



Sexual Offences (Scotland) Act 2009

2009 asp 9

PART 5

ABUSE OF POSITION OF TRUST

Mentally disordered persons

46 Sexual abuse of trust of a mentally disordered person

- (1) If a person (“A”)—
- (a) intentionally engages in a sexual activity with or directed towards a mentally disordered person (“B”), and
 - (b) is a person mentioned in subsection (2),
- then A commits an offence, to be known as sexual abuse of trust of a mentally disordered person.
- (2) Those persons are—
- (a) a person providing care services to B,
 - (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, independent health care service or state hospital in which B is being given medical treatment.
- (3) 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 specified in an order made by the Scottish Ministers.
- (4) In this section—

Status: This is the original version (as it was originally enacted).

“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),
“hospital” and “independent health care service” have the meanings given in section 44, and
“state hospital” means a hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978 (c. 29).

47 Sexual abuse of trust of a mentally disordered person: defences

- (1) It is a defence to a charge in proceedings under section 46 that A reasonably believed—
- (a) that B did not have a mental disorder, or
 - (b) that A was not a person specified in section 46(2).
- (2) It is a defence to a charge in proceedings under section 46—
- (a) that B was A’s spouse or civil partner, or
 - (b) in a case where A was—
 - (i) a person specified in section 46(2)(a), that immediately before A began to provide care services to B, a sexual relationship existed between A and B,
 - (ii) a person specified in section 46(2)(b), that immediately before B was admitted to the hospital (or other establishment) referred to in that provision or (where B has been admitted to that establishment more than once) was last admitted to it, such a relationship existed.