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.

[F1](1) . . . . . .

[F1](2) . . . . . .

(3) In section 13 of the [M1]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 ".

[F2](4) . . . . . .

(5) Section 145 of the [M2]Criminal Justice and Public Order Act 1994 (which is superseded by this section) is hereby repealed.

Textual Amendments

F1 S. 1(1)(2) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 45(2), **Sch. 7**; S.I. 2004/874, art. 2

F2 S. 1(4) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 7**; S.I. 2004/874, art. 2

Status: *Point in time view as at 05/12/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Sexual Offences (Amendment) Act 2000. (See end of Document for details)*

Commencement Information

I1 S. 1 wholly in force; s. 1 not in force at Royal Assent see s. 7(3); s. 1(1)(2)(4)(5) in force for E.W.N.I. at 8.1.2001 by S.I. 2000/3303, **art. 2**; s. 1(3)(5) in force for S. by S.S.I. 2000/452, **art. 2(a)**

Marginal Citations

M1 1995 c. 39.
M2 1994 c. 33.

2 Defences available to persons who are under age.

[F3](1) . . . . . .

[F3](2) . . . . . .

[F3](3) . . . . . .

(4) In section 13 of the [M3]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."

[F4](5) . . . . . .

Textual Amendments

F3 S. 2(1)-(3) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 45(3), **Sch. 7**; S.I. 2004/874, art. 2

F4 S. 2(5) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 7**; S.I. 2004/874, art. 2

Commencement Information

I2 S. 2 wholly in force; s. 2 not in force at Royal Assent see s. 7(3); s. 2(1)-(3)(5) in force for E.W.N.I. at 8.1.2000 by S.I. 2000/3303, **art. 2**; s. 2(4) in force for S. at 8.1.2001 by S.S.I. 2000/452, **art. 2(b)**

Marginal Citations

M3 1995 c. 39.

3 Abuse of position of trust.

[[F5](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**[**[F6], or in civil partnership with,**]** 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.**]**

Textual Amendments

F5 S. 4 repealed (E.W.N.I.) (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 45(4), **Sch. 7**; S.I. 2004/874, art. 2

F6 Words in s. 3(2)(c) inserted (S.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 62**; S.S.I. 2005/604, arts. 2(c), 4

Commencement Information

I3 S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 7(3); s. 3 in force for E.W.N.I. at 8.1.2001 by S.I. 2000/3303, **art. 2**; s. 3 in force for S. by S.S.I. 2000/452, **art. 2(c)**

4 Meaning of "position of trust".

[[F5](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 [M4] Children Act 1989 or Article 27(2) of the [M5] Children (Northern Ireland) Order 1995;

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(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 [M6] 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 **[**[F7]residential care home, nursing home, mental nursing home or**]** private hospital;

[[F8](bb) provided by a care home service;**]**

(c) a community home, voluntary home, children's home or residential establishment; or

(d) a home provided under section 82(5) of the [M7] 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 [M8] Children (Northern Ireland) Order 1995;

[[F9] " care home service " has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8); **]**

" 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 [M9] 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 [M10] 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 [M11] Children Act 1989;

" hospital " has—

(a) in relation to England and Wales, the meaning given by section 128(1) of the [M12] National Health Service Act 1977;

(b) in relation to Scotland, the meaning given by section 108(1) of the [M13] National Health Service (Scotland) Act 1978; and

(c) in relation to Northern Ireland, the meaning given by Article 2(2) of the [M14] 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 [M15] Registered Homes Act 1984;

" nursing home "—

(a) in relation to England and Wales, has the meaning given by section 21(1) of the [M16] Registered Homes Act 1984;

(b) **[**[F10]. . .**]** and

(c) in relation to Northern Ireland, has the meaning given by Article 16(1) of the [M17] Registered Homes (Northern Ireland) Order 1992;

" private hospital " **[**[F11] has **]** —

(a) in relation to Scotland, **[**[F12]the meaning given by section 12(2) of the [M18] Mental Health (Scotland) Act 1984**][**[F12]private psychiatric hospital" within the meaning of section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8)**]** ; and

(b) in relation to Northern Ireland, **[**[F13] has **]** the meaning given by Article 90(2) of the [M19] 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 [M20] Registered Homes Act 1984;

(b) **[**[F14]. . .**]** and

(c) in relation to Northern Ireland, has the meaning given by Article 3(1) of the [M21] Registered Homes (Northern Ireland) Order 1992;

" residential establishment " has the meaning given by section 93(1) of the [M22] 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 [M23] Children Act 1989; and

