also necessary given the increasing numbers of such cases. One of the Review Group's recommendations was to establish a new specialist sexual offences court which would:

- allow all complainers, as far as possible, to give their evidence before the trial and have this recorded
- improve ways in which judges would manage cases; and
- require specialist trauma-informed training for all people who work in the court, including lawyers and judges

The model envisioned by the Lady Dorrian Review Group was a court separate from existing courts on the basis that past attempts at improving the management of sexual offence cases within existing courts had failed to deliver lasting improvements to the experience of complainers in these cases.

A [Working Group](#) was set up to consider the detail of the Lady Dorrian Review Group's suggestions. This was made up of people who work in different parts of the justice system along with representatives from victims' organisations.

Improvements to the experience of complainers

Establishing the Sexual Offences Court will enable a more flexible use of court and other resources and improved ways of managing cases that will help trials to start and finish more quickly and help to reduce overall delay in the system. This has been an important benefit of specialist sexual offence courts introduced in other countries such as New Zealand.

The Bill also aims to make sure that cases in the Sexual Offences Court are carried out in a way which is mindful of the impacts of trauma and supports victims and witnesses who take part. This is sometimes described as a "trauma informed practice". The Bill would make it essential that everyone involved with the Sexual Offences Court, including lawyers, complete specialist training in trauma-informed practice. This will help to ensure that everyone who comes into contact with a complainer or other witnesses will understand trauma and be able to work in a way that helps reduce the risk of causing further trauma.

The Bill would also introduce a presumption that all complainers required to give evidence in the Sexual Offences Court would be able to have their evidence pre-recorded before the trial. This is intended to mitigate the trauma that victims associate with this experience.

The Sexual Offences Court would also lead to future improvements to the experience of complainers by creating a way of hearing cases that is designed to make the experience less traumatic for complainers. It would also set the standard

for this as best practice to be applied consistently to cases involving serious sexual offences from across the whole of Scotland.

Jurisdiction of the Sexual Offences Court

The Bill lists the offences which an accused would have to be charged with before their case could be heard in the Sexual Offences Court. The Sexual Offences Court would be able to hear any case on indictment which includes one of those offences as well as any other charges that appear on the same indictment including murder.

An indictment is a court document which sets out the charges against the accused in solemn (more serious) cases. Solemn cases are heard before a jury.

Allowing the Sexual Offences Court to hear cases that involve both sexual and non-sexual offences means that cases will not be split across different courts. Splitting cases would be an inefficient use of court resources and risk re-traumatising complainers because they might end up having to give evidence more than once.

In determining what cases the Sexual Offences Court can hear, the Bill lists all serious sexual offences where a complainer may be required to give evidence (such as rape and sexual assault). The list of sexual offences has been expanded beyond those recommended by the Lady Dorrian Review Group and the [cross-sector working group](#). It also includes other offences where a complainer may be required to give evidence of a similar nature, or experience barriers in accessing justice regarding conduct that can also be considered to amount to sexual or physically intimate abuse, such as female genital mutilation or offences contrary to section 1 of the Domestic Abuse (Scotland) Act 2018 where it is apparent from the charge that there was a substantial sexual element present in the alleged commission of the offence.

This approach recognises that complainers in those cases should also benefit from the specialist approaches introduced through the Sexual Offences Court. Provisions in the Bill would also allow the list of offences to be amended. This would make sure that the Sexual Offences Court is able to hear any new offences that might be created after the Sexual Offences Court is set up.

The decision as to whether individual cases should be heard within the Sexual Offences Court or another court would remain a decision for prosecutors. The Bill permits rather than requires prosecutors to raise cases in the Sexual Offences Court, provided the Sexual Offences Court has the power to hear them.

Judges of the Sexual Offences Court

The Bill proposes creating a new category of judge to preside over cases in the Sexual Offences Court. These judges would be known as a “Judges of the Sexual Offences Court”.

The Lady Dorrian Review recommended that the Sexual Offences Court should consist of both sheriffs and High Court judges. The power to appoint Judges of the Sexual Offences Court would lie with the Lord Justice General as the most senior judge in Scotland. The Bill does set out some restrictions on who the Lord Justice General could appoint to this role. For example, the Bill specifies that appointments are to be made from the pool of certain existing judicial office holders including Lord

Commissioners of Justiciary (High Court judges), temporary judges, sheriffs principal and sheriffs.

Those appointed to the role will have to have completed specialist trauma-informed training as approved by the Lord Justice General.

The Bill also provides that the Lord Justice General and the Lord Justice Clerk would be able to preside over cases in the Sexual Offences Court.

The Bill also provides for the creation of two new statutory judicial officer roles to be known as the “President of the Sexual Offences Court” and the “Vice-President of the Sexual Offences Court”. These roles will further enhance the development and operation of the Court by having the responsibility of ensuring the efficient disposal of business in the Court.

Under the provisions in the Bill, the Lord Justice General would also have the power to remove Judges of the Sexual Offences Court but only after consulting with the President and Vice President of the Sexual Offences Court. The Lord Justice General currently has a power to remove Appeal Sheriffs from office, with the consent of a majority of sheriffs principal. Removing a Judge of the Sexual Offences Court would not affect their main role for example if they were a sheriff, they would remain a sheriff.

There are specific rules in place for removing a person from their main role such as a sheriff or a High Court judge. These are set out in the Scotland Act 1998 and other legislation. These rules will continue to apply in the usual way and the Bill would not change this.

Sentencing powers of the Sexual Offences Court

The Bill proposes to give the Sexual Offences Court the same sentencing powers as the High Court. This means that they will have the power to issue a sentence of life imprisonment or grant an Order for Lifelong Restriction. This is different to the recommendation of the Lady Dorrian Review Group, which recommended that the Sexual Offences Court should only be able to imprison someone for a maximum of ten years with the ability to send cases deserving of a lengthier sentence to the High Court.

Giving the Sexual Offences Court unlimited custodial sentencing powers recognises that the Sexual Offences Court will have the power to hear some of the most serious offences, including rape and murder. It ensures that the Sexual Offences Court has all the tools it needs to deal with these cases. Giving Judges of the Sexual Offences Court the same sentencing powers as those that sit in the High Court was also recommended by the cross-sector working group to avoid creating the impression that sexual offences are being treated less seriously.

Legal representation in the Sexual Offences Court

The Bill would allow advocates, solicitor advocates and solicitors to represent an accused person in the Sexual Offences Court. This recognises that it will have the power to hear cases which are currently heard in the High Court and the sheriff courts. The Bill does not, however, allow solicitors to represent an accused person in cases of murder or rape. In those cases, the accused would have to be represented

by an advocate or a solicitor advocate, which is the case at the moment. This would make sure that accused persons in those cases receive the same level of legal representation in the Sexual Offences Court as they do in the High Court.

The Bill would create a requirement for lawyers to complete specialist training in trauma-informed practice before they can appear in the Sexual Offences Court. This follows the recommendation of the Lady Dorrian Review Group that this would improve the experience of complainers and other witnesses.

While the Bill does not place a specific requirement on prosecutors in the Sexual Offences Court to have completed trauma-informed training, it does place a requirement on the Lord Advocate to publish a statement in respect of the trauma-informed training that prosecutors appearing in the Court will undertake.

Self-representation in the Sexual Offences Court

The Bill would not allow an accused person to represent themselves in the Sexual Offences Court in any case where a witness is required to give evidence. This is in line with existing legislation which prohibits persons who are accused of certain sexual offences from representing themselves in other courts. This applies to the majority of sexual offences and the purpose is to prevent a complainer or other witness from becoming traumatised by, for example, an accused person cross-examining them.