

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Abuse of Position of Trust

Section 45 – Sexual abuse of trust: defences

131. This section provides for the defences which can be invoked by a person who is charged with an offence under section 42 (sexual abuse of trust).
132. Subsection (1)(a) provides that it is a defence if the accused reasonably believed that, at the time the sexual conduct took place, the person with whom it took place (or towards whom it was directed) was aged 18 or over.
133. Subsection (1)(b) provides that it is a defence if the accused reasonably believed, at the time of the sexual conduct, that the person with whom it took place (or towards whom it was directed) was not a person in relation to whom the accused was in a position of trust.
134. Subsection (2)(a) provides that it is a defence for the accused to show that the other party was his or her spouse or civil partner at the time of the conduct they are charged with.
135. Subsection (2)(b) provides that it is a defence for the accused to show that a sexual relationship with the victim was in existence immediately before the particular position of trust with the victim was established. This defence has been provided in order that those who were already in a sexual relationship (but who are not married to, or in civil partnership with, each other) at the time that a position of trust arises should be free to continue that relationship while a position of trust persists without committing a criminal offence.
136. Subsection (3) provides that the defences under subsection (2) do not apply where the position of trust is as described in section 32(6). In other words, they do not apply where the position of trust is within a family setting.