

## Briefing for the Public Petitions Committee

**Petition Number:** [PE1773](#)

**Main Petitioner:** Sarah Takahashi

**Subject:** Reform Rape Law

Calls on the Parliament to urge the Scottish Government to update the Sexual Offences (Scotland) Act 2009 to include the offence of a man being raped by a woman.

### Introduction

The petition seeks a widening of the definition of rape to cover situations where a woman ‘rapes’ a man. Whilst acknowledging that other offences may be used to prosecute such behaviour, it suggests that not including it within the offence of rape fails to acknowledge its seriousness.

In relation to [sexual abuse](#), the website of Abused Men in Scotland states that:

“Under the criminal law in Scotland, a man can only be raped by another man. Non-consensual intercourse between a man and a woman (where the man does not consent) would be defined as a ‘sexual assault’ or ‘sexual assault by penetration’ depending on the circumstances. Despite these different definitions, any kind of sexual assault can have equally devastating consequences.”

Relevant offences are set out in the [Sexual Offences \(Scotland\) Act 2009](#) (‘the 2009 Act’) and are discussed below.

The petition also expresses concerns about the stigmatising of, and a lack of support for, male victims. The Scottish Government guide [Rape and Sexual Assault: Support](#) notes that:

“It may be difficult for men to talk about what has happened because of the common view that men should be ‘strong’ and able to protect themselves.”

It goes on to list organisations that may be able to help male victims.

### Sexual Offences (Scotland) Act 2009

Section 1 of the 2009 Act created a statutory offence of rape, replacing the previous common law offence. In doing so, it made some significant reforms, including extending the range of actions covered:

- the common law offence of rape required penile penetration of the victim's vagina
- the 2009 Act broadened the definition of rape to include penile penetration of the anus or mouth of a victim of either sex<sup>1</sup>

Thus, the offence of rape was widened but still involves penetration by a penis. The 2009 Act defines penis and vagina as including surgically constructed ones.

The question of whether the definition of rape should be further widened to cover penetration with an object was considered during scrutiny of the [Sexual Offences \(Scotland\) Bill](#). For example, see the [policy memorandum](#) (paras 42 to 48) and the Justice Committee's [stage 1 report](#) (paras 59 to 63).

Other offences created by the 2009 Act include sexual assault by penetration (section 2) and sexual assault (section 3). Sexual assault by penetration covers situations where the offender penetrates sexually the victim's vagina or anus. Penetration may be by part of the offender's body (e.g. finger) or something else.

The statutory offence of sexual assault covers various types of conduct which a reasonable person would consider to be sexual.

There is a large element of overlap in the types of behaviour covered by the three statutory offences. Most of what is covered by rape is also covered by sexual assault by penetration; and everything that is covered by sexual assault by penetration is also covered by sexual assault. The intention behind this is to avoid difficulties in prosecuting cases where what exactly happened may not be wholly clear. It will be for the prosecution to select the most appropriate charge (e.g. where there is clear evidence of rape the appropriate charge would be rape, rather than one of the other offences).

On introduction, the Sexual Offences (Scotland) Bill did not include the offence of sexual assault by penetration. However, concerns were expressed that relying on the broad offence of sexual assault to prosecute penetrative sexual assaults with objects failed to clearly label them as potentially some of the most severe forms of sexual offence. This led to amendments being passed adding the offence of sexual assault by penetration. There was some debate on whether the additional offence should be described as a form of rape (e.g. to help emphasise the seriousness of the offence), but wording which does not use the term rape was agreed to.

The offence of sexual assault by penetration, unlike the offence of rape, does not cover penetration of the victim's mouth. It was argued that including penetration of the mouth would extend the scope of sexual assault by penetration to include less serious behaviour, contrary to the purpose of labelling particularly serious forms of sexual assault.

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<sup>1</sup> Under the previous common law, penile penetration of the anus or mouth could be prosecuted under other offences such as indecent assault.

Where prosecuted in the High Court, the maximum custodial sentence for all three of the above statutory offences is life imprisonment. Rape can only be prosecuted in the High Court. Sexual assault by penetration can also be prosecuted under solemn procedure in the sheriff courts. In such cases, the maximum custodial sentence is five years. Sexual assault can be prosecuted under both solemn and summary procedures. Where prosecuted under summary procedure in a sheriff court, the maximum custodial sentence is 12 months. These differences are intended to reflect the seriousness of the offences and the broad range of behaviour covered by the offence of sexual assault.

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