(b) in relation to Northern Ireland, the meaning given by Article 74(1) of the [M24] Children (Northern Ireland) Order 1995. **]**

Textual Amendments

F5 S. 4 repealed (E.W.N.I.) (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 45(4), **Sch. 7**; S.I. 2004/874, art. 2

F7 Words in s. 4(4)(b) repealed (S.) (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 25(2)(a)**; S.S.I. 2002/162 art. 2(f)(h) (subject to arts. 3-13)

F8 S. 4(4)(bb) inserted (S.) (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 25(2)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

F9 S. 4(9): definition of "care home service" inserted (S.) (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 25(3)(a)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

F10 S. 4(9): para. (b) in the definition of
"nursing home"
repealed (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 25(3)(b)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

F11 Word in s. 4(9) omitted (S.) (27.9.2005) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **Sch. 1 para. 29(2)(a)**

F12 Words in s. 4(9) substituted (S.) (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **Sch. 1 para. 29(2)(b)**

F13 Word in s. 4(9) inserted (S.) (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **Sch. 1 para. 29(2)(c)**

F14 S. 4(9): para. (b) in the definition of
"residential care home"
repealed (1.4.2002) by 2001 asp 8, s. 79, **Sch. 3 para. 25(3)(c)**; S.S.I. 2002/162, **art. 2(f)(h)** (subject to arts. 3-13)

Commencement Information

I4 S. 4 wholly in force; s. 4 not in force at Royal Assent see s. 7(3); s. 4(1)- (3)(a)(b)(4)(5)-(9) in force for E.W.N.I. at 8.1.2001 by S.I. 2000/3303, **art. 2**; s. 4(1)(2)(3)(c)(4)(a)-(c)(5)-(9) in force for S. by S.S.I. 2000/452, **art. 2(d)**

Marginal Citations

M4 1989 c. 41.
M5 S.I. 1995/755 (N.I. 2).
M6 1995 c. 36.
M7 1989 c. 41.
M8 S.I. 1995/755 (N.I. 2).
M9 1989 c. 41.
M10 S.I. 1995/755 (N.I. 2).
M11 1989 c. 41.
M12 1977 c. 49.
M13 1978 c. 29.
M14 S.I. 1972/1265 (N.I. 14).
M15 1984 c. 23.
M16 1984 c. 23.
M17 S.I. 1992/3204 (N.I. 20).
M18 1984 c. 36.
M19 S.I 1986/595 (N.I. 4).
M20 1984 c. 23.
M21 S.I. 1992/3204 (N.I. 20).
M22 1995 c. 36.
M23 1989 c. 41.
M24 S.I. 1995/755 (N.I. 2).

F15 5 Notification requirements for offenders under section 3.

. . . . . .

Textual Amendments

F15 S. 5 repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 45(5), **Sch. 7**; S.I. 2004/874, art. 2

Commencement Information

I5 S. 5 wholly in force; s. 5 not in force at Royal Assent see 7(3); s. 5(1)(2)(4) in force for E.W.N.I. at 8.1.2001 by S.I. 2000/3303, **art. 2**; s. 5(1)(3) in force for S. by S.S.I. 2000/452, **art. 2(e)**

6 Meaning of "sexual offence" for the purposes of certain enactments.

[F16](1) . . . . . .

(2) In subsection (10) of section 210A of the [M25]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)."

Textual Amendments

F16 S. 6(1) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 45(6), **Sch. 7**; S.I. 2004/874, art. 2

Commencement Information

I6 S. 6 wholly in force; s. 6 not in force at Royal Assent see s. 7(3); s. 6(1) in force for E.W.N.I. at 8.1.2001 by S.I. 2000/3303, **art. 2**; s. 6(2) in force for S. by S.S.I. 2000/452, **art. 2(f)**

Marginal Citations

M25 1995 c. 46.

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 [M26]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.

Subordinate Legislation Made

P1 S. 7(3) power partly exercised (14.12.2000): 8.1.2001 appointed by S.I. 2000/3303, **art. 2**
S. 7(3) power partly exercised (21.12.2000): 8.1.2001 appointed by S.S.I. 2000/452, **art. 2**

Commencement Information

I7 S. 7(2) in force at 1.8.2003 to the extent, if any, that it is not already in force by S.I. 2003/1935, **art. 2**

Marginal Citations

M26 1998 c. 46.

Status:
Point in time view as at 05/12/2005.

Changes to legislation:
There are currently no known outstanding effects for the Sexual Offences (Amendment) Act 2000.