



# Sexual Offences (Amendment) Act 2000

## 2000 CHAPTER 44

An Act to reduce the age at which, and to make provision with respect to the circumstances in which, certain sexual acts are lawful; to make it an offence for a person aged 18 or over to engage in sexual activity with or directed towards a person under that age if he is in a position of trust in relation to that person; and for connected purposes. [30th November 2000]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Acts 1911 and 1949, and by the authority of the same, as follows:—

### **1 Reduction in age at which certain sexual acts are lawful**

- (1) In the Sexual Offences Act 1956—
  - (a) in subsections (1A) and (1C) of section 12 (buggery); and
  - (b) in sub-paragraphs (a) and (b) of paragraph 16 (indecenty between men etc.) of Schedule 2 (punishments etc.),for the word “eighteen” there shall be substituted the word “sixteen”.
- (2) In the Sexual Offences Act 1967—
  - (a) in subsections (1) and (6) of section 1 (amendment of law relating to homosexual acts in private), for the word “eighteen” there shall be substituted the word “sixteen”; and
  - (b) in section 8 (restriction on prosecutions), for the word “twenty-one” there shall be substituted the word “sixteen”.
- (3) In section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (homosexual offences)—
  - (a) in subsections (1) and (5)(c), for the word “eighteen”; and
  - (b) in subsection (8), for the word “18”,there shall be substituted the word “sixteen”.

- (4) In paragraphs (1) and (5) of Article 3 of the Homosexual Offences (Northern Ireland) Order 1982 (homosexual acts in private), for the word “18” there shall be substituted the word “17”.
- (5) Section 145 of the Criminal Justice and Public Order Act 1994 (which is superseded by this section) is hereby repealed.

## 2 Defences available to persons who are under age

- (1) In section 12 of the Sexual Offences Act 1956—
  - (a) in subsection (1), after the words “subsection (1A)” there shall be inserted the words “or (1AA)”;
  - (b) in subsection (1A), after the word “circumstances” there shall be inserted the word “first”; and
  - (c) after that subsection there shall be inserted the following subsection—
 

“(1AA) The other circumstances so referred to are that the person is under the age of sixteen and the other person has attained that age.”
- (2) In section 13 of that Act (indecentcy between men)—
  - (a) after the words “another man”, in the first place where they occur, there shall be inserted the words “otherwise than in the circumstances described below”; and
  - (b) at the end there shall be inserted the following paragraph—
 

“The circumstances referred to above are that the man is under the age of sixteen and the other man has attained that age.”
- (3) In subsection (1) of section 1 of the Sexual Offences Act 1967—
  - (a) the words from “a homosexual act” to the end shall become paragraph (a); and
  - (b) after that paragraph there shall be inserted the words “and
    - (b) a homosexual act by any person shall not be an offence if he is under the age of sixteen years and the other party has attained that age.”
- (4) In section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995, after subsection (8) there shall be inserted the following subsection—
 

“(8A) A person under the age of sixteen years does not commit an offence under subsection (5)(a) or (c) above if he commits or is party to the commission of a homosexual act with a person who has attained that age.”
- (5) In paragraph (1) of Article 3 of the Homosexual Offences (Northern Ireland) Order 1982—
  - (a) the words from “a homosexual act” to the end shall become sub-paragraph (a); and
  - (b) after that sub-paragraph there shall be inserted the words “and
    - (b) a homosexual act by any person shall not be an offence if he is under the age of seventeen years and the other party has attained that age.”

### **3 Abuse of position of trust**

- (1) Subject to subsections (2) and (3) below, it shall be an offence for a person aged 18 or over—
  - (a) to have sexual intercourse (whether vaginal or anal) with a person under that age; or
  - (b) to engage in any other sexual activity with or directed towards such a person, if (in either case) he is in a position of trust in relation to that person.
- (2) Where a person (“A”) is charged with an offence under this section of having sexual intercourse with, or engaging in any other sexual activity with or directed towards, another person (“B”), it shall be a defence for A to prove that, at the time of the intercourse or activity—
  - (a) he did not know, and could not reasonably have been expected to know, that B was under 18;
  - (b) he did not know, and could not reasonably have been expected to know, that B was a person in relation to whom he was in a position of trust; or
  - (c) he was lawfully married to B.
- (3) It shall not be an offence under this section for a person (“A”) to have sexual intercourse with, or engage in any other sexual activity with or directed towards, another person (“B”) if immediately before the commencement of this Act—
  - (a) A was in a position of trust in relation to B; and
  - (b) a sexual relationship existed between them.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.
- (5) In this section, “sexual activity”—
  - (a) does not include any activity which a reasonable person would regard as sexual only with knowledge of the intentions, motives or feelings of the parties; but
  - (b) subject to that, means any activity which such a person would regard as sexual in all the circumstances.

### **4 Meaning of “position of trust”**

- (1) For the purposes of section 3 above, a person aged 18 or over (“A”) is in a position of trust in relation to a person under that age (“B”) if any of the four conditions set out below, or any condition specified in an order made by the Secretary of State by statutory instrument, is fulfilled.
- (2) The first condition is that A looks after persons under 18 who are detained in an institution by virtue of an order of a court or under an enactment, and B is so detained in that institution.
- (3) The second condition is that A looks after persons under 18 who are resident in a home or other place in which—

- (a) accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 or Article 27(2) of the Children (Northern Ireland) Order 1995;
  - (b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order; or
  - (c) accommodation is provided by an authority under section 26(1) of the Children (Scotland) Act 1995,
- and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.
- (4) The third condition is that A looks after persons under 18 who are accommodated and cared for in an institution which is—
- (a) a hospital;
  - (b) a residential care home, nursing home, mental nursing home or private hospital;
  - (c) a community home, voluntary home, children’s home or residential establishment; or
  - (d) a home provided under section 82(5) of the Children Act 1989,
- and B is accommodated and cared for in that institution.
- (5) The fourth condition is that A looks after persons under 18 who are receiving full-time education at an educational institution, and B is receiving such education at that institution.
- (6) No order shall be made under subsection (1) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (7) A person looks after persons under 18 for the purposes of this section if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.
- (8) For the purposes of this section a person receives full-time education at an educational institution if—
- (a) he is registered or otherwise enrolled as a full-time pupil or student at the institution; or
  - (b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.
- (9) In this section, except where the context otherwise requires—
- “authority” means—
    - (a) in relation to Great Britain, a local authority; and
    - (b) in relation to Northern Ireland, an authority within the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995;
  - “children’s home” has—
    - (a) in relation to England and Wales, the meaning which would be given by subsection (3) of section 63 of the Children Act 1989 if the reference in paragraph (a) of that subsection to more than three children were a reference to one or more children; and
    - (b) in relation to Northern Ireland, the meaning which would be given by Article 90(1) of the Children (Northern Ireland) Order 1995 if, in Article 91(2) of that Order, paragraphs (f) and (g) and the words after paragraph (h) were omitted;

“community home” has the meaning given by section 53(1) of the Children Act 1989;

“hospital” has—

- (a) in relation to England and Wales, the meaning given by section 128(1) of the National Health Service Act 1977;
- (b) in relation to Scotland, the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978; and
- (c) in relation to Northern Ireland, the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972;

“mental nursing home” has, in relation to England and Wales, the meaning given by section 22(1) of the Registered Homes Act 1984;

“nursing home”—

- (a) in relation to England and Wales, has the meaning given by section 21(1) of the Registered Homes Act 1984;
- (b) in relation to Scotland, means a nursing home registered under section 1 of the Nursing Homes Registration (Scotland) Act 1938; and
- (c) in relation to Northern Ireland, has the meaning given by Article 16(1) of the Registered Homes (Northern Ireland) Order 1992;

“private hospital” has—

- (a) in relation to Scotland, the meaning given by section 12(2) of the Mental Health (Scotland) Act 1984; and
- (b) in relation to Northern Ireland, the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986;

“residential care home”—

- (a) in relation to England and Wales, has the meaning given by section 1(2) of the Registered Homes Act 1984;
- (b) in relation to Scotland, means an establishment in respect of which a person is registered under section 62 or 63 of the Social Work (Scotland) Act 1968; and
- (c) in relation to Northern Ireland, has the meaning given by Article 3(1) of the Registered Homes (Northern Ireland) Order 1992;

“residential establishment” has the meaning given by section 93(1) of the Children (Scotland) Act 1995 as the meaning of that expression in relation to a place in Scotland;

“voluntary home” has—

- (a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989; and
- (b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.

## **5 Notification requirements for offenders under section 3**

- (1) Schedule 1 to the Sex Offenders Act 1997 (sexual offences to which Part I applies) shall be amended as follows.
- (2) In paragraph 1 (offences under the law of England and Wales)—
  - (a) in sub-paragraph (1), the word “and” immediately following paragraph (e) shall be omitted and after paragraph (f) there shall be inserted—

- “(g) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).”; and
  - (b) in sub-paragraph (2)(a), for the words “paragraph (a)(iii), (v) and (vi) does not” there shall be substituted the words “paragraphs (a)(iii), (v) and (vi) and (g) do not”.
- (3) In paragraph 2 (offences under the law of Scotland)—
- (a) in sub-paragraph (1), after paragraph (d) there shall be inserted—
    - “(e) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).”; and
  - (b) in sub-paragraph (2), the word “and” immediately before paragraph (f) shall be omitted and after that paragraph there shall be inserted—
    - “(g) paragraph (e) does not apply where the offender was under 20.”.
- (4) In paragraph 3 (offences under the law of Northern Ireland)—
- (a) in sub-paragraph (1), the word “and” immediately following paragraph (i) shall be omitted and after paragraph (j) there shall be inserted—
    - “(k) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).”; and
  - (b) in sub-paragraph (2)(a), for the words “and (d)” there shall be substituted the words “, (d) and (k)”.

## **6 Meaning of “sexual offence” for the purposes of certain enactments**

- (1) In subsection (1) of section 31 of the Criminal Justice Act 1991 (interpretation of Part I), in the definition of “sexual offence”—
- (a) after paragraph (f) there shall be inserted—
    - “(fa) an offence under section 3 of the Sexual Offences (Amendment) Act 2000;” and
  - (b) in paragraph (g), for “(f)” there shall be substituted “(fa)”.
- (2) In subsection (10) of section 210A of the Criminal Procedure (Scotland) Act 1995 (extended sentences for sex and violent offenders), in the definition of “sexual offence” the word “and” immediately before paragraph (xix) shall be omitted and after that paragraph there shall be inserted “and
- (xx) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).”.

## **7 Short title, construction, commencement and extent**

- (1) This Act may be cited as the Sexual Offences (Amendment) Act 2000.
- (2) For the purposes of the Scotland Act 1998, this Act shall be taken to be a pre-commencement enactment within the meaning of that Act.
- (3) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (4) This Act extends to Northern Ireland.