

UNDERSTANDING SEXUAL ASSAULT AND CAUSING SOMEONE TO ENGAGE IN SEXUAL ACTIVITY



It is believed that 23% of adult women experience some form of sexual assault. This information sheet is designed to give information about two offences under the Sexual Offences Act 2003 (the SOA 2003): sexual assault and causing someone to engage in sexual activity without consent.

Rights of Women publishes a number of other information sheets that may be useful (on issues including Rape and Criminal Injuries Compensation) as well as *From Report to Court: A Handbook for Adult Survivors of Sexual Violence*. For further information about these and other Rights of Women publications contact us or visit our website at www.rightsofwomen.org.uk.

Language

Sexual violence is most commonly perpetrated by men against women (although we recognise that this is not always the case). Consequently, in this information sheet we refer to the abuser throughout as “he”. Similarly, we will use the terms “defendant” to describe the abuser and “complainant” to describe the survivor of sexual violence as these are the terms most commonly used in the law.

Different complainants

Sexual violence affects women from all ages and backgrounds, regardless of economic or social status, race, religion or

immigration status. The criminal law of England and Wales that deals with sexual violence should protect **all women** from violence (Scotland and Northern Ireland have different arrangements). This means that the police have the same obligation to assist and protect you whether you are a British citizen, an overstayer, an asylum seeker, or someone with leave to remain in the UK as a spouse, student or worker. If you want to discuss the implications of contacting the police or cooperating with a criminal investigation contact our Sexual Violence Legal Advice Line. Further information about the line and its opening times can be found at the end of this information sheet.

Which law applies?

The SOA 2003 was a significant overhaul of the law that deals with sexual violence. It removed from the law a number of offences such as indecent assault and replaced them with new offences such as **sexual assault** and **causing someone to engage in sexual activity**.

The SOA 2003 came into force at **midnight on 1 May 2004**. This means that any offence that took place **after** midnight on 1 May 2004 will be dealt with under the SOA 2003 as explained in this information sheet. If the offence took place **before** midnight on 1 May 2004 then the law that deals with the offence may be the Sexual Offences Act 1956 and this information sheet will **not** apply. If you do not know when the offence was committed and it cannot be proved that it occurred either before or after midnight on 1st May 2004 then the defendant may still be convicted of an offence (under section 55 **Violent Crime Reduction Act 2006**).

The age of the complainant

Under the SOA 2003 a person can legally consent to sexual activity if she or he is 16 years old or over. If a child is under 13 years old then in law she is held **not to be able to consent** to sexual activity (even if she expressed consent or believes that she is able to decide whether or not to consent to sexual activity). A person who is between the ages of 13 and 16 has the capacity or ability to consent to sexual activity but it is against the law for her or him to do so.

Consequently, a number of offences under the SOA 2003 refer to the age of the complainant. Section 3 SOA 2003 creates the offence of sexual assault while section 7 creates the offence of sexual assault of a child under 13.

This information sheet is designed to assist adult survivors of sexual violence.

It will not discuss child sex offences or offences that relate to under 13 year olds. See **Other useful telephone numbers** for details of organisations that may be of assistance to children and their families.

Consent

Both sexual assault and causing someone to engage in sexual activity are **non-consensual sexual offences**. This means that they are offences because the complainant did not consent to the sexual activity concerned. Consent to sexual activity can be expressed, for example, through a verbal statement that a person wishes to engage in sexual activity, or implied, for example, by their behaviour.

Under section 74 SOA 2003 consent is defined as having the **freedom** and **capacity** to choose.

Having the **freedom** to choose means being able to exercise real choice about whether to engage in sexual activity or not. A complainant may not be able to refuse sexual activity because violence or threats are used against her or she is detained against her will. She may have been denied access to her children or financial support. Whether or not a particular threat is capable of preventing her from being able to choose will depend on a number of factors, including the complainant's age and personal circumstances as well as whether it is likely the particular threat would be carried out.

Having the capacity to choose refers to the ability a person has to make a particular choice. The fact that a woman has voluntarily consumed alcohol or another substance may affect her capacity to

consent to sexual activity. Further information about capacity and consent can be found in our information sheet **Rape and Assault by Penetration**.

In order for an offence to have been committed the defendant **must not have reasonably believed** that the complainant consented to the sexual activity. Whether the defendant's belief in the complainant's consent is reasonable or not is determined by looking at all the circumstances of the case. This includes any steps that the defendant took to find out whether the complainant was consenting (such as asking her).

The SOA 2003 outlines certain situations where in law it will be harder or impossible for the defendant to argue that the complainant consented to the activity and that the defendant reasonably believed that she consented. These include where the defendant deceives the complainant as to his identity or gives her a substance without her knowledge or consent that has the effect of overpowering her. These situations are known as "presumptions". For further information on consent and the presumptions see **From Report to Court**.

Sexual assault

Sexual assault was one of the new offences created by the SOA 2003. Under section 3(1) SOA 2003 a defendant is guilty of sexual assault if:

- he intentionally touches the complainant;
- the touching is sexual;
- the complainant did not consent to the touching; and
- the defendant did not reasonably believe that the complainant consented.

What is "touching"?

Touching can be done with a part of the body, such as the defendant's hand, or with an object. Touching can also be done through clothes. Touching includes penetration; so a defendant who kissed a woman without her consent using his tongue may have committed a sexual assault.

What is "sexual"?

Under section 78 SOA 2003 touching or any other activity is "sexual" if a reasonable person would think that:

- the act is sexual by its nature; or
- the act may be sexual and because of the circumstances in which it occurred or the purpose the defendant has, or both, it is sexual.

