

PE1773/D

Police Scotland submission of 28 February 2020

I refer to your correspondence of 31 January 2020 to Police Scotland in respect of the above petition and your request to provide a response.

I note the comments of the petitioner, in so far as they have asked the Scottish Government to consider whether the definition of rape should be changed to include the offence of a man being raped by a woman. Having considered the content of the petition, I offer the following by way of comment.

Firstly, I wish to reassure you that we aim to provide every victim with a professional and sensitive approach, treating all with dignity and respect. The needs and wellbeing of a victim of sexual crime, regardless of the classification of that particular crime, are of paramount consideration at all times.

Turning to the specific issue in respect of the reform of rape law, prior to the definition of rape being agreed, and the Sexual Offences (Scotland) Act 2009 coming into force on 1 December 2010, the preceding Sexual Offences (Scotland) Bill discussed whether the definition of rape should be widened to cover penetration with an object. Ultimately, it was agreed that other sections within the aforementioned Act would cover these types of penetrative offences.

In terms of the 2009 Act, rape occurs when a penis (or surgically constructed penis) penetrates the vagina, anus or mouth of either sex, creating a statutory offence of rape. In doing so, it made significant reforms, including extending the range of actions that covered the common law offence of rape.

In the specific reform suggested by the Petitioner the desire is to widen the definition of rape to cover situations where a woman can be prosecuted for the rape of a man.

As highlighted, and at present, under the criminal law of Scotland a man can only be raped by another man by way of penetration by a penis (or surgically constructed penis). Non-consensual intercourse between a man and a woman (where the man does not consent) would currently be defined as sexual assault.

Rape and sexual assault are serious crimes. The maximum sentence on conviction for either is life imprisonment, reflecting the potential seriousness of sexual assault. As such, sexual assault is not necessarily subject to a lesser penalty and where a crime of rape or sexual assault is reported, in either crime type, Police Scotland will deploy specialist Sexual Offences Liaison Officers to engage with the complainer.

It should be noted that the Scottish Law Commission published the Report on Rape and Other Sexual Offences in December 2007. The report states:

“One such type of conduct is so-called ‘female rape’, that is where a woman compels a man to have penetrative intercourse with her without his consent. Our proposed definition of rape restricts the commission of offence to a person who has a penis. Where a woman compels a man to penetrate her, although there is intercourse obtained without consent, it is not the victim’s body which has been penetrated. This is undoubtedly a violation of the victim’s physical integrity and sexual autonomy, but it is questionable whether it can properly be described as ‘rape’. The wrong in this situation is that a person has been compelled into

taking active steps to engage in sexual activity without his consent. This is a different type of violation from the victim's own body being penetrated and should not be classified as rape but as coerced sexual conduct.”

From assessment of the current provisions, it would appear that legislation currently in place is adequate to deal with the wide range of circumstances in which a sexual offence can be committed, including circumstances in which a woman compels a man to engage in penetrative sexual intercourse, without his consent, as described within the Scottish Law Commission report.

To include within the legislation, circumstances whereby a woman engages in penetrative sexual intercourse, whether vaginal anal or oral, with a man without his consent, would require a material change in the definition of the crime of rape. Officers of Police Scotland have a specific statutory duty in terms of law enforcement and the investigation of crime, the enactment of law is for parliament alone. Should any change to the definition be made to include the aforementioned circumstances, then officers of Police Scotland would continue to enforce the law, subject to any future amendments, as outlined within the relevant section(s), of the Sexual Offences (Scotland) Act 2009 or any subsequent legislation.

The Petitioner also expresses concerns about the stigmatising of, and a lack of support for, male victims. Police Scotland recognises the impact of rape and other serious sexual crime on victims and acknowledges that the nomenclature of a crime may impact upon how a crime, and the perpetrator, are perceived and treated, as well as how a crime is experienced by a victim. It is noted that there are a number of support services, including Rape Crisis Scotland, available to individuals in such circumstances who can offer specialist support to aid their journey to recovery. Police Scotland remains committed to, and indeed would encourage, all victims of sexual crime, regardless of gender, to report the circumstances to the police.

The nature of rape and other serious sexual offences present considerable evidential challenges. Investigations must be rigorous and thorough in all aspects to ensure the best evidence available is secured. Victims must have the confidence that their complaint will be taken seriously and professionally.

Police Scotland is committed to protecting people at risk of harm within our communities. Our ability to fulfil this is largely dependent on how we treat victims of all criminality and that includes victims of Rape and Sexual Crime.

I trust this information is of assistance