



# 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, Cross Heading: Mentally disordered persons. (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).

#### 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)**

#### 47 Sexual abuse of trust of a mentally disordered person: defences

- (1) It is a defence to a charge in proceedings under section 46 that A reasonably believed—
  - (a) that B did not have a mental disorder, or
  - (b) that A was not a person specified in section 46(2).
- (2) It is a defence to a charge in proceedings under section 46—
  - (a) that B was A's spouse or civil partner, or
  - (b) in a case where A was—
    - (i) a person specified in section 46(2)(a), that immediately before A began to provide care services to B, a sexual relationship existed between A and B,
    - (ii) a person specified in section 46(2)(b), that immediately before B was admitted to the hospital (or other establishment) referred to in that provision or (where B has been admitted to that establishment more than once) was last admitted to it, such a relationship existed.

**Changes to legislation:**

There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009,  
Cross Heading: Mentally disordered persons.