

PREVENTING SEXUAL VIOLENCE IN NEPAL: HARMONISATION OF LAWS WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

Research Guide to Sexual Offences in England & Wales

Prepared for Kathmandu Law School

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PREFACE

This collection of resources has been prepared for Kathmandu Law School in Nepal at the request of researchers there working on a project regarding the prevention of sexual violence in Nepal and the harmonisation of laws with international human rights standards.

The collection is intended to provide legal researchers in the Law School with a guide to resources relating to the law in England & Wales and, where possible, links to those resources. We were not asked to undertake any analysis of the law Nepal, nor any comparative analysis of Nepalese and UK laws, but we hope the resources will be useful for Nepalese researchers who are undertaking comparative analysis. The collection may also be useful to legal researchers in other jurisdictions.

The aims in putting together this resource pack were:

- To provide a list of key primary sources (legislation, cases, treaties and the like) and secondary sources (textbooks, commentary, analysis);
- To provide links to open access online material that is available free of charge;
- To provide a brief summary of the law and legal issues that explains how those resources fit together. The summary is not intended in any way to be a detailed legal commentary.

Some sources are not available free of charge but we have included them because researchers may find them particularly useful references. Generally, these are textbooks.

Structure and content of the resource pack

The resource pack is divided into two parts:

- Part 1: The Law and Legal Issues in the Prevention of Sexual Violence
- Part 2: Resources for Researchers

Three important observations should be made about the content of the resource pack.

First, in examining the laws relating to the prevention of sexual violence, we have been careful not to limit the discussion to the law relating to rape, either in substance alone or in substance and procedure. The legal strategies for preventing sexual violence are much wider than those relating to rape alone.

Secondly, the collection does not have a great deal of material regarding the ways the law in England & Wales has been harmonised with international human rights standards. The law in England & Wales has, mostly, for some years provided protections that meet or exceed what human rights standards would require as a minimum. Reforms in recent years have tended to focus on putting in place strategies and practices that ensure the rights and protections provided by law are reflected in policing, prosecution, preventative and protective practices, including ensuring that sexual violence is reported to police and that the justice system responds appropriately. Although there is some consideration of the relevant international rule of law and human rights standards, the collection does not provide a detailed or comprehensive analysis of how laws are to be harmonised with international human rights standards.

Thirdly, we refer to the law in England & Wales, rather than the law in the UK. Of particular note, Scotland has a different criminal law system. While the position in many respects is the same, addressing Scots law and practice would make the discussion unnecessarily complex for the purposes at hand.

PART 1

THE PREVENTION OF SEXUAL VIOLENCE IN ENGLAND AND WALES: THE LAW AND LEGAL ISSUES

INTRODUCTION

Part 1 of this resource guide is divided into five sections. The structure reflects a general theme of law reform in England & Wales in this area: an examination of the sexual violence and the law should not be limited to consideration solely of laws relating to rape and associate offences. The legal strategies for preventing sexual violence encompass a wider range of laws and legal issues, as well as policy initiatives that do not require legislative change or action by the courts.

The resource guide is not intended to be comprehensive. Rather, it aims to provide researchers with key primary sources and a brief outline of some of the main issues that have arisen in England & Wales as the law has changed over the years.

The main focus is on legislation, rather than case law. In this area of the law it is statute law that establishes the main framework. There are many important cases that interpret and apply the law but, given the purpose of this guide and the limited space and scope, legislation dominates the discussion. Substantial reference is also made to the legal and policy guidance of the Crown Prosecution Service (CPS), which is all available online and is an invaluable resource for anyone researching law and policy in this area.

The five sections of this guide are:

1. The law relating to sexual offences

This encompasses the substantive criminal law relating to sexual violence, particularly under the Sexual Offences Act 2003. We include within the scope of sexual violence:

- the social context in which rape and sexual violence occur, including myths about rape;
- the offence of rape as it is traditionally understood;
- assaults of a sexual nature that do not constitute rape but which have generally been brought under the umbrella of sexual offences;
- issues relating to consent
- defences, and we focus on intoxication;
- factors that determine the seriousness of the offence;

- anonymity; and
- the abolition of legal immunity for husbands who rape their wives.

2. Criminal procedure and evidence

We address here one of the most significant aspects of criminal procedure and evidence:

- The admissibility of evidence relating to the victim's sexual behaviour in the past.

3. Beyond the sexual offences framework: domestic and family violence

This encompasses laws relating to domestic and family violence, by which we mean violence that occurs in what are traditionally seen as private spaces – most notably, in the home – or in families. Importantly, the ordinary criminal law of assault (and, where relevant, sexual offences) should cover any such violence. However, victims may be put in fear of violence that does not fall within the scope of assault laws, victims are often frightened to report assaults, police may be reluctant to prosecute, and in some instances violence committed against a family member may not be criminal. Domestic and family violence is important because its victims can often be vulnerable to systematic and repeated sexual violence in the home.

We include within the scope of domestic and family violence:

- The UK government definition of domestic violence and the relationships between sexual offences and family violence;
- The use of disclosure schemes to prevent violence and protect victims;
- Court orders to protect victims of domestic violence, especially by preventing the offender (often a husband) from approaching the family home, wife or children;
- Laws that protect victims of harassment; and
- Policy initiatives that aim to address violence against women and girls.

4. Strategies and practices in prosecution

Reforms in recent years have tended to focus on putting in place strategies and practices that ensure the rights and protections provided by substantive law and procedure are reflected in policing, prosecution preventative and protective practices, including:

- Strategies to ensure that sexual violence is reported to police and that the justice system responds appropriately; and
- Training of lawyers.

5. The rule of law and international human rights standards

The collection does not have a great deal of material that relates to the ways that the law in England & Wales has been harmonised with international human rights standards. The law in England & Wales has, mostly, for some years provided protections that meet or exceed what human rights standards would require as a minimum. There are notable exceptions which are mentioned at different points in Part 1. More generally, however, we have outlined the way that rule of law standards should govern law and legal institutions, and indicated some of the most important international instruments that are referred to in legal debates in England & Wales. While they are not frequently used as points of reference in relation to the law regarding sexual violence, they often embed standards against which laws in this country might be evaluated.

There are many other matters that could be addressed in a consideration of laws relating to the prevention of sexual violence. The limited scope of the project brief precludes a wider consideration of issues but we note that further matters addressed by a comprehensive study of sexual violence could include:

- homosexual sexual activity, though we note that offences criminalising consenting homosexual sexual activity have been abolished in England & Wales, reflecting autonomy principles and privacy rights, and we note that equal treatment under the law means that the law and procedure relating to sexual violence should not be discriminatory on the basis of sexual orientation;
- the production or possession of pornography; and
- forced marriage.

1. THE LAW RELATING TO SEXUAL OFFENCES

A. Historical background

In England & Wales the law relating to sexual offences has fallen into three main periods:

- Before 1956: There was no statute that criminalised rape or sexual offences. However, the **common law** applied. Rape and assaults of a sexual nature were offences under the common law.
- 1956 – 2003: Parliament enacted the **Sexual Offences Act 1956**. This Act codified the common law offences as they existed at 1956.

In this period, governments and parliaments sought to address issues relating to sexual offences as they arose in the public consciousness and over time various amendments were made to the 1956 Act, though this piecemeal approach to reform led to confusion about some aspects of the law. Furthermore, the law was in many ways outdated (with some parts dating as far back as the 19th century) and was arguably discriminatory to such an extent that some commentators considered it might violate the UK's international human rights obligations.¹ A review of the UK sexual offences legal framework commenced in 1999 and culminated in the enactment of the **Sexual Offences Act 2003**, which replaced the 1956 Act.²

- 2003 – present: **The Sexual Offences Act 2003** remains the core element of the UK legislation dealing with sexual offences. The following discussion of the law refers to the 2003 Act.

B. Social context: Myths about Sexual Violence

Key Sources

Report:

Home Office, [Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials](#), 2006, pages 2-3 ('Rape myths')

Policy:

Crown Prosecution Service, Policy and Guidance, [Chapter 21: Societal Myths](#)

Sexual violence occurs in a social context where commonly held beliefs about rape and sexual behaviour are inconsistent with established evidence. These beliefs may persist in spite of the evidence against them and so are appropriately referred to as myths. Importantly, they can influence the ways that individuals, communities and criminal justice institutions treat victims of sexual violence.

¹ Nicole Westmarland, *Rape Law Reform in England and Wales*, School for Policy Studies Working Paper Series, Paper Number 7 April 2004, p 1, 3.

² The Act came into force in May 2004.

