

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 30: Sexual activity with a person with a mental disorder impeding choice

Section 31: Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

Section 32: Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

Section 33: Causing a person, with a mental disorder impeding choice, to watch a sexual act

61. All the offences in these sections are concerned with the situation where a person (A) involves another person (B) in sexual activity where B has a mental disorder and because of that mental disorder, or for reasons related to it, B is unable to refuse involvement in the sexual activity. "Mental disorder" is stated at section 79(6) to have "the meaning given by section 1 of the Mental Health Act 1983". In section 1(2) of that Act, subject to section 1(3), mental disorder is defined as "mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind." A person with a "learning disability" would fall within this definition. The definition of sexual activity is at section 78. *Subsection (2)* of each section contains a definition of what is meant by B being unable to refuse.
62. The offences are divided according to the different types of sexual activity (the types of sexual activity covered are the same as for the child sex offences (sections 9 to 12)).
63. *Section 30* covers touching, which as section 79(8) explains, includes any type of physical contact including penetration.
64. *Section 31* covers the situation where A causes or incites B to engage in sexual activity, for example, where A causes B to have sexual intercourse with A's friend, or incites him to do so, even if the incitement does not result in B engaging in sexual activity.
65. *Section 32* covers the situation where, for the purpose of obtaining sexual gratification, A engages in sexual activity in the presence of B, or in a place from which B can observe him. The offence is only committed, however, where A knows or believes that B is aware of the sexual activity or intends him to be aware of it. B might be aware of the sexual activity because he is watching it at A's behest or because A is describing what he is doing to B.
66. *Section 33* covers the situation where A, for his sexual gratification, causes B to watch a third person engaging in sexual activity or to look at an image of a person engaging in sexual activity. "Image" is defined in section 79(4)).