Sexual intercourse is an act that is sexual by its very nature. However, if the touching is not sexual by its nature, for example, touching a part of someone's body through clothes, whether it is considered to be sexual or not will depend on:

- the circumstances of the touching (for example, where the touching occurred, what was touched and with what); and / or
- the defendant's purpose.

Touching can be sexual in some circumstances but not in others. What makes the activity "sexual" is the intention of the person doing the particular act and/or the circumstances in which the act was carried out. For example, touching a woman's breasts for the defendant's sexual gratification would be considered sexual while touching a woman's breasts for the purposes of carrying out a necessary medical examination would not. If the

touching is not sexual but done without consent it may, depending on the circumstances, be a different criminal offence such as common assault.

In addition to the requirements that a person is touched and that the touching is sexual, an offence will only be committed if the touching was done without the complainant's consent where the defendant did not reasonably believe that she was consenting (see the section on consent above).

Some examples of sexual assault

The following situations may be a sexual assault:

- Where a man kisses a colleague at an office party where she did not consent to the kissing and he did not reasonably believe that she consented.
- Where a man touches his girlfriend's breast for his sexual gratification without her consent where he did not reasonably believe that she consented.
- Where a man strokes a woman's hair for his sexual gratification without her consent where he did not reasonably believe that she consented.

Criminal proceedings and sentencing

Sexual assault can be dealt with in either the magistrates' court or the Crown Court depending on the nature and seriousness of the offence. The maximum sentence that a person can receive in the magistrates' court is 6 months imprisonment. The maximum sentence for sexual assault following Crown Court trial is 10 years imprisonment.

Causing someone to engage in sexual activity without consent

Causing someone to engage in sexual activity without consent is a new offence created by the SOA 2003. Under section 4(1) SOA 2003 a defendant is guilty of causing someone to engage in sexual activity if:

- he intentionally causes the complainant to engage in an activity;
- the activity is sexual;
- the complainant did not consent to the activity;
- and the defendant did not reasonably believe that she consented.

The sections on what activities are "sexual" and consent discussed above also apply to this offence.

The offence of causing someone to engage in sexual activity covers situations where the defendant causes a woman to engage in sexual activity alone (for example, by forcing her to remove her clothes or masturbate) or with a third person. Unlike sexual assault, the defendant does not have to touch the complainant in order for an offence to have been committed.

The offence refers to a person being "caused" to engage in sexual activity; a person may be caused to engage in sexual activity because violence is used against her or because she is threatened with something else, such as harm to others or loss of a job. Whether or not a particular thing "causes" a woman to engage in sexual activity without her consent will depend on her personal circumstances, such as her age and other characteristics as well as the circumstances of the case.

For example, a threat to end someone's employment will be a significant threat to a woman who has a family to support or is in financial difficulties but may not be a significant threat to a woman who is financially secure and confident of finding employment elsewhere. What is important is that the defendant is able to exercise power or influence over the complainant that prevents her from being able to exercise free choice.

Some examples of causing someone to engage in sexual activity are:

- Where a man forces his partner to penetrate herself using a vibrator where she does not consent and he does not reasonably believe in her consent.
- Where a man forces a woman to have sex with a third person (regardless of whether this is for his sexual gratification or for another reason, such as for financial gain) where she does not consent and he does not reasonably believe in her consent.

Criminal proceedings and sentencing

All criminal proceedings start in the magistrates' court. Where the sexual activity the defendant caused involved:

- penetration of the complainant's anus or vagina (whether by a penis, another part of the body or anything else);
- penetration of the complainant's mouth with a person's penis;

- penetration of a person's anus or vagina with a part of the complainant's body or by the complainant with anything else; or
- penetration of a person's mouth with the complainant's penis

the offence can only be tried in the Crown Court and the maximum sentence is life imprisonment. Where the offence does not involve penetration in one of the ways outlined above, the offence can be tried in either the magistrates' court or the Crown Court depending on the nature and seriousness of the offence. The maximum sentence that the Crown Court can impose is 10 years imprisonment while the maximum sentence that the magistrates' court can impose is 6 months imprisonment.

The law relating to sexual violence is complex and we have provided a basic overview of the law and terminology. We would strongly advise you to seek legal advice by telephoning our legal advice line.

For further information on sexual offences, their investigation and prosecution please see our handbook *From Report to Court: A Handbook for Adult Survivors of Sexual Violence*. The handbook is available to download free of charge from our website in English, Chinese, French, Punjabi, Somali and Spanish see www.rightsofwomen.org.uk for further information.

Please note that the law referred to in this information sheet is as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.

For free legal advice on sexual violence, criminal law, immigration and asylum issues please call our Sexual Violence Advice Line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open Mondays 11am – 1pm and Tuesdays 10am – 12 noon.

Other useful telephone numbers

Broken Rainbow (same-sex domestic violence advice)	08452 604460	www.broken-rainbow.org.uk
Criminal Justice System for England and Wales (includes the Victims' Code and other useful information)		www.cjsonline.gov.uk
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk
NSPCC Child Protection Line	0808 800 5000	www.nspcc.org.uk
Rape Crisis Federation (for details of local services)		www.rapecrisis.org.uk
Rape & Sexual Abuse Support Centre (RASASC)	0845 122 1331	www.rasasc.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Respond (support for disabled survivors)	0808 8080700	www.respond.org.uk
The Survivors' Trust	01788 550554	www.thesurvivorstrust.org
Women and Girls Network	020 7610 4345	www.wgn.org.uk
Victim Support Line	0845 3030900	www.victimsupport.org

To find your local Sexual Assault Referral Centre (SARC) visit www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/ and follow the links.

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