

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Abuse of Position of Trust

Section 47 - Sexual abuse of a mentally disordered person: defences

142. This section provides for the defences which can be invoked by a person who is charged with an offence under section 46 (sexual abuse of trust of a mentally disordered person).
143. Subsection (1)(a) provides that it is a defence that the accused reasonably believed, at the time of the sexual conduct, that the person with whom that conduct took place (or towards whom it was directed) did not have a mental disorder.
144. Subsection (1)(b) provides that it is a defence that the accused reasonably believed, at the time of the sexual conduct, that he or she was not a person who fell within any of the classes of person specified in section 46(2).
145. Subsection (2)(a) provides that it is a defence for the accused to show that the victim was his or her spouse or civil partner at the time the sexual conduct in the charge was said to have taken place.
146. Subsection (2)(b) provides that it is a defence for the accused to show that a sexual relationship with the victim existed immediately before the time when the accused is considered to have fallen within either of the classes of person specified in section 46(2).