

# **MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 21 – Offences**

##### ***Section 311: non-consensual sexual acts***

617. **Section 311** creates an offence of engaging in a sexual act, as defined in subsection (2), with a patient who does not consent or is incapable of consenting to that act by reason of his or her mental disorder. It applies to any patient of either gender, whatever his or her type of mental disorder (unlike section 106 of the 1984 Act, which was restricted to sexual intercourse and could only be committed by a man on a mentally impaired woman).
618. A patient will be regarded as not having consented to a sexual act where the purported consent has been given as a result of the patient being frightened, threatened, intimidated or tricked.
619. Subsection (5) provides a defence to an accused who can prove that they did not know and could not reasonably be expected to know both that the patient had a mental disorder and was incapable of consenting.
620. Subsection (7) also makes it an offence for another person to assist or encourage a person to carry out such a sexual offence.
621. The section provides the levels of penalties applicable to these offences.