Government agencies in England & Wales have have acknowledged and identified myths about rape, and contrasted them with the evidence. A 2006 report by the Home Office identifies some of the myths and notes that they are inconsistent with evidence including, for example:³

Myth:	Rape is committed by strangers.
Evidence from research:	<i>It is mainly committed by men known to the victim.</i>
Myth:	There are always injuries.
Evidence:	<i>A minority of reported rapes involve major external or internal injuries.</i>
Myth:	Anyone facing the possibility of rape will resist.
Evidence:	<i>Many do resist, many freeze through fear or shock, or decide that resistance would be futile or dangerous.</i>
Myth:	A rape victim will report promptly that they have been raped.
Evidence from research:	<i>The majority of rapes are not reported at all and many victims take some time to speak to a close friend before deciding to report.</i>

It has been seen as important that the criminal justice system address the existence myths. The Crown Prosecution Service includes a chapter on myths in its legal and policy guidance for prosecutors, noting that it is 'imperative that [prosecutors] recognise these myths and challenge them at every opportunity', and identifying not only the myths and realities, but also the implications of failing to address the myths and acknowledge the realities.⁴

C. Sexual Offences Act 2003

Aims and rationale of the 2003 Act

Professor Ashworth argues that the legislative history and law reform processes that led to the enactment of the 2003 statute suggested that there are seven purposes underlying it:⁵

- to modernise the law of sexual offences and to bring it more closely into line with contemporary attitudes;
- to create gender-neutral offences (apart from the offence of rape) to ensure equality of protection and of criminalisation;
- to provide greater clarity in this area of the law;
- to clarify the law relating to consent;
- to secure appropriate protection for the vulnerable, in particular children and persons with mental disorder;
- to provide appropriate penalties to reflect the seriousness of the crimes committed; and
- to reduce the attrition rate in rape cases and help to convict the guilty.

³ L Kelly et al, *Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials*, Home Office Online Report 20/06 2006, p 2

<http://tna.europarchive.org/20071206133532/homeoffice.gov.uk/rds/pdfs06/rdsolr2006.pdf>

⁴ CPS Policy and Guidance, Rape and Sexual Offences, Chapter 21: Societal Myths,

http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/societal_myths/

⁵ A Ashworth & J Horder, *Principles of Criminal Law*, 7th Ed, 2009 ('Ashworth'), p 340-341.

As Ashworth explains, the rationale behind the current framework, and in particular behind the 2003 Act, is the autonomy principle, and he identifies the relationship between autonomy, sexual offences and human rights standards:

‘Part of the rationale for laws against sexual offending is to protect the autonomy of individuals in sexual encounters, ensuring that there are criminal prohibitions to prevent unwanted sexual interference and to criminalise those who culpably interfere with individuals’ sexual autonomy. In human rights terms, states have a positive obligation to have in place laws that protect citizens from unwanted sexual interference.’⁶

Contents, scope and structure of the 2003 Act

The table of contents to the Sexual Offences Act 2003 is available at:

<http://www.legislation.gov.uk/ukpga/2003/42/contents>. Looking at the table of contents will be useful in understanding the scope and structure of the Act.

The 2003 Act is divided into Parts 1 and 2. Part 1 (sections 1–79) deals with sexual offences.

In Part 1 the offences in sections 1-4 are based on a lack of consent. For the remaining offences in Part 1 consent is irrelevant; in general terms, the terminology used tends to be ‘sexual activity’ rather than ‘sexual assault’. This may reflect that fact that an act is committed against a vulnerable person, for example, a child, or a person in one’s care.

Key groups of offences in Part 1 are:

- Sections 1-4 create offences of rape, assault by penetration, sexual assault and causing sexual activity.
- Sections 5-24 create offences against children and others under 18. They draw distinctions between children under 13, aged 13-16, and those under 18 where the offender has abused a position of trust.⁷
- Sections 25-29 create offences where the victim is a child and the offender a member of the family. Importantly, ‘family’ is defined broadly. It may include a parent, grandparent, brother, sister, half-brother, half-sister, aunt, uncle, cousin, stepbrother or stepsister. It will also be relevant whether a person is living in the same house as the victim or caring for them.
- Sections 30-44 create offences which can be committed against people with mental disorders, recognising the vulnerability of this category of victims.
- Sections 45-60C are concerned with the protection of children against indecent photographs, pornography, prostitution and trafficking.⁸

There is other legislation that also creates sexual offences. For example, paying for the services of a prostitute who is subject to exploitation.⁹

⁶ Ashworth, p 338 (emphasis added), citing (on the human rights point) *X and Y v Netherlands* [1985] ECHR 4 and *MC v Bulgaria* (2005) 40 EHRR 459, Application 39272/98, 4 March 2004.

⁷ A child under 13 cannot legally consent to sexual activity under English law, though CPS guidelines indicate that actual consent may be a mitigating factor and reduce the sentence the judge gives for the offence: *Attorney-General's Reference No 74 & 83 of 2007* [2007] EWCA Crim 2550.

⁸ Ashworth, p 339, provides a more detailed breakdown. However, consulting the contents of the Act should provide a sufficient guide to the various groups of offences.

⁹ Policing and Crime Act 2009, section 14.

D. Key offences: Rape and Assault

Key Sources

Legislation: Sections 1, 2 and 3 of the [Sexual Offences Act 2003](#).

There are three main primary sexual offences, each sitting in the first three sections of the act. They are divided into two category headings of 'Rape' and 'Assault':

Rape

Section 1: Rape

Assault

Section 2: Assault by penetration

Section 3: Sexual assault

There are important distinctions between the three primary offences, and they also share some common features. This table shows the key elements of the offences and highlights the distinctions.

Sec	Offence	Characterised by offender's acts and the complainant's lack of consent and the offender's state of mind.	Maximum penalty
1	Rape	Penetration of the vagina, anus or mouth, by the penis. <i>Note that penetration must be by the penis.</i>	The victim does not consent	Intentional penetration, and Did not reasonably believe the victim was consenting	Life imprisonment
2	Assault by penetration	Penetration of the vagina or anus, by any part of the body or by an object, and the penetration is sexual <i>Note that (as compared to rape) penetration does not need to be by the penis. Note that (as compared to rape) this offence does not include penetration of the mouth.</i>	The victim does not consent	Intentional penetration, and Did not reasonably believe the victim was consenting	Life imprisonment <i>Note that this offence attracts the same penalty as rape.</i>
3	Sexual assault	Intentional touching of a person's body, and the touching is sexual. <i>Note that (as compared to the other two offences) penetration is not required at all.</i>	The victim does not consent	Intentional touching, and Did not reasonably believe the victim was consenting	10 years imprisonment

There is a fourth sexual offence that, like the above three, is characterised by the fact the victim does not consent. This offence, under **section 4**, is '**causing a person to engage in sexual activity without consent**'.

This offence criminalises some acts of sexual violence which are not caught by sections 1-3. The offence captures a situation where the defendant intentionally causes the victim to engage in sexual activity, and the victim does so but is not consenting. For instance, the defendant may force the victim to masturbate by, for example, threatening the victim, by being in a position of dominance or authority over the victim or by physical coercion. This offence would also cover a scenario in which the victim is tricked by the defendant into believing that a third party wants to have sex with him (when the third party does not).¹⁰

Causing sexual activity carries a maximum sentence of life imprisonment where the activities involve penetration and a maximum sentence of ten years where they do not.

To understand all of these offences it is essential to look at the full text of the sections and at the Act more generally, including:

- Section 78, which explains the meaning of term 'sexual'
- Sections 74-76, which explain the law regarding consent

E. Key definition: 'Sexual'

Key Sources

Legislation: Section 78 of the [Sexual Offences Act 2003](#).

Section 2 and 3 offences (and also section 4) require that touching, penetration or activity must be 'sexual'. The term 'sexual' is defined in section 78, which states:

Penetration, touching or any other activity is sexual if a reasonable person would consider that:

- (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual

In general terms, this means penetration or touching is either (a) inherently sexual in nature or (b) is not inherently sexual but the purpose of the act or the circumstances in which it occurs make it sexual in nature.

¹⁰ Ashworth, p 346, cites these as examples of section 4 offences; see also *R v SD* [2008] EWCA Crim 527.

F. Key issue: Consent

Key Sources

Legislation:	Sections 74, 75, 76 and 78 of the Sexual Offences Act 2003
Cases:	Of the many cases relevant to this topic, key cases include: <i>R v C</i> [2009] UKHL 42 <i>R v Bree</i> [2007] EWCA Crim 804 <i>R v Doyle</i> [2010] EWCA Crim 119 <i>R v Olugboja</i> [1981] EWCA Crim 2 <i>Williams</i> [1923] 1 KB 340 <i>R v Jheeta</i> [2007] EWCA Crim 1699 <i>R v Tabassum</i> [2000] EWCA Crim 90 <i>R v Green</i> [2002] EWCA Crim 1501 <i>R v Piper</i> [2007] EWCA Crim 2131
CPS guide:	What is consent? (two page summary guide, 2015)

The concept of consent is central to sexual offences laws in England & Wales, as it is in every jurisdiction.

It occupies two key places in the elements of the primary offences:

1. **The victim did not consent.** Sometimes this will be very straightforward in fact and in law. In other instances it will be less straightforward.

Factually, consent may be given to some acts, but not others. It may be given and then withdrawn. In either such instance, when there is no consent or when there is no longer consent, the victim is not consenting and the relevant element of the offence is established.

Legally, there may be questions arise as to whether consent given under duress is truly consent, and what exactly may constitute duress.

2. **The defendant did not reasonably believe the victim was consenting.** This encompasses at least two possible states of mind. First, the defendant simply knows the victim does not consent but proceeds with the touching or penetration regardless. Secondly, what of the case where a defendant claims that, at the time of the touching or penetration, he honestly believed the victim was consenting (even though the victim was not, in fact, consenting)? The law is that a mistaken but honest belief is not enough. The law of consent means that the belief must also be a reasonable belief.¹¹

¹¹ Prior to the 2003 Act a defendant who held an honest but mistaken belief that the victim was consenting would have been acquitted.

