

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

Single judge rape trial pilot

This page provides more information on the proposals within the [Victims, Witnesses and Justice Reform \(Scotland\) Bill](#) to develop and conduct a pilot of single judge rape and attempted rape trials.

It covers:

- what the Bill does
- background and reasons for the proposal to pilot single judge rape and attempted rape trials
- objectives
- scope of the pilot – single complainer cases

Further background is provided on:

- jury trials in Scotland
- current use of jury trials for rape cases
- use of juries in other jurisdictions
- evidence on the use of different modes of trials for rape cases

What the Victims, Witnesses, and Justice Reform (Scotland) Bill does

As part of a package of reform, the Bill grants Scottish Ministers the power to enable a pilot of single judge rape and attempted rape trials, which meet specified criteria, to be conducted without a jury for a time limited period.

The Bill requires that judges in trials that are carried out as part of the pilot, must give written reasons for their verdicts. This enhances the rights of an accused by giving them an opportunity to challenge those reasons in any appeal against conviction. This does not currently exist with jury verdicts, which are delivered without reasons being provided.

At the end of the pilot, the Bill requires that Scottish Ministers must carry out a review and publish a report which must also be laid in the Parliament.

Should the Parliament pass the Bill, we will bring forward secondary legislation that sets out the operational detail of the pilot including how long it will run for and the case criteria that must be met for rape and attempted rape cases to fall within its scope.

Before bringing secondary legislation forward, the Bill requires Scottish Ministers to consult with a range of cross sector interests including the Faculty of Advocates, the Law Society of Scotland and victims' organisations.

This continues the important collaborative work on design and development of the pilot, building on the constructive work of [Lady Dorrian's Review into Improving the Management of Sexual Offence Cases](#) and the [Governance Group set up to consider approaches to implementing the recommendations of that Review](#).

Background and reasons for the proposal to pilot single judge rape and attempted rape trials

In Scotland, juries return verdicts of acquittal at a significantly higher rate for sexual offences cases than for other crimes.

[Conviction rate data for 2020 to 2021](#) shows that 51% of people prosecuted for rape and attempted rape that year were convicted compared to an average of 91% across all offences. These figures form part of a long term trend in which conviction rates for rape and attempted rape have been the lowest of all offences in each of the last ten years for which comparable data is available. The average rate of conviction over this period for rape and attempted rape was 46% compared to 88% for all offences.

While specific data is not available for cases involving single complainers, there is a concern that the conviction rate for these cases is even lower.

In the context of this longstanding and significant disparity; it is important that we critically examine all aspects of our approach to these cases. Victims of rape must have meaningful access to justice through an effective criminal justice system and perpetrators must be held to account.

[Lady Dorrian's Review into Improving the Management of Sexual Offence Cases](#) took a clean sheet approach in its scrutiny of the current system and considered the use of the jury trial for rape cases, including its strengths and weaknesses, before recommending that:

“Consideration should be given to developing a time-limited pilot of single judge rape trials to ascertain their effectiveness and how they are perceived by complainers, accused and lawyers, and to enable the issues to be assessed in a practical rather than a theoretical way.”

There are three key reasons to pilot single judge rape trials:

Firstly, the widely acknowledged need to improve complainers' experiences. Victims have told us that the justice system can be daunting and retraumatising, and that the experience of justice is often as important as the need for a substantive outcome. A pilot offers an important opportunity to gather evidence on whether changing the decision maker results in changes to that experience, whether that be as a result of changes to the way trials are conducted, or because of the transparency in verdicts that the requirement for written reasons provides.

Secondly, the significant and longstanding disparity in conviction rates for rape compared to other offences. In Scotland, juries return verdicts of acquittal at a significantly higher rate for rape than for other crimes. [Criminal Proceedings data](#) demonstrates that 51% of people prosecuted for rape and attempted rape in 2020-21 were convicted, compared to an average of 91% across all offences. The five-year average conviction rate is 44% for rape and attempted rape. It is consistently lower than for other crime types. This, as noted in the Review, is a cause for further enquiry as it indicates that there may be barriers to accessing justice in these cases that are not seen in other types of cases.

Thirdly, the evidence that the power and prevalence of rape myths may be influencing jury decision making. Rape myths is the term used to describe false

beliefs and preconceptions about the actions of a complainer before, during or after a serious sexual assault. Examples include expectations that a genuine victim would seek to escape or resist an assault, that they would be injured as a result or that they would immediately report an offence once it has happened. The evidence indicates that verdicts in these cases are not being returned solely based on an objective assessment of the facts and an application of the law, but rather they are influenced by factors outwith the trial. More information on the evidence is available in our factsheet on [rape myths](#).

