

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Abuse of Position of Trust

Section 46 – Sexual abuse of trust of a mentally disordered person

137. This section creates the offence of “sexual abuse of trust of a mentally disordered person”. The definition of “mental disorder” is provided at section 60. It is the same definition as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
138. Subsection (1) states that a person commits an offence under this section if they fall within the class of persons specified in subsection (2) and intentionally engage in a sexual activity with, or directed at, a mentally disordered person.
139. Subsection (2) defines those classes of person who are subject to the offence provisions in subsection (1). It provides that they are those who provide a care service to a mentally disordered person and those who are employed in (or contracted to provide services in, or who manage), a hospital in which a mentally disordered person is receiving medical treatment.
140. Subsection (3) defines the meaning of “providing care services” for the purpose of subsection (2) and provides that the Scottish Ministers may set out further circumstances which fall within this term by order (subject to negative resolution procedure).
141. Subsection (4) defines certain terms used elsewhere in this section.