

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 64: Sex with an adult relative: penetration

Section 65: Sex with an adult relative: consenting to penetration

123. **Section 64** makes it an offence for a person (A) aged 16 or over intentionally to penetrate sexually a relative (B) who is aged 18 or over if he knows or could reasonably have been expected to know that B is his relative. **Section 65** makes it an offence for a person (A) aged 16 or over to consent to being penetrated sexually by a relative (B) aged 18 or over if he knows or could reasonably have been expected to know that B is his relative. For either offence to be committed the penetration must be “sexual”, as defined at **Section 78**. This requirement ensures that penetration for some other purpose, for example where one sibling helps another to insert a pessary for medical reasons, is not caught by this offence. *Subsection (2)* of each section defines “relative” for the purposes of each offence.
124. Adoptive relatives are excluded from each offence. Paragraph 47 of Schedule 6 makes a consequential amendment to the Adoption and Children Act 2002, to the effect that the provision in the 2002 Act that makes an adoptive child a child of the adoptive parents does not apply in relation to these offences. So, for example, it will not be an offence under either of these sections for an adoptive brother and sister aged over 18 to have sexual intercourse.
125. The effect of *subsection (3)* of each section is that, unless A shows from the evidence that there is an arguable case as to whether or not he knew or could reasonably have been expected to know that B is his relative, it is presumed that he did know or could reasonably have been expected to know it.