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## 3.10 Factsheet

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### The legal definition of rape in Scotland

The Sexual Offences (Scotland) Act 2009 states that rape occurs when a person intentionally or recklessly penetrates another person's vagina, anus or mouth with their penis, where the victim does not consent and the person responsible has no reasonable belief that the victim is giving consent.<sup>1</sup> The victim can be male or female. 1 in 10 women and 2% of men in Scotland have experience rape.<sup>2</sup> 1 in 5 women has had someone try to make them have sex against their will.<sup>3</sup>

### What does consent mean?

Consent is defined as free agreement.<sup>4</sup> The law is clear that consent can be withdrawn at any time, and consent to one sexual act does not mean consent to a different act. Consent cannot be given when: someone is intoxicated or unconscious; someone is asleep; the person is mentally disabled; where false representation of identity; and consent cannot be coerced.

### False rape allegations

A 2009 study across 11 European countries found only 4% of reported rapes or attempted rapes in Scotland are false.<sup>5</sup> This is a similar % as the false reporting of any other crime. Many cases are marked as 'no crimes', meaning insufficient evidence was available to say it happened but doesn't mean it didn't and in the past these have often been counted as 'false allegations'. In Scotland, all 'no crimes' are reviewed by the National Rape Task Force Rape Review Team.

### Who commits rape?

In Scotland 92% of rapes are committed by known men,<sup>6</sup> and often by someone who the survivor has previously trusted or even loved. Rapists can be friends, colleagues, clients, neighbours, family members, partners or exes. Stalking and Harassment Law Stalking is unwanted, focused behaviours carried out by one person, or persons, against another, causing fear and alarm.<sup>7</sup>

It includes checking someone's phone, social media history, monitoring their movements, following them, making threats towards them or people they care about. 2010 saw a new offence of Stalking in Scotland.

### Stalking and Students

The NUS Hidden Marks survey of women students found 12% had been stalked whilst they were students at their current institution.<sup>8</sup> Respondents reported the behaviour lasting from between a few weeks to a year or more. The longer the behaviour continued, the greater the impact in terms of their health, studies and relationships.

### Physical harassment on campus

34% of respondents of the Hidden Marks survey said they had experienced one or more forms of physical harassment during their time as a student. Students were most likely to report that they have had their bottom groped, pinched or smacked in a students' union or at a union event (19%) with 14% reporting this happening in and around their institution. 6% stated that their breasts have been touched without their consent in a students' union, with 5% reported this happening to them in their institution. 6% had been 'flushed' at in and around their institutional buildings. 16% had been subject to unwanted sexual contact (unwanted kissing, molesting or touching including through clothes) as a student.

### Interpersonal Abuse (Domestic Abuse)

At least 1 in 5 women in Scotland will experience domestic violence in their lifetime.<sup>9</sup> The 2011-12 statistics revealed that 81% of recorded domestic abuse incidents were violence against a woman committed by a man.<sup>10</sup> The proportion of incidents with a male victim and female perpetrator has risen from 9% in 2002/3 to 17% in 2011/12.<sup>11</sup> On average, two women a week in England and Wales are killed by a violent partner or ex-partner.<sup>12</sup> This constitutes nearly 40% of all female homicide victims.

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[1], [4] Sexual Offences (Scotland) Act 2009. Available online: [http://www.legislation.gov.uk/asp/2009/9/pdfs/asp\\_20090009\\_en.pdf](http://www.legislation.gov.uk/asp/2009/9/pdfs/asp_20090009_en.pdf)

[2] [3] Natsal-3: Key Findings from Scotland (2015) Available online: <http://www.gov.scot/Resource/0047/00474316.pdf> [5], [6] Lovett, J. & Kelly, L. (2009). Different Systems, Similar Outcomes: Tracking Attrition In Reported Rape Cases In Eleven European Countries. London : CWASU. Available online: [http://cwasu.org/wpcontent/uploads/2016/07/different\\_systems\\_03\\_web2.pdf](http://cwasu.org/wpcontent/uploads/2016/07/different_systems_03_web2.pdf) [7] Criminal Justice And Licensing (Scotland) Act 2010. Available online: [http://www.legislation.gov.uk/asp/2010/13/pdfs/asp\\_20100013\\_en.pdf](http://www.legislation.gov.uk/asp/2010/13/pdfs/asp_20100013_en.pdf) [8] Hidden Marks (2010). Available online: [https://www.nus.org.uk/global/nus\\_hidden\\_marks\\_report\\_2nd\\_edition\\_web.pdf](https://www.nus.org.uk/global/nus_hidden_marks_report_2nd_edition_web.pdf) [9] Key Facts About Violence Against Women. Available online: <http://www.gov.scot/Topics/People/Equality/violence-women/Key-Facts> [10], [11] Domestic Abuse Recorded by the Police in Scotland, 2010-11 and 2011-12. Available online: <http://www.gov.scot/Publications/2012/10/9283/3> [12] Office for National Statistics citing Homicide Index, Home Office