The burden of proof will fall on the prosecution. That is, the prosecution must prove that the victim did not consent and the prosecution must prove that the defendant had no reasonable belief the victim was consenting.

The meaning of consent: section 74

The Sexual Offences Act 2003 provides the definition of the consent under the Act: 'a person consents if he agrees by choice, and has the freedom and capacity to make that choice.' (Note that all uses of word 'he' in the legislation are to be read as 'he or she'.)

Consent warrants some close consideration. It needs to be seen in the context in which sexual violence offences occur and the 2003 Act has important provisions regarding the legal presumptions about consent which apply in criminal cases.

Consent in context

According to government statistics published in 2013, around 90 per cent of victims of the most serious sexual offences in the previous year knew the perpetrator, compared with less than half for other sexual offences.¹² The most commonly reported victim-offender relationship among victims of the most serious offence types was a spouse or partner (56 per cent).¹³

The fact that most defendants and victims are well known to each other, and the fact that the very nature of sexual offences means that those crimes often take place in private with only a victim and a perpetrator able to give first-hand evidence, means that consent or belief in consent is often the most contested and controversial issue in courtrooms and a serious obstacle to successful prosecutions.¹⁴

Proving that the victim did not consent / proving that the defendant did not reasonably believe there was consent

The general definition of consent in section 74 may be an adequate basis on which to proceed in some cases. It will be quite plain on the facts that the victim did not consent, and equally plain that the defendant did not believe the victim was consenting.

Nonetheless, the concepts of agreement, choice, capacity and freedom used in section 74 are clearly very difficult to define and apply with ease, and they have been subject to much judicial interpretation. In relation to the concept of capacity in particular, it has been held that this implies a certain level of

¹² Ministry of Justice, Home Office and Office of National Statistics, *An Overview of Sexual Offending in England and Wales*, 2013, p 6, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf

¹³ Ministry of Justice et al, *An Overview of Sexual Offending in England and Wales*, 2013, p 16. It is noteworthy that since 1991 it has been recognised under English law that rape can occur within a marriage and that marrying someone is not equivalent to giving an irrevocable consent: *R v R* [1991] UKHL 12 (see further Section 1(J) of this resource guide). In 1993, Article 2 of the UN Declaration on the Elimination of Violence Against Women categorised marital rape as a form of violence against women.

¹⁴ See Joint CPS and Police Action Plan on Rape; January 2015, http://www.cps.gov.uk/publications/equality/vaw/rape_action_plan.pdf. See also the excellent two-page CPS summary aide-memoire, *What is Consent?* http://www.cps.gov.uk/publications/equality/vaw/what_is_consent.pdf, January 2015.

understanding of the acts and their significance.¹⁵ This will be particularly relevant in cases where the victim is voluntary intoxicated, where it has been held that if, through drinking, the victim has temporarily lost her capacity to choose whether to have intercourse, she is not consenting.¹⁶

It may be less clear in other circumstances whether the victim did or did not consent or whether the defendant believed the victim was consenting. The 2003 Act addresses a range of circumstances in sections 75 and 76 by establishing a framework of presumptions.

First, in section 75, the Act contemplates circumstances where the victim's lack of consent and the defendant's absence of reasonable belief in consent will not be immediately clear. It says that if any of the following circumstances existed, and the defendant knew they existed, then it will be presumed that the victim was not in fact consenting, and it will be presumed that the defendant did not reasonably believe the victim was consenting. Importantly, those presumptions may be displaced or rebutted by evidence. Once the presumption is displaced, the general definition of consent (in section 74) will apply and consent issues will be determined on the evidence. The circumstances specified in section 75 are, in summary, that: the victim was in fear that violence would be used against them or another person, or such violence had been used immediately prior to the act, or the victim was unlawfully detained, or the victim was asleep or unconscious, had a physical disability that affected their ability to communicate, or had been drugged so that they could be overpowered.¹⁷

To the extent that the circumstances involve violence and threats of violence at the time of or immediately before the defendant's actions, the law begins to tackle the issue of consent (or perhaps more accurately, submission) obtained under duress. However, a section 75 presumption will not apply if violence is threatened in the non-immediate future, or where there has been a history of violence, or where the threat is non-violent (for example, the threat of being fired from a job). Where a section 75 presumption does not apply then lack of consent must be proved under section 74, usually on the basis that there was not a freely made choice to consent. Case law is not entirely clear on how much duress will be required before it can be said the victim's choice was not freely made. It was made clear in *R v Doyle* that there is a difference between the 'reluctant but free exercise of choice on the one hand... and unwilling submission to demand in fear of more adverse consequences from refusal on the other.'¹⁸ The line between the two can sometimes be difficult to draw, but it appears that the jury must focus not on the nature of the threat (i.e., the degree of violence or adverse consequences that were threatened) but on the effect of the threat (i.e., how great was its effect on the victim).¹⁹ This is a subjective question focusing on the state of mind of the victim.

Secondly, in section 76, the Act contemplates circumstances where the defendant has deceived the victim. For instance, the defendant told the complainant that penetration was a necessary medical procedure when it was not, or the defendant had impersonated the complainant's husband. In these circumstances there will again be a presumption that the victim was not in fact consenting, and it will be presumed that the defendant did not reasonably believe the victim was consenting. However unlike

¹⁵ The leading case on capacity under the 2003 Act is *R v C* [2009] UKHL 42, which held that in order to be able to make a decision a person must be able to understand the information relevant to making that decision and must be able to weigh that information in the balance to arrive at a choice. As Baroness Hale states at (para 27), 'One does not consent to sex in general but to this act of sex with this person at this time and place.' Where a person is not able to weigh the information in the balance so as to make a choice they do not have the capacity to consent.

¹⁶ *R v Bree* [2007] EWCA Crim 804

¹⁷ Section 75(2)

¹⁸ *R v Doyle* [2010] EWCA Crim 119

¹⁹ *R v Olugboja* [1981] EWCA Crim 2

the position regarding section 75, the presumption will be 'conclusive'. That is, the presumption may not be displaced or rebutted by evidence, and those elements of the offence will be considered proved.

G. Key issue: Intoxication of the defendant

Key Sources

Cases	Of the many cases relevant to this topic, key cases include: <i>R v Bailey</i> [1983] EWCA Crim 2 <i>R v Hardie</i> [1984] EWCA Crim 2 <i>DPP v Majewski</i> , [1976] UKHL 2 <i>R v Heard</i> [2007] EWCA Crim 125 <i>R v Fotheringham</i> (1988) 88 Cr App R 206 <i>R v Grewal</i> [2010] EWCA Crim 2448
Report	Law Commission, <i>Intoxication and Criminal Liability</i> , 2009

Many sexual offences prosecutions are made more complicated by the fact that the defendant was voluntarily intoxicated through consumption of alcohol or drugs at the time of the incident.²⁰ According to the UK Prime Minister's 2004 Strategy Unit Report *Alcohol Harm Reduction Strategy for England* heavy drinking increases the risk of a sexual assault being committed and one third of domestic violence victims say that their assailant had been drinking beforehand.²¹

Under English law it has long been considered that an offender should not be able to escape criminal liability simply because he or she was intoxicated. In *DPP v Majewski* the House of Lords said that to 'leave the citizen legally unprotected from unprovoked violence where such violence was the consequence of drink or drugs having obliterated the capacity of the perpetrator to know what he was doing or what were its consequences' would not provide sufficient protection to the community.²² (There is clearly much in the decision that is based on policy – it would be wrong, the argument goes, for a person to voluntarily get themselves drunk and then escape the consequences that drunkenness had on their judgment or behaviour.) It was held in this case that self-induced intoxication was not a defence to a criminal charge of 'basic intent' (that is, a crime where no specific intent must be proved).²³

²⁰ The discussion in this section considers circumstances where the defendant is voluntarily intoxicated. The position may be different where a defendant is not voluntarily intoxicated (e.g., they have been tricked or forced into consuming drugs or alcohol).

²¹ Cabinet Office, 15 March 2004, pages 4, 13, 14 and 46.

²² *DPP v Majewski*, [1977] AC 443, 495, per Lord Simon.

²³ Intoxication may provide a defence where a specific intent is required. However, what constitutes a crime of specific or special intent as opposed to a crime of basic intent remains unclear. The Law Commission has noted that the 'basic intent' and 'specific intent' distinction is 'confusing', 'not particularly enlightening' and have suggested it is 'profoundly misleading' (2009), paras 1.17, 2.3. Still, the terminology remains a part of the law. The complexity of the issues and the way they apply in the sexual offences context is well illustrated in *R v Heard* [2007] EWCA Crim 125. Having said that, the Court of Appeal in *Heard* (at para 31) summarised the position as being that 'crimes of specific intent are those where the offence requires proof of purpose or consequence' and made it clear (at para 32-33) that rape, assault by penetration and sexual assault are all offences of basic intent to which voluntary intoxication does not provide a defence by negating the intention.

