



# Sexual Offences (Scotland) Act 2009

## 