

PE2064/G: Ensure that under 16s charged with rape are treated as adults in the criminal justice system

Lord Advocate written submission, 28 April 2025

I refer to the above and previous correspondence whereby the Committee have sought updates on the review I instructed on the use of diversion from prosecution and referral to the Scottish Children's Reporter Administration (SCRA) in cases of serious sexual offences.

I am delighted to advise that the review has now concluded and as a result, I have approved a new Statement of Prosecution Policy which focuses on cases involving children.

The Statement of Prosecution Policy has been directly informed by the invaluable discussions and feedback received during the roundtable discussion events that were held with key stakeholders who provided comments from the perspective of victims and witnesses of rape and other serious sexual offences, including views from those with lived experience, and stakeholders who represent children in conflict with the law.

The new policy has also been informed by the outcome of the examination of all cases of rape which were diverted or referred to SCRA in the last five years, which was conducted by a Senior Advocate Depute.

From Monday 28th April 2025, all decision making in rape and other solemn level sexual offences cases involving child accused (including where the accused is now an adult, but was a child at the time the offence was reported to COPFS) will follow the new policy.

Such a bespoke policy is required to recognise the seriousness of sexual offending and ensure there is a clear and detailed framework for prosecutors to work within when making decisions as to the appropriate prosecutorial response in these cases to ensure the appropriate use of diversion and referral to the Reporter.

Communication with victims around decisions on cases involving children and sexual offending is central to the new policy. Decisions relating to the offences of rape and attempted rape will also now be taken by Senior Crown Counsel appointed by the Lord Advocate to exercise her authority on her behalf. These moves recognise the seriousness of these cases, the profound impact they have on victims, and the need to ensure that diversion and referral to the Reporter are being used appropriately.

The new Statement of Prosecution Policy will be published externally on COPFS' website on Monday 28th April 2025.

These cases are particularly difficult when the victim and accused person are both children. As public prosecutors, we are trusted to make appropriate decisions considering the rights of all children involved. I hope that the publication of the policy will assist members of the public in understanding how decisions are reached and ensure confidence in the approach.

Yours sincerely,

THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE