



# 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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*Status: This is the original version (as it was originally enacted).*

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“care service” has the meaning given by subsection (1)(a), (b), (e), (g), (h), (k) and (n) as read with subsections (2), (3), (6), (9), (10), (16) and (27) of section 2 of the Regulation of Care (Scotland) Act 2001 ([asp 8](#)),

“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](#)).