In the context of this evidence, a pilot of single judge trials provides an unrivalled opportunity to gather evidence to inform the debate over whether we have the most effective procedures in place within our criminal justice system to provide access to justice for victims of rape and to hold perpetrators to account.

Objectives

The objective of the pilot is to gather evidence to allow a comparison, properly informed by empirical research, of two different modes of trial for rape cases. (That is, single judge trials and jury trials.) The pilot will seek to:

- assess how single judge trials are perceived by those involved in the trial process E.g. what are the views and experiences of the complainer, accused, prosecution, defence, judge? Do these differ between the two modes of trial? Does the way that evidence is presented differ (preparation, cross-examination, etc), are the issues in dispute more focussed? Does the requirement for written reasons for verdict improve the experience for both complainer and accused?
- explore the impact of single judge trials on the effectiveness and efficiency of managing rape trials. E.g. do single judge trials reduce the duration of trials that will deliver benefits to these cases and to the wider system?
- consider the impact of single judge trials on outcomes. E.g. what impact, if any, does changing the decision maker have on trial outcomes?

Scope of the pilot: single complainer cases

The Bill does not specify criteria that rape and attempted cases must meet to be included in the pilot or how long the pilot is to run for. The Bill requires that information to be contained in secondary legislation that must be laid to enable the pilot to commence.

The desired sample size for meaningful evaluation will be determined by the final case criteria and the design features of the data gathering and evaluation process.

[A cross-sector working group](#) began to refine those areas but recognised that further work and further data is required.

The [main recommendations of that working group](#) included that the pilot should encompass all single complainer rape and attempted rape cases in which there are either no other charges on the indictment or in which those other charges are only minor or evidential.

The focus on single complainer cases is because concerns over jury decision making are most acute in these cases.

Further work is required to identify how many cases would fall under that criteria to ensure it is effective in generating a sufficient sample size for the pilot and to ascertain how long the pilot ought to run for.

That work is ongoing and we will provide more information to the Parliament as the Bill progresses.

Further background

Jury trials in Scotland

There is no right to trial by jury in Scotland. All accused persons in Scotland have the right to a fair trial, but that does not, as a matter of law, mean the right to a trial by jury.

This position has been confirmed by [the European Court of Human Rights, which has expressly ruled that the right to a fair trial does not require that the outcome is determined by a jury.](#)

Single judge trials are already a key feature of the Scottish criminal justice system. The overwhelming majority of trials in Scotland proceed under summary procedure and are heard before a justice of the peace or a sheriff who sits without a jury. Data contained in the [Scottish Courts and Tribunals Service's 2019 to 2020 annual report](#) shows that during that year, 84% of all criminal trials were tried under summary procedure with verdicts reached without a jury.

Current use of jury trials for rape cases in Scotland

Whether an offence will be tried by a jury or not will generally depend on a number of factors. For certain offences it is set out in legislation, but the powers of the Scottish courts under the [Criminal Procedure \(Scotland\) Act 1995](#), and the decision of the prosecutor on the most appropriate court to hear the case, are also factors.

Currently, offences of rape may only be tried on indictment in the High Court. Therefore, these cases are always heard by a jury. The use of juries for the prosecution of other serious offences is long established in Scotland.

Use of juries in other jurisdictions

The use of juries in criminal trials is not universal.

In Europe, the use of jury trials is not particularly common, with some countries like the Netherlands exclusively using professional judges with no input from lay members.

Other countries, like Germany, use a combined system where professional judges and lay members together determine questions of fact.

Where juries do form part of a criminal justice system, their use is not fixed and continues to evolve.

Some jurisdictions allow flexibility within a traditional jury system for the accused to make a choice to proceed without them – New Zealand, some parts of Australia, America and Canada.

Some other jurisdictions are moving away from the use of juries – for example the French government has announced that they will remove juries from most rape trials. All cases involving crimes with maximum sentences of between 15 and 20 years will be tried by courts of a panel of judges.

In other jurisdictions, where it is shown that there is a risk to impartiality, law and practice has evolved to allow cases to proceed without juries. In England and Wales, legislation provides for non-jury trials in cases where there is danger of jury tampering or where jury tampering has taken place. See the [Criminal Justice Act 2003](#).

Evidence on the use of different modes of trial for rape cases

International evidence is limited and difficult to apply to the Scottish context.

We previously published an [evidence briefing on alternatives to jury trials which considered the research available](#).

A pilot will enable us to develop an objective and informed understanding of single judge rape trials in the context of Scotland's justice system. This will significantly enrich the evidence base on what is the most effective way for the criminal justice system to respond to serious sexual assault cases.