



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 1

#### SEXUAL OFFENCES

##### *Familial child sex offences*

#### **25 Sexual activity with a child family member**

- (1) A person (A) commits an offence if—
  - (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) the relation of A to B is within section 27,
  - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and
  - (e) either—
    - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.
- (4) A person guilty of an offence under this section, if aged 18 or over at the time of the offence, is liable—

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- (a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
  - (b) in any other case—
    - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (4) 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 5 years.
- (6) This subsection applies where 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.

## **26 Inciting a child family member to engage in sexual activity**

- (1) A person (A) commits an offence if—
- (a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A,
  - (b) the touching is sexual,
  - (c) the relation of A to B is within section 27,
  - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and
  - (e) either—
    - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.
- (4) A person guilty of an offence under this section, if he was aged 18 or over at the time of the offence, is liable—
- (a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
  - (b) in any other case—

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- (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (4) 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 5 years.
- (6) This subsection applies where the touching to which the incitement related 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.

## 27 Family relationships

- (1) The relation of one person (A) to another (B) is within this section if—
  - (a) it is within any of subsections (2) to (4), or
  - (b) it would be within one of those subsections but for [<sup>F1</sup>section 39 of the Adoption Act 1976 or] section 67 of the Adoption and Children Act 2002 (c. 38) (status conferred by adoption).
- (2) The relation of A to B is within this subsection if—
  - (a) one of them is the other’s parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or
  - (b) A is or has been B’s foster parent.
- (3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and—
  - (a) one of them is or has been the other’s step-parent,
  - (b) A and B are cousins,
  - (c) one of them is or has been the other’s stepbrother or stepsister, or
  - (d) the parent or present or former foster parent of one of them is or has been the other’s foster parent.
- (4) The relation of A to B is within this subsection if—
  - (a) A and B live in the same household, and
  - (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.
- (5) For the purposes of this section—
  - (a) “aunt” means the sister or half-sister of a person’s parent, and “uncle” has a corresponding meaning;
  - (b) “cousin” means the child of an aunt or uncle;
  - (c) a person is a child’s foster parent if

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- [<sup>F2</sup>(i) he is a person with whom the child has been placed under section 22C of the Children Act 1989 in a placement falling within subsection (6) (a) or (b) of that section (placement with local authority foster parent),
- (ia) he is a person with whom the child has been placed under section 59(1)(a) of that Act (placement by voluntary organisation),]
- [<sup>F3</sup>(ib) he is a person with whom the child has been placed under section 81 of the Social Services and Well-being (Wales) Act 2014 in a placement falling within subsection (6)(a) or (b) of that section (placement with a local authority foster parent),]
- (ii) he fosters the child privately, within the meaning given by section 66(1)(b) of that Act;
- (d) a person is another’s partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
- (e) “step-parent” includes a parent’s partner and “stepbrother” and “stepsister” include the child of a parent’s partner.

#### Textual Amendments

- F1** Words in s. 27(1)(b) inserted (8.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, 153(2)(e), [Sch. 15 para. 3](#)
- F2** S. 27(5)(c)(i)(ia) substituted for s. 27(5)(c)(i) (1.4.2011 for E., 6.4.2016 for W.) by [Children and Young Persons Act 2008 \(c. 23\)](#), s. 44(4), [Sch. 1 para. 16](#); S.I. 2010/2981, art. 4(e); S.I. 2016/452, art. 2(b)
- F3** S. 27(5)(c)(ib) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **203**

## 28 Sections 25 and 26: [<sup>F4</sup>exception for spouses and civil partners]

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 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 [<sup>F5</sup>or civil partners of each other].
- (2) In proceedings for such an offence it is for the defendant to prove that A and B [<sup>F6</sup>were at the time lawfully married or civil partners of each other].

#### Textual Amendments

- F4** S. 28: words in heading substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 174\(4\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))
- F5** Words in s. 28(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 174\(2\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))
- F6** Words in s. 28(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 174\(3\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))

## 29 Sections 25 and 26: sexual relationships which pre-date family relationships

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if—
- (a) the relation of A to B is not within subsection (2) of section 27,

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- (b) it would not be within that subsection if [<sup>F7</sup>section 39 of the Adoption Act 1976 or] section 67 of the Adoption and Children Act 2002 (c. 38) did not apply, and
  - (c) immediately before the relation of A to B first became such as to fall within section 27, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.
- (3) In proceedings for an offence under section 25 or 26 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

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**Textual Amendments**

- F7** Words in s. 29(1)(b) inserted (8.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, 153(2)(e), [Sch. 15 para. 4](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 60B(5)(i) substituted for s. 60B(5)(i)(ii) by [2015 c. 9 \(N.I.\) Sch. 1 para. 123\(1\)Sch. 9 Pt. 1](#) (This amendment not applied to [legislation.gov.uk](#). S. 60B already repealed (N.I.) (14.1.2015) by [2015 c. 2 \(N.I.\)](#), s. 28(2), Sch. 5; and omitted (E.W.) (31.7.2015) by virtue of [2015 c. 30](#), Sch. 5 para. 5(2); S.I. 2015/1476, reg. 2(j))
- s. 103C(4B) inserted by [2022 c. 32 s. 178\(7\)\(b\)](#)
- s. 103E(5C)(5D) inserted by [2022 c. 32 s. 178\(8\)](#)
- s. 103F(3B) inserted by [2022 c. 32 s. 178\(9\)\(a\)](#)
- s. 103FA103FB inserted by [2022 c. 32 s. 178\(10\)](#)
- s. 108(9) inserted by [2011 c. 18 s. 17\(2\)](#)
- s. 122A(8A) inserted by [2022 c. 32 s. 178\(11\)\(a\)](#)
- s. 122A(9B) inserted by [2022 c. 32 s. 178\(11\)\(b\)](#)
- s. 122D(4C)(4D) inserted by [2022 c. 32 s. 178\(12\)](#)
- s. 122E(3B) inserted by [2022 c. 32 s. 178\(13\)\(a\)](#)
- s. 122EA122EB inserted by [2022 c. 32 s. 178\(14\)](#)
- s. 136ZA(3) inserted by [2022 c. 32 s. 178\(15\)](#)