

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part One – Rape Etc

Section 1 – Rape

5. This section creates a statutory offence of “rape”. Subsection (1) provides that a person will commit the offence of rape by intentionally or recklessly penetrating, with their penis, the victim’s vagina, anus or mouth, in circumstances where the victim does not consent, and the accused has no reasonable belief that the victim is consenting to the penetration.
6. Subsection (2) defines “penetration” for the purposes of this section. It is defined as a continuing act from entry of the penis until its withdrawal.
7. Subsection (3) provides that there may be circumstances where penetration is initially consented to but consent is subsequently withdrawn. In these circumstances, a person will have committed rape only if the penetration of the victim’s vagina, anus or mouth takes place (or continues to take place) after the point at which consent is withdrawn.
8. Subsection (4) defines the terms “penis” and “vagina”.