There is therefore no general common law or statutory defence of intoxication. That is to say, the simple fact that a defendant was voluntarily intoxicated at the time he or she allegedly committed the offence charged does not automatically provide the defendant with a defence.

For non-consensual sexual offences, the issue will often centre on whether the defendant had a reasonable belief in the victim's consent. The position under English law is that, when determining whether a voluntarily intoxicated defendant had a lack of reasonable belief in the victim's consent, the reasonable grounds for belief will be judged from the perspective of a sober man, not an intoxicated one.²⁴

It is important to note that different countries have taken different approaches to whether intoxication should provide a defence to crimes. The Law Commission provides a good overview of the position in several common law countries at 2009. While the law in some of those countries may have since changed, it provides a useful overview of different approaches.²⁵ It may also be noted that the position may be different where a defendant is not voluntarily intoxicated (e.g., they have been tricked into consuming drugs or alcohol).²⁶

H. Seriousness of offences

Key Sources

Law: Sentencing Council, [Sexual Offences – Definitive Guideline](#), April 2014

The Sentencing Council for England and Wales is established by section 118 of the [Coroners and Justice Act 2009](#). Under section 120 of the Act the Council prepares and publishes guidelines on sentencing.

The primary offences in sections 1-3, and section 4, are quite obviously serious offences. Where there has been a greater degree of harm, or greater culpability of the offender, or where an offence was committed in what are called 'aggravating circumstances', the offence is viewed more seriously. There also may be mitigating factors, which arguably reduce the seriousness or provide a counterweight to aggravating factors.

The law in England & Wales recognises the degree of seriousness at the stage of sentencing.

The Sentencing Council guidelines are fairly clear and must be consulted in order to see how they function and to see all the factors.²⁷ However, the main concepts they use include the following (each with some examples):

Harm

- Severe psychological or physical harm
- Penetration using large or dangerous object(s)

²⁴ *R v Heard* [2007] EWCA Crim 125; *R v Fotheringham* (1988) 88 Cr App R 206; *R v Grewal* [2010] EWCA Crim 2448

²⁵ The Law Commission, *Intoxication and Criminal Liability*, 2009. See also *R v Daviault* [1994] 3 SCR 63 on the Canadian position and the Charter of Rights and Freedoms.

²⁶ The Law Commission, *Intoxication and Criminal Liability*, 2009, page 17 paragraph 2.76

²⁷ See pages 7-26 for guidelines on rape and associated offences.

- Pregnancy or sexually transmitted infection (STI) as a consequence of offence
- Additional degradation/humiliation

Culpability

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Commercial exploitation and/or motivation
- Offence racially or religiously aggravated

Aggravating factors

- Specific targeting of a vulnerable victim
- Blackmail or other threats made
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home (including victims of domestic violence)
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence

I. Anonymity

Complainants (or victims) in rape and associated sexual offences cases are entitled to anonymity under the Sexual Offences (Amendment) Act 1992. The rationale for anonymity as stated in a government review of the law in 1975 is that:

‘public knowledge of the indignity which [the complainant] has suffered in being raped may be extremely distressing and even positively harmful, and the risk of such public knowledge can operate as a severe deterrent to bringing proceedings...The balance of argument seems to us to be in favour of anonymity for the complainant other than in quite exceptional circumstances.’²⁸

²⁸ Home Office, *Heilbron Committee: Report of the Advisory Group on the Law of Rape*, Cmnd 6352, December 1975, p 27, paras 153-7, as cited in S Lipscombe, *Anonymity in Rape Cases*, House of Commons Library, 2012 <http://www.parliament.uk/business/publications/research/briefing-papers/SN04746/anonymity-in-rape-cases>

Defendants are not entitled to anonymity, though there is regularly debate about whether this position should change. A good outline of the law, reform proposals and rationales can be found in the Standard Note produced by the House of Commons Library in 2012.²⁹

J. Marital Rape

Although not referred to in the Sexual Offences Act 2003, a point that warrants a brief note is the issue of rape in marriage.

At common law a husband could not be convicted of the rape of his wife. The marital rape exemption was abolished in England and Wales in 1991 in the decision by the Appellate Committee of the House of Lords in [R v R](#) [1991] UKHL 12. Since then the law in England and Wales has recognised that rape can occur within a marriage and that marriage is not equivalent to irrevocable consent.

²⁹ S Lipscombe, *Anonymity in Rape Cases*, House of Commons Library, 2012
<http://www.parliament.uk/business/publications/research/briefing-papers/SN04746/anonymity-in-rape-cases>.

2. CRIMINAL PROCEDURE AND EVIDENCE

Key Sources

Legislation: Parts 34, 35, and 36 of the [Criminal Procedure Rules 2014](#)

The Sexual Offences Act 2003 Act and other related statutes create criminal offences. A trial for a sexual offence is a criminal trial and is regulated by the Criminal Procedure Rules. The Rules provide for the procedural aspects of a trial and govern the processes by which evidence may be introduced to the court.

The process of prosecution is, of course, complex. Many of the issues in sexual violence cases are common to criminal prosecutions generally. Some are common to cases where there are vulnerable victims and witnesses. A comprehensive 250-page guide produced by the UK Ministry of Justice may be useful in considering the range of issues that arise.³⁰ We cannot address a wide range of legal or practical issues in this document. However, in the following section we address an issue that has been important in sexual offences matters.

A. Treatment of evidence of victim's sexual activity in the past

Key Sources

Legislation: Parts 36 of the [Criminal Procedure Rules 2014](#)
Section 41 of the [Youth Justice and Criminal Evidence Act 2003](#)

Cases: [R v RT, R v MH](#) [2001] EWCA Crim 1877
[R v A](#) [2001] HL 25

In the past, it was relatively common for victims of rape to have their characters attacked in court by defence counsel. This defensive strategy aimed to either shift the blame onto the victim or to suggest that in having had previous sexual relationships – in being ‘unchaste’ – the victim could not be truthfully alleging rape. The latter is akin to the myth that a prostitute cannot be raped.

It was eventually recognised that questions about a victim's sexual history are generally irrelevant. In order to prevent the unnecessary traumatising of the victim, evidence of her past sexual conduct became inadmissible unless the offender could satisfy the court that the questions were relevant to establishing his defence/innocence.

Section 41 of the Youth Justice and Criminal Evidence Act 1999 prohibits evidence or cross-examination about the sexual behaviour of a victim of a sexual offence, except with permission of the court. The court can only give permission if it receives an application from the defendant. An

³⁰ *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance in using special measures*, Ministry of Justice, March 2011, <http://www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf>

application is made under Part 36 of the Criminal Procedure Rules. Part 36 allows for the possibility that questions may be asked about a victim's previous sexual history and that evidence about prior sexual behaviour may be introduced. To succeed in a Part 36 application a defendant must satisfy the court that the conditions and exceptions in section 41 of the Youth Justice and Criminal Evidence Act 1999 are met. [Section 41](#) should be consulted in order to understand the conditions and exceptions.

The House of Lords in [R v A](#) [2001] UKHL 25 held that there must be some exceptions that permit questions to be asked; if not, then it would conflict with the defendant's right to a fair trial. Section 41 is thus interpreted in that light.

The Court of Appeal in [R v RT, R v MH](#) (decided shortly after R v A) provides a very useful discussion of the scope and limits of section 41.

For witnesses and victims, the Prosecutors' Pledge requires prosecutors to 'Protect victims from unwarranted or irrelevant attacks on their character and may seek the court's intervention where cross examination is considered to be inappropriate or oppressive.'³¹

Has Section 41 worked to its intended effect? The Home Office reviewed the operation of the law in 2006 and concluded that there were numerous problems and that prior sexual history evidence was not as greatly restricted as the Act would seem to suggest it should be. Among the problems, the Criminal Procedure Rules were not being followed.³²

³¹ Crown Prosecution Service, Prosecutors' Pledge,
http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

³² L Kelly et al, *Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials*, Home Office Online Report 20/06, 2006,
<http://tna.europarchive.org/20071206133532/homeoffice.gov.uk/rds/pdfs06/rdsolr2006.pdf>

3. STRATEGIES AND PRACTICES IN PROSECUTION

Strategies and practices in criminal justice agencies are a crucial part of addressing sexual violence issues.

The Crown Prosecution Service (CPS) is one part of the criminal justice system, which includes other organisations such as the police, the courts, defence lawyers, the National Offender Management Service, Youth Offender Teams, the Witness Service and the Prison Service.

The police are responsible for investigating allegations of rape and for gathering the evidence. The police do not refer every complaint of a criminal offence to the CPS. In more serious or complex cases, it is the CPS who decide whether a person should be charged with a criminal offence, and, if so, what that offence should be. Where a police decision maker considers there is sufficient evidence to charge the offence of rape, they must refer that case to a Crown Prosecutor, who will make the decision whether to charge.

The CPS is the public prosecution service for England and Wales, headed by the Director of Public Prosecutions, set up in 1986 to prosecute cases investigated by the police. Although the CPS works closely with the police, the CPS is an independent entity. The CPS is answerable to Parliament through the Attorney General (the senior Law Officer of the Crown).

The CPS is a national organisation consisting of 42 Areas, plus an out-of-hours service called 'CPS Direct'. Each Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one Area covering London.

