



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 5

#### ABUSE OF POSITION OF TRUST

##### *Mentally disordered persons*

#### **46 Sexual abuse of trust of a mentally disordered person**

- (1) If a person (“A”)—
- (a) intentionally engages in a sexual activity with or directed towards a mentally disordered person (“B”), and
  - (b) is a person mentioned in subsection (2),
- then A commits an offence, to be known as sexual abuse of trust of a mentally disordered person.
- (2) Those persons are—
- (a) a person providing care services to B,
  - (b) a person who—
    - (i) is an individual employed in, or contracted to provide services in or to, or
    - (ii) not being the Scottish Ministers, is a manager of, a hospital, independent health care service or state hospital in which B is being given medical treatment.
- (3) References in this section to the provision of care services are references to anything done by way of such services—
- (a) by,
  - (b) by an employee of, or
  - (c) in the course of a service provided or supplied by,
- a care service, whether by virtue of a contract of employment or any other contract or in such other circumstances as may be specified in an order made by the Scottish Ministers.
- (4) In this section—

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*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 46. (See end of Document for details)*

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[<sup>F1</sup>“care service” has the meaning given by subsection (1)(a), (b), (d), (f), (g), (j) and (m) of section 47 of the [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#) as read with paragraphs 1, 2, 4, 6, 7, 11 and 19 of schedule 12 to that Act,]  
“hospital” and “independent health care service” have the meanings given in section 44, and  
“state hospital” means a hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978 (c. 29).

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#### Textual Amendments

**F1** Definition in [s. 46\(4\)](#) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [Sch. 1 para. 20\(3\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Section 46.