



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 1

#### SEXUAL OFFENCES

##### *Care workers for persons with a mental disorder*

#### **38 Care workers: sexual activity with a person with a mental disorder**

- (1) A person (A) commits an offence if—
  - (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section, if the touching involved—
  - (a) penetration of B's anus or vagina with a part of A's body or anything else,
  - (b) penetration of B's mouth with A's penis,
  - (c) penetration of A's anus or vagina with a part of B's body, or
  - (d) penetration of A's mouth with B's penis,is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **39 Care workers: causing or inciting sexual activity**

- (1) A person (A) commits an offence if—
  - (a) he intentionally causes or incites another person (B) to engage in an activity,
  - (b) the activity is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section, if the activity caused or incited involved—
  - (a) penetration of B's anus or vagina,
  - (b) penetration of B's mouth with a person's penis,
  - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
  - (d) penetration of a person's mouth with B's penis,is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **40 Care workers: sexual activity in the presence of a person with a mental disorder**

- (1) A person (A) commits an offence if—
  - (a) he intentionally engages in an activity,
  - (b) the activity is sexual,
  - (c) for the purpose of obtaining sexual gratification, he engages in it—
    - (i) when another person (B) is present or is in a place from which A can be observed, and
    - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
  - (d) B has a mental disorder,

- (e) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (f) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **41 Care workers: causing a person with a mental disorder to watch a sexual act**

- (1) A person (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
  - (b) the activity is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **42 Care workers: interpretation**

- (1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.
- (2) This subsection applies if—
- (a) B is accommodated and cared for in a care home, community home, voluntary home or children's home, and
  - (b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

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- (3) This subsection applies if B is a patient for whom services are provided—
- (a) by a National Health Service body or an independent medical agency, or
  - (b) in an independent clinic or an independent hospital,
- and A has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.
- (4) This subsection applies if A—
- (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B’s mental disorder, and
  - (b) as such, has had or is likely to have regular face to face contact with B.
- (5) In this section—
- “care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);
- “children’s home” has the meaning given by section 1 of that Act;
- “community home” has the meaning given by section 53 of the Children Act 1989 (c. 41);
- “employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;
- “independent clinic”, “independent hospital” and “independent medical agency” have the meaning given by section 2 of the Care Standards Act 2000;
- “National Health Service body” means—
- (a) a Health Authority,
  - (b) a National Health Service trust,
  - (c) a Primary Care Trust, or
  - (d) a Special Health Authority;
- “voluntary home” has the meaning given by section 60(3) of the Children Act 1989.

#### **43 Sections 38 to 41: marriage exception**

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if at the time—
- (a) B is 16 or over, and
  - (b) A and B are lawfully married.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

#### **44 Sections 38 to 41: sexual relationships which pre-date care relationships**

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if, immediately before A became involved in B’s care in a way that falls within section 42, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

- (3) In proceedings for an offence under any of sections 38 to 41 it is for the defendant to prove that such a relationship existed at that time.