A. Accreditation and standards for prosecutors

Since 1 October 2007, only prosecution advocates who have attended a CPS accredited course and have demonstrated the right skills while being monitored are able to undertake rape prosecutions in court. Accredited courses are run by the various circuits and accredited by Strategy and Policy Directorate according to the criteria in the principles document. Advocates must attend one such course every four years, must be monitored and reviewed to ensure competence is attained and maintained. Only applicants who have attended CPS accredited training and have met the criteria established in the Principles documents are appointed to the specialist Rape Panel.

In addition, the CPS has set down a standard for specialist prosecutors for rape. A specialist network also provides mutual support to rape specialist prosecutors by enabling them to share knowledge and experience. This reinforces their expertise and assists future rape prosecutions.

One method by which checks and balances are kept in place is if, following the receipt of an evidential report from the police, a rape specialist prosecutor decides that the case should not proceed, a second rape specialist must confirm the decision.

In 2013, dedicated Rape and Serious Sexual Offences units were introduced across the CPS in the UK.

4. DOMESTIC AND FAMILY VIOLENCE

The UK government has undertaken significant legal and policy steps to combat domestic and family violence, and (both in that context and beyond) violence against women and girls.

The definition of domestic violence used in all UK government policy is:

Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.³³

The following sections outline some key laws and initiatives. Many of these issues are dealt with by legislation other than the Sexual Offences Act 2003.

For a good outline of the issues regarding sexual violence in the domestic and family environments, see the Australian Law Reform Commission's report, *Family Violence – A National Legal Response*, Chapter 24, 'Sexual violence and family violence'.³⁴

A. Domestic violence disclosure scheme (DVDS)

Following a series of recommendations and pilot programmes, the DVDS was launched in England and Wales in 2014 with the goal of informing women that their partner may have a history of violence and thus protecting potential future victims of domestic violence³⁵. The DVDS did not introduce any new legislation and operates within the existing legal framework in the UK.³⁶ However, it:

- Introduced recognised and consistent procedures for disclosing information that enables the new partner of a previously violent person to make informed choices about how or whether to continue a relationship with that previously violent person;
- Created the 'right to ask'. This is the right for an individual to ask police to check whether a new or existing partner has a violent past. If records show that an individual may be at risk of domestic violence from a partner, the police will consider disclosing the information. A disclosure can be made if it is legal, proportionate and necessary to do so; and
- Created the 'right to know'. This enables an agency to apply for a disclosure if the agency believes that an individual is at risk of domestic violence from their partner. Again, the police can release information if it is lawful, necessary and proportionate to do so.

³³ Home Office, Guidance, Domestic Violence and Abuse, 2013 <https://www.gov.uk/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition>

³⁴ ALRC, *Family Violence – A National Legal Response*, ALRC Report 114, 2010, Chp 24, 'Sexual violence and family violence' <http://www.alrc.gov.au/sites/default/files/pdfs/publications/24.%20Sexual%20Assault%20and%20Family%20Violence.pdf>

³⁵ More detailed information on the scheme, including outlines of risk assessment and details of the procedures agencies are to follow is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224877/DV_Disclosure_Scheme_Guidance_-_REVISED_W.pdf

³⁶ The police have a common law power to disclose information where necessary to prevent a crime. However, this power must be exercised in accordance with statutory obligations. Of particular relevance are the Human Rights Act 1998 (which makes Art 8 ECHR part of the law in England and Wales), the Rehabilitation of Offenders Act 1978 and the Data Protection Act 1998, which will all influence any decision to make a disclosure using the common law power and may restrict what can be disclosed.

Under the DVDS, where all the tests are met, the police may disclose a person's unspent convictions or recorded cautions related to domestic violence. Where a new partner does not have the mental ability to understand the disclosure or would be put in danger by the disclosure, a disclosure may not be made to the new partner but may be made to the person best able to safeguard the new partner (e.g., a social worker or relative).

B. The use of court orders to protect victims of sexual violence

There has been a system in place since 2003 under which a court can make a protective order that will help protect a victim of sexual violence.

The current framework of protective orders includes two types of protective civil orders:

- Sexual offences prevention orders (SOPO) and foreign travel orders (FTOs)³⁷ which can be imposed on an offender who has been convicted, cautioned, warned or reprimanded for a sexual or violent offence; and
- a risk of sexual harm order (RSHO) which can be imposed on any adult thought to pose a risk of sexual harm to a child³⁸.

In 2013 a major review by police argued that these orders do not give the police sufficient powers to protect victims. Of note for this document, the police review considered the human rights issues surrounding such orders, arguing that wider scope for orders would be human rights compliant.³⁹ However, the professional body for solicitors, The Law Society of England & Wales, and Parliament's Joint Committee on Human Rights had some concerns.⁴⁰

Following the review, a Bill was put to Parliament and passed in 2014. As a result the existing laws will soon be replaced by sexual harm prevention orders (SHPOs) and sexual risk orders (SROs).⁴¹ The new legislative provisions have not yet come into force and so both types of orders are addressed here.

³⁷ Sexual Offences Act 2003, sections 104-122

³⁸ Sexual Offences Act 2003, sections 123-129 and Anti-Social Behaviour, Crime and Policing Bill Home Office Fact Sheet, October 2013:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251341/27_28_sexual_offences_and_VOO_fact_sheet.pdf

³⁹ H Davies et al, *Civil Prevention Orders Sexual Offences Act 2003: ACPO Commissioned Review of the Existing Statutory Scheme and Recommendations for Reform*, 15 May 2013, see pp 48-50 on human rights, <http://3rblaw.com/downloads/civil.prevention.orders.pdf>

⁴⁰ T Thomas & D Thompson, 'New Civil Orders to Contain Sexual Offending – A Matter of "Purposive Logic"?', *Criminal Law & Justice Weekly*, 28 August 2013
<http://www.criminallawandjustice.co.uk/features/New-Civil-Orders-Contain-Sexual-Offending---Matter-Purposive-Logic>

⁴¹ Schedule 5 section 2 to the Anti-Social Behaviour, Crime and Policing Act 2014, which introduces a new section 103A to 103K, 122A to 122K to the Sexual Offences Act 2003 Act and repeals sections 104-122 and 123 of the 2003 Act.

Current framework

Key Sources

Legislation: Sections 104-122, 123-129 of the [Sexual Offences Act 2003](#)

Cases: [R v Smith & others](#) [2011] EWCA Crim 1772

Sexual Offences Prevention Orders (SOPOs) are civil preventative orders designed to protect the public from serious sexual harm.⁴² The defendant may already be subject to some controls such as requirements that they notify the police when they change address, name or are issued with a new passport,⁴³ and they may already be disqualified from working with children,⁴⁴ and may have some restrictions on their behaviour as part of post-release 'licence' conditions.⁴⁵ A SOPO is designed to provide additional restrictions if required. A SOPO will vary on a case-by-case basis but, broadly speaking, an order will prohibit the defendant from doing certain things – e.g., contacting a particular individual or group of individuals. An order *can prohibit* the defendant from doing things but *cannot compel* the defendant to act in a certain way. The Court can impose a SOPO upon conviction, or the senior commanding police officer can make an independent application to a court.

Foreign Travel Orders (FTOs) can be used to prevent offenders convicted for child sex offences from travelling to countries where there is a risk they will cause serious physical or psychological sexual harm children.⁴⁶

Risk of Sexual Harm Orders (RSHOs) are civil preventative orders that may be imposed on adults thought to pose a risk of sexual harm to children. They can prohibit adults from engaging in inappropriate behaviour such as sexual conversations with children online.

Incoming future framework

Key Sources

Legislation:
Schedule 5 to the [Anti-Social Behaviour, Crime and Policing Act 2014](#)

This repeals sections 104-122 and 123-129 of the [Sexual Offences Act 2003](#) and introduces new sections 103A-103K and 122A-122K to replace them.

The grounds on which the new orders may be made are wider than those for the existing orders.

⁴² See generally Crown Prosecution Service Sentencing – Ancillary Orders, Sexual Offences http://www.cps.gov.uk/legal/s_to_u/sentencing_and_ancillary_orders_applications/#a50; for a critical discussion of SOPOs see Madeleine Wolfe, 'Sexual Offences Prevention Orders' 16 September 2014 <http://www.1itl.com/news/415/>.

⁴³ Sexual Offences Act 2003, sections 80-102.

⁴⁴ Criminal Justice and Court Service Act 2000, section 28.

⁴⁵ *R v Smith and Others* [2011] EWCA Crim 1772, see esp para 9.

⁴⁶ Sexual Offences Act 2003, sections 114-115.

Sexual Harm Prevention Orders (SHPOs) will under the new sections 103A-103K replace SOPOs and FTOs. They can be made against a person who poses a risk of sexual harm to the public and who has been convicted of, or cautioned for, a sexual or violent offence, including equivalent offences that have been committed overseas. The NCA and the police can apply for SHPOs or the court can impose them upon conviction for a sexual or violent offence. The imposition of an SHPO will place the subject on the sex offenders register.

Sexual Risk Orders (SROs) will under the new sections 122A-122K take the place of RSHOs and (again) FTOs. They may be applied for by the police or the National Crime Authority (NCA) where a person has performed an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for such an order to be made, even if that person has never been convicted of a crime.

