



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

2003 asp 13

PART 21

OFFENCES

313 Persons providing care services: sexual offences

- (1) Subject to subsection (3) below, a person who engages in—
- (a) sexual intercourse (whether vaginal or anal); or
 - (b) any other sexual act,
- with, or towards, a mentally disordered person shall be guilty of an offence if, at the time of the intercourse or other act, the person is one of those specified in subsection (2) below.
- (2) Those persons are—
- (a) a person providing care services to the mentally disordered person;
 - (b) a person who—
 - (i) is an individual employed in, or contracted to provide services in or to; or
 - (ii) not being the Scottish Ministers, is a manager of, a hospital in which the mentally disordered person is being given medical treatment.
- (3) Where a person is charged with an offence under subsection (1) above, it shall be a defence for such person to prove that—
- (a) at the time of the intercourse or other act—
 - (i) such person did not know, and could not reasonably have been expected to know, that the other person was mentally disordered; or
 - (ii) the mentally disordered person was the spouse of such person; or
 - (b) in the case of—
 - (i) a person specified in subsection (2)(a) above, immediately before that person began to provide care services to the mentally disordered person; or

Status: This is the original version (as it was originally enacted).

- (ii) a person specified in subsection (2)(b) above, immediately before the mentally disordered person was admitted to the hospital referred to in that provision or (where the mentally disordered person has been admitted to that hospital more than once) was last admitted to it, a sexual relationship existed between them.
- (4) 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 a term not exceeding 2 years or to a fine or to both.
- (5) References in this section to the provision of care services are references to anything done by way of such services—
- (a) by;
 - (b) by an employee of; or
 - (c) in the course of a service provided or supplied by,
- a care service, whether by virtue of a contract of employment or any other contract or in such other circumstances as may be prescribed by regulations.
- (6) In this section—
- “care service” has the meaning given by subsection (1)(a), (b), (e), (g), (h), (k) and (n) as read with subsections (2), (3), (6), (9), (10), (16) and (27) of section 2 of the Regulation of Care (Scotland) Act 2001 ([asp 8](#)); and
 - “sexual act” has the meaning given by section 311(8) of this Act.