



Mental Health (Care and Treatment) (Scotland) Act 2003

2003 asp 13

PART 21

OFFENCES

311 Non-consensual sexual acts

- (1) Subject to subsection (5) below, a person who engages in an act mentioned in subsection (2) below with, or towards, a mentally disordered person shall be guilty of an offence if, at the time of the act, the mentally disordered person—
 - (a) does not consent to the act; or
 - (b) by reason of mental disorder, is incapable of consenting to the act.
- (2) The acts referred to in subsection (1) above are—
 - (a) sexual intercourse (whether vaginal or anal); and
 - (b) any other sexual act.
- (3) For the purposes of subsection (1)(a) above, a person shall be regarded as not consenting if the person purports to consent as a result of—
 - (a) being placed in such a state of fear; or
 - (b) being subjected to any such—
 - (i) threat;
 - (ii) intimidation;
 - (iii) deceit; or
 - (iv) persuasion,as vitiates that person's consent.
- (4) For the purposes of subsection (1)(b) above, a person is incapable of consenting to an act if the person is unable to—
 - (a) understand what the act is;
 - (b) form a decision as to whether to engage in the act (or as to whether the act should take place); or
 - (c) communicate any such decision.

Status: This is the original version (as it was originally enacted).

- (5) Where a person is charged with an offence under subsection (1)(b) above it shall be a defence for such person to prove that, at the time of the sexual intercourse or other sexual act, such person did not know, and could not reasonably have been expected to know, that the other person—
- (a) had a mental disorder; and
 - (b) was incapable of consenting to the intercourse or other act.
- (6) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment to imprisonment for life.
- (7) A person guilty of aiding, abetting, counselling, procuring or inciting any other person to commit an offence under subsection (1) above shall be liable—
- (a) on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (8) In this section “sexual act” means any activity which a reasonable person would, in all the circumstances, regard as sexual.