In respect of both SHPOs and SROs, the court needs to be satisfied that the order is necessary for protecting the public (including children or vulnerable adults), or any particular members of the public, from sexual harm by the defendant.

Under both the old and new systems, orders run for a minimum of 5 years. Failure to comply with an order is a criminal offence punishable by up to 5 years imprisonment.

C. The use of court orders to protect victims of domestic violence

Key Sources

Legislation: Sections 24-30 of the [Crime and Security Act 2010](#)

Domestic violence protection orders (DVPOs) were launched across England and Wales on 8 March 2014. They enable a senior police officer to issue a notice to enable a victim of domestic violence to get immediate protection, and then an application to the court will follow. A court order may for 14-28 days ban the perpetrator from the home and from contacting the victim. A defendant who breaches an order may be held in custody and brought before the court (where any offence will be considered).⁴⁷

The Home Office details the purpose of these new orders:

DVPOs are a new power intended to provide protection to victims by enabling the police and magistrates to put in place protection in the immediate aftermath of a domestic violence incident such as a sexual assault.⁴⁸

As a report for the Home Office explains:⁴⁹

DVPOs were designed to provide immediate protection for victim-survivors following a domestic violence incident in circumstances where, in the view of the police, there are no other

⁴⁷ Crime and Security Act 2010, sections 24-30.

⁴⁸ Home Office, *Guidance, Domestic Violence and Abuse*, 2013, <https://www.gov.uk/domestic-violence-and-abuse#domestic-violence-protection-notices-and-orders>

⁴⁹ L Kelly et al, *Evaluation of the Pilot of Domestic Violence Protection Orders*, Home Office Research Report 76, Nov 2013
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260897/horr76.pdf

enforceable restrictions that can be placed upon the perpetrator. ... DVPOs aim to give victim-survivors time, space and support to consider their options by placing conditions on perpetrators, including restricting/removing perpetrators from households, and preventing contact with, or molestation of, victim-survivors.

D. Laws that protect victims of harassment and fear of violence

Key Sources

Legislation: [Protection from Harassment Act 1997](#)
[Protection of Freedoms Act 2012, section 111](#)

The Protection from Harassment Act 1997 came into force in June 1997 and was amended in 2012 by section 111 of the Protection of Freedoms Act to include (as section 2A) specific offences of stalking.

The Act address the following behaviours, creating several offences. These are not simply offences which will be committed if the defendant behaves in a certain way; they require that the defendant knew or ought to have known that the target of the behaviour would (for example) feel harassed or would fear violence.

All offences require a 'course of conduct', which means some form of repeated behaviour.

- Harassment
- Stalking
- Putting people in fear of violence

The Act also provides for restraining orders that will prevent a perpetrator from continuing to act in the above ways. A breach of a restraining order will of itself be a criminal offence.

In addition, the Act creates a civil action for harassment.

E. Proposed new domestic abuse laws

Key Sources

Government consultation on law reform:

Strengthening the Law on Domestic Abuse, [Consultation](#), August 2014

Strengthening the Law on Domestic Abuse, [Government Response \(including proposed new laws\)](#), December 2014

As part of its efforts to tackle domestic violence, the UK government has undertaken a major consultation on the current state of the law and whether it needs reform.

The consultation paper and the government response both provide a wide range of information about the law relating to domestic violence and the ways that police and other criminal justice agencies handle domestic violence.

The government will be proposing new laws in the coming months. If the proposed laws are enacted then men who control their partners through threats or by restricting their personal or financial freedom, could face prison in the same way as those who are violent towards them. The proposals are outlined in the conclusion of the Government Response.

F. Policy initiatives: Call to End Violence Against Women and Girls

Key Sources

Policy:

[Call to End Violence Against Women and Girls: Action Plan](#), March 2011

A major UK government policy action plan was published in March 2011. The 40-page document begins by referring to the 1993 UN Declaration on Violence Against Women.

The plan addresses a range of matters including:

- behaviours, practices and attitudes,
- the importance of early intervention,
- training for those working in the sector,
- the value of government working with civil society
- the importance of international action and commitments to international standards (see especially pages 24-28)
- the need for legislation that supports policy initiatives
- the reduction of risk for victims and the rehabilitation of offenders

This policy initiative is an excellent example of how important policy measures (rather than law reform) are used UK debates around commitment to international standards and commitments. None of the international matters at pages 24-28 of the action plan are concerned with law reform. All are aimed at other steps.

5. THE RULE OF LAW AND INTERNATIONAL HUMAN RIGHTS STANDARDS

Key Sources

Treaties:

1. [Charter of the United Nations \(1945\)](#).
2. [European Convention on Human Rights \(1950\)](#).
3. Treaty on the Functioning of the European Union (1958)
4. [UN Convention on the Elimination of Violence against Women \(1979\)](#).

Declarations:

1. [UN Declaration on the Elimination of Violence Against Women \(1993\)](#).
2. [Universal Declaration of Human Rights \(1948\)](#).

Other material from International Institutions:

1. [CEDAW Committee General Recommendation 19 \(1992; 11th session\)](#).
2. [Report on the rule of law - Adopted by the Venice Commission at its 86th plenary session \(Venice, 25-26 March 2011\)](#).

A. Rule of Law

Rule of law principles and considerations are inevitably relevant to questions of law reform and legal standards. They are often also captured by international treaties. The rule of law and its constituent elements are of universal relevance and should underpin all reforms to law and legal institutions, including with regard to criminal law and sexual offences.

The definition of the rule of law remains a matter of much discussion in the international community and no single international institution has produced a universally accepted definition. However, across the various formulations there is wide acceptance of some fundamentals. A useful point of reference is the definition of the rule of law given by Lord Bingham who stated that the essence of the rule of law is that:

'all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.'⁵⁰

This definition has wide, international respect. It was adopted by the European Commission for Democracy through Law ('Venice Commission') at its 86th plenary session (25-26 March 2011).⁵¹ The

⁵⁰ Tom Bingham, *The Rule of Law*, 2010, page 8.

⁵¹ European Commission for Democracy through Law (Venice Commission), Report on the Rule of Law, 2011, para 36-41, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282011%29003rev-e>

Commission's Report on the Rule of Law also took up the challenge of identifying specific elements of the rule of law, reviewing Bingham's eight components and a number of other definitions.

The Venice Commission stated that 'a consensus can now be found for the necessary elements of the rule of law' and that the elements are:⁵²

- (1) Legality, including a transparent, accountable and democratic process for enacting law
- (2) Legal certainty
- (3) Prohibition of arbitrariness
- (4) Access to justice before independent and impartial courts, including judicial review of administrative acts
- (5) Respect for human rights
- (6) Non-discrimination and equality before the law

Any framework of law reform should seek to enact laws that comply with these rule of law fundamentals in substance and in procedure.

B. United Nations

The Universal Declaration of Human Rights (1948) provides definitions of certain human rights terms which are used in the Charter of the United Nations (1945). The Charter is binding on all signatories. As a signatory, the UK is therefore bound by the Universal Declaration on Human Rights. The Universal Declaration on Human Rights sets out fundamental rights concerning, amongst other things, the right to life, liberty and security of person, equal protection of the law without discrimination and the right to marry only with the free and full consent of both parties .

The Universal Declaration on Human Rights provides a solid foundation for equal protection of the law. The Convention on the Elimination of Violence against Women (1979) (CEDAW) and subsequent Declaration on the Elimination of Violence Against Women (1993) provide more focused protection for women against gender-based violence.

- CEDAW is binding on States parties, and the UK has ratified that Convention.
- The Declaration on the Elimination of Violence Against Women (1993) identifies the physical, sexual and psychological nature of violence towards women occurring within the family, the wider community and that perpetrated by the state. It obliges UN states to condemn violence against women and punish acts of violence against women. The condemnation of, and protection from, such violence under English law is set out in the Sexual Offences Act 2003 and reflected in many of the other legislative and policy initiatives mentioned in this resource pack.

Following CEDAW's entry into force on 3 September 1981, a committee (the 'CEDAW Committee') was set up in 1982 to oversee the implementation of the Convention by the states which ratified it. The CEDAW Committee is an international body, made up of 23 experts on women's issues. It reviews national reports prepared by each state within one year of that state's ratification of the Convention, and every four years thereafter. In addition, the CEDAW Committee can also make recommendations to states concerning any women's issues which it thinks require more attention. The CEDAW Committee meets annually to discuss current women's issues and provide any recommendations that it deems necessary.

⁵² European Commission for Democracy through Law (Venice Commission), Report on the Rule of Law, 2011, para 41, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282011%29003rev-e>

At the eleventh session in 1992, the CEDAW provided General Recommendation 19 on violence against women.⁵³ The Recommendation explicitly identified gender-based violence, such as rape, assault, mental and other forms of violence, which disproportionately affect women, as issues to which states needed to pay particular attention. These forms of violence were identified in their own right as gender discrimination rather than elements of sexual offences. The specific recommendations to states included taking appropriate and effective measures to overcome all forms of gender-based violence, ensuring that laws against family violence and abuse were adequate for the protection of all women and the compilation of statistics on the extent of such gender-based violence. The UK responded to these specific recommendations in a number of ways; more recent examples include the DVDS and SOPOs (both discussed in section 4 of this resource pack) and the UK Ministry of Justice and Home Office's statistics report on the extent of sexual offending in England and Wales.

There are other general rights that are relevant to criminal law and sexual offences, which are set out in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). Everyone is entitled to a fair and public trial by a competent, independent and impartial court, from which the press and public as a general rule should not be excluded, although they can be excluded when the interest of the private lives of the parties requires it. People charged with a criminal offence have various rights including the right to be presumed innocent until proven guilty, to be tried without undue delay, and to have legal assistance. The rights around fair and public trials interact with other rights, particularly, the rights to freedom of expression and to privacy. The right to freedom of expression means that the media should be able to report on court proceedings, but note that the media can be excluded from the court when necessary for the parties' private lives. Relatedly, procedures that allow for the anonymity for victims and offenders help to protect their right to privacy. It is clear from these different rights that the rights of both the accused and the survivor of sexual offences must be taken into account by the law and legal procedure, and law reform must balance and take into account all of the relevant human rights. These various rights are also protected under the European Convention on Human Rights (1950).

C. European Union (EU)

Declaration 19 of Article 4 of the Treaty on the Functioning of the European Union (1958) (the 'TFEU') enshrines the key principle of the elimination of inequality between women and men, with the aim of combatting all kinds of domestic violence in the EU.

The TFEU is a binding agreement between the EU Member States and so the UK is bound to comply with this principle and declaration. As such, the UK is bound to combat domestic violence in line with this aim. Although domestic violence is a far broader term than sexual violence, the two are not mutually exclusive and so a consequence of compliance with this aim is the reduction of sexual violence. Article 14 of the ECHR (1950) also asserts the right to freedom from discrimination on grounds of (among others) sex.

The UK assisted in the drafting of the ECHR and has sought to comply with it since its adoption. For 50 years, UK nationals seeking to rely on the protection of the ECHR would have had to take individual cases to the European Court of Human Rights in Strasbourg. The UK Human Rights Act 1998 (the 'HRA') came into force in 2000 and provided protection of the ECHR rights in UK courts. Importantly,

⁵³ CEDAW Committee, General Recommendation 19, 1992, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

the HRA made it unlawful for a UK public authority to act in a way that is incompatible with the ECHR. In this way, the UK has made efforts to comply with international human rights standards by enshrining it in English law.

There has also been a renewed focus on protection from discrimination in the UK in recent years, extending the scope of protection on grounds on homosexuality and transgender status. The Equality Act 2010 protects the right to freedom from discrimination under Article 14 of the ECHR by making it unlawful to discriminate, amongst other things, on grounds of sexual orientation and transgender status. This has broadened the scope of protection against discrimination in areas such as employment, education and public services. There has also been development in policy concerning hate crimes aggravated by homophobic or transphobic motivations; CPS policy considers such motivations as warranting lengthier sentences so as to deter such criminal activity and offer greater protection. Furthermore, the Sexual Offences Act 2003 implicitly offers protection from sexual violence to transgender individuals by virtue of section 79(3). This states that references to a part of the body include references to 'a part surgically constructed' thereby capturing offences perpetrated by transgender individuals and offering greater protection under the law for transgender victims of such sexual offences. As such, English law provides equal protection from sexual violence for homosexual and transgender individuals.

PART 2

RESOURCES FOR RESEARCHERS

6. ACCESSING PRIMARY SOURCES AND COMMENTARY ON THE LAW IN THE UNITED KINGDOM

We provide here some general information and links to sites that provide open access materials for researchers. By 'primary sources' we mean legislation and case law. By 'commentary', we mean all other sources, including textbooks, academic articles, government resources, and the like.

A. Primary sources

While we have focused on the law in England & Wales in this resource pack, legislation and case law from all UK jurisdictions tends to be gathered together on sites that cover all of the UK.

Legislation in the United Kingdom

- The authoritative site is www.legislation.gov.uk
- The British and Irish Legal Information Institute (BAILII) also has legislation though on occasion it may not be as up-to-date as that on the government site: www.bailii.org

Case law in the United Kingdom

- The best open access site is the British and Irish Legal Information Institute (BAILII): www.bailii.org. It does not contain all reported cases but generally has a very comprehensive collection of significant cases, especially from superior courts in the UK. It is possible to search. Alternatively, one can browse by court and then, within courts, by year; this can be useful if looking for a particular case.

B. Commentary

Government and law reform reports provide one of the most useful sources of commentary and analysis on sexual violence in the UK. As Part 1 of this document indicates, there have been numerous significant reports on a range of law and policy issues. The reports tend to:

- State the current law
- Review the background to the current law
- Outline and discuss the views that have been taken in academic commentary
- Outline submissions made by organisations working in the area (many reports involve a public consultation process), and this means the reports may review the evidence base carefully
- Review the way the law works in practice
- Compare the position in other jurisdictions (with common points of reference being Australia, Canada, New Zealand and the United States)
- Propose ways forward, either suggesting the current law should be retained or, if it is to be modified, explaining how it should be modified and in what ways.

Reports on issues of sexual violence will often be undertaken by the following bodies:

- The Home Office (a government department)
- The Ministry of Justice (a government department)
- The Law Commission of England & Wales (a statutory body independent of government)

All government publications are available at: <https://www.gov.uk/government/publications>

Law Commission publications are available at: <http://lawcommission.justice.gov.uk/>

Academic commentary in criminal law textbooks is very useful for obtaining excellent statements and analysis of the current law and legal debates. Several are listed below, though few are available on open access. However, Google Books can sometimes be useful.

Academic commentary in journal articles can be very good, especially if focusing on very specific issues. The general nature of this resource pack means we have tended not referred to articles. Many academic articles will be available only through paid subscription databases. However, the Social Science Research Network (SSRN) can be a very useful source for obtaining articles; they may be published in slightly different versions, or may be available on SSRN as well as in journals, and many are open access: www.ssrn.com. Google Scholar can also be useful: <http://scholar.google.co.uk/>

Crown Prosecution Service (CPS) guidance is very useful in the area of sexual offences. The CPS guidance is all available online and open access. The CPS has given a great deal of attention to sexual violence issues and the guidance is very thorough. It sometimes also provide useful links to other sources. We list some of the specific guidance in the resources below.

7. RESOURCES

Where material is available on open access we have provided links.

A. Crown Prosecution Service (CPS) resources

CPS Policy for Prosecuting Cases of Rape, 2012.

http://www.cps.gov.uk/publications/docs/rape_policy_2012.pdf

CPS Prosecution Policy and Guidance: Rape and Sexual Offences

http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/

All 22 chapters and 6 appendices are available at that link. Specific chapters of interest may include:

- Chapter 3: Consent
- Chapter 5: Victims and Witnesses
- Chapter 20: Media Guidance for Rape Prosecutors
- Chapter 21: Societal Myths

CPS Policy and Guidance: Violence Against Women and Girls, 2015 and archived previous years.

<http://www.cps.gov.uk/publications/equality/vaw/index.html>

Specific documents of interest on this site may include:

- Joint CPS and Police Action Plan on Rape (updated January 2015)
- What is consent? (2015)

CPS Guidelines on Prosecuting Cases of Child Sexual Abuse, 2014

http://www.cps.gov.uk/legal/a_to_c/child_sexual_abuse/

CPS Legal Guidance, Sentencing – Ancillary Orders, 2011

http://www.cps.gov.uk/legal/s_to_u/sentencing_and_ancillary_orders_applications/

CPS Guidance on Stalking and Harassment

[\(http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/\)](http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/)

B. Legislation

Criminal Justice Act 2003

<http://www.legislation.gov.uk/ukpga/2003/44/contents>

Criminal Procedure Rules 2014

<http://www.legislation.gov.uk/uksi/2014/1610/contents/made>

Domestic Violence, Crime and Victims Act 2004

<http://www.legislation.gov.uk/ukpga/2004/28/contents>

Equality Act 2010

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

Human Rights Act 1998

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

Policing and Crime Act 2009

<http://www.legislation.gov.uk/ukpga/2009/26/contents>

Protection from Harassment Act 1997

<http://www.legislation.gov.uk/ukpga/1997/40/contents>

Section 2A (Stalking) added by the Protection of Freedoms Act 2012, section 111

<http://www.legislation.gov.uk/ukpga/2012/9/part/7/crossheading/stalking/enacted>

Protection of Children Act 1978

<http://www.legislation.gov.uk/ukpga/1978/37/contents>

Sexual Offences Act 2003

<http://www.legislation.gov.uk/ukpga/2003/42/contents>

Sexual Offences (Amendment) Act 1992

<http://www.legislation.gov.uk/ukpga/1992/34/contents>

Youth Justice and Criminal Evidence Act 1999

<http://www.legislation.gov.uk/ukpga/1999/23/contents>

Guidelines pursuant to legislation

Sentencing Council, *Sexual Offences – Definitive Guideline*, April 2014

https://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Sexual_Offences_Definitive_Guideline_content_web1.pdf

C. Cases

Medium-neutral citations are used for cases in this list. They may also be available in law reports with alternative citations.

Attorney-General's Reference No 74 & 83 of 2007 [2007] EWCA Crim 2550

Summary in CPS guidance:

http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/s5_rape_of_child_under_13/

Aydin v Turkey [1997] ECHR 75

<http://www.bailii.org/eu/cases/ECHR/1997/75.html>

DPP v Majewski [1976] UKHL 2

<http://www.bailii.org/uk/cases/UKHL/1976/2.html>

MC v Bulgaria (2005) 40 EHRR 459, Application 39272/98, 4 March 2004

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61521>

R v A [2001] HL 25

<http://www.bailii.org/uk/cases/UKHL/2001/25.html>

R v Bailey [1983] EWCA Crim 2

<http://www.bailii.org/ew/cases/EWCA/Crim/1983/2.html>

R v Bree [2007] EWCA Crim 804

<http://www.bailii.org/ew/cases/EWCA/Crim/2007/804.html>

R v C [2009] UKHL 42
<http://www.bailii.org/uk/cases/UKHL/2009/42.html>

R v. C [2012] EWCA Crim 2034
<http://www.bailii.org/ew/cases/EWCA/Crim/2012/2034.html>

R v. Ciccarelli [2011] EWCA Crim 2665
<http://www.bailii.org/ew/cases/EWCA/Crim/2011/2665.html>

R v Daviault [1994] 3 SCR 63 (Note – this is a Canadian case)
<http://www.canlii.org/en/cq/scc/doc/1994/1994canlii61/1994canlii61.html>

R v SD [2008] EWCA Crim 527
<http://www.bailii.org/ew/cases/EWCA/Crim/2008/527.html>

R v Doyle [2010] EWCA Crim 119
<http://www.bailii.org/ew/cases/EWCA/Crim/2010/119.html>

R v Flattery (1877) QBD 410
<http://www.e-lawresources.co.uk/cases/R-v-Flattery.php>

R v Fotheringham (1988) 88 Cr App R 206

R v Green [2002] EWCA Crim 1501

R v Grewal [2010] EWCA Crim 2448

R v Grout [2011] EWCA Crim 299
<http://www.bailii.org/ew/cases/EWCA/Crim/2011/299.html>

R v Hardie [1984] EWCA Crim 2
<http://www.bailii.org/ew/cases/EWCA/Crim/1984/2.html>

R v Heard [2007] EWCA Crim 125
<http://www.bailii.org/ew/cases/EWCA/Crim/2007/125.html>

R v Ismail [2005] EWCA Crim 397

R v Jheeta [2007] EWCA Crim 1699
<http://www.bailii.org/ew/cases/EWCA/Crim/2007/1699.html>

R v Jones [2007] EWCA Crim 1118
<http://www.bailii.org/ew/cases/EWCA/Crim/2007/1118.html>

R v. Kirk [2008] EWCA Crim 434
<http://www.bailii.org/ew/cases/EWCA/Crim/2008/434.html>

R v Leaver [2006] EWCA Crim 2988
<http://www.bailii.org/ew/cases/EWCA/Crim/2006/2988.html>

R v. Lewis MBA [2012] EWCA Crim 2773
<http://www.bailii.org/ew/cases/EWCA/Crim/2012/2773.html>

R v Malone [1998] 2 Cr App R 447

R v McAllister [1997] Crim LR 233

R v Olugboja [1981] EWCA Crim 2
<http://www.bailii.org/ew/cases/EWCA/Crim/1981/2.html>

R v Piper [2007] EWCA Crim 2131

R v R [1991] UKHL 12
<http://www.bailii.org/uk/cases/UKHL/1991/12.html>

R v RT, R v MH [2001] EWCA Crim 1877
<http://www.bailii.org/ew/cases/EWCA/Crim/2001/1877.html>

R v. Robinson [2011] EWCA Crim 916
<http://www.bailii.org/ew/cases/EWCA/Crim/2011/916.html>

R v Smith & Others [2011] EWCA Crim 1772
<http://www.bailii.org/ew/cases/EWCA/Crim/2011/1772.html>

R v Tabassum [2000] EWCA Crim 90
<http://www.bailii.org/ew/cases/EWCA/Crim/2000/90.html>

R v Williams [1923] 1 KB 340

Woolmington v DPP [1935] UKHL 1
<http://www.bailii.org/uk/cases/UKHL/1935/1.html>

X and Y v Netherlands [1985] ECHR 4
<http://www.bailii.org/eu/cases/ECHR/1985/4.html>

D. Reports and other analysis by government or parliament

UK Government action plan:

Call to End Violence Against Women and Girls: Action Plan, Cabinet Office, March 2011
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118153/vawg-action-plan.pdf

Home Office Fact Sheet:

Anti-social Behaviour, Crime and Policing Bill, Fact Sheet: Protection from sexual harm and violence, October 2013
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251341/27_28_sexual_offences_and_VOO_fact_sheet.pdf

Home Office report:

L Kelly, J Temkin & S Griffiths, *Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials*, 2006
<http://tna.europarchive.org/20071206133532/homeoffice.gov.uk/rds/pdfs06/rdsolr2006.pdf>

Home Office consultation paper:

Setting the Boundaries: Reforming the Law on Sexual Offences, Home Office Consultation Paper Volume 1, July 2000

<http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/vol1main.pdf?view=Binary>

Home Office report:

A Feist, J Ashe, J Lawrence, D McPhee, R Wilson, Home Office Online Report 18/07, 2007

<http://socialwelfare.bl.uk/subject-areas/services-activity/criminal-justice/homeoffice/144173rdsolr1807.pdf>

Law Commission of England & Wales report:

Criminal Law: Rape within Marriage, Report No 205, 1992

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228746/0167.pdf

Law Commission of England & Wales report:

Intoxication and Criminal Liability, Report No 314, 2005

http://lawcommission.justice.gov.uk/docs/lc314_Intoxication_and_Criminal_Liability_report.pdf

House of Commons Library Standard Note:

S Lipcombe, Anonymity in Rape Cases, House of Commons Library, 2012

<http://www.parliament.uk/business/publications/research/briefing-papers/SN04746/anonymity-in-rape-cases>

Ministry of Justice, Home Office & Office for National Statistics report:

An Overview of Sexual Offending in England and Wales, 2013

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf

Police and CPS Action plan:

Joint CPS and Police Action Plan on Rape, October 2014

(http://www.cps.gov.uk/publications/equality/vaw/rape_action_plan.pdf)

[Policy for Prosecuting Cases of Homophobic and Transphobic Hate Crime](#), 2007, CPS policy paper.

Police and CPS protocol:

A Protocol between the Police and Crown Prosecution Service in the Investigation and Prosecution of Allegations of Rape, 8 January 2015

http://www.cps.gov.uk/publications/agencies/cps_acpo_rape_protocol.pdf

Australian Law Reform Commission report:

Family Violence: A National Legal Response, ALRC Report 114, 2010

<http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

See esp: Chapter 24, 'Sexual Assault and Family Violence'

<http://www.alrc.gov.au/sites/default/files/pdfs/publications/24.%20Sexual%20Assault%20and%20Family%20Violence.pdf>

E. International treaties and related documents

Charter of the United Nations, 1945

<http://www.un.org/en/documents/charter/>

European Convention on Human Rights, 1950

http://www.echr.coe.int/Documents/Convention_ENG.pdf

European Commission for Democracy through Law (Venice Commission), Report on the Rule of Law, 2011

<http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282011%29003rev-e>

UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

CEDAW Committee, *General Recommendation 19, 1992: 11th Session*

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

UN Declaration on the Elimination of Violence Against Women (1993)

<http://www.un.org/documents/ga/res/48/a48r104.htm>

Universal Declaration of Human Rights, 1948

<http://www.un.org/en/documents/udhr/>

F. Academic texts and commentary

P Alston & R Goodman, *International Human Rights*, Oxford University Press, 2012

Archbold: *Criminal Pleading, Evidence and Practice 2015*, Sweet & Maxwell, 2014

A Ashworth & J Horder, *Principles of Criminal Law*, 7th Ed, Oxford University Press, 2013

T Bingham, *The Rule of Law*, Penguin Books, 2010

O de Schutter, *International Human Rights Law: Cases, Materials, Commentary*, 2nd Ed, Cambridge University Press, 2014

A Edwards, *Violence against Women under International Human Rights Law*, Cambridge University Press, 2013

J Herring, *Criminal Law: Text, Cases and Materials 6th Ed*, Oxford University Press, 2014

D Ormerod, *Smith and Hogan's Criminal Law*, 13th Ed, Oxford University Press, 2011

D Ormerod, *Blackstone's Criminal Practice 2015*, Oxford University Press, 2014

N Padfield, *Criminal Law*, 9th Ed, Oxford University Press, 2014

P Rook & R Ward, *Sexual Offences Law and Practice*, 4th Ed with 1st supplement to 4th Ed, Sweet & Maxwell, 2014

R K M Smith, *Textbook on International Human Rights*, 6th Ed, Oxford University Press, 2013

N Westmarland, *Rape Law Reform in England and Wales*, School for Policy Studies Working Paper Series, Paper Number 7, April 2004

<http://nicolewestmarland.pbworks.com/f/Rape+Law+Reform+in+England+and+Wales+-+Westmarland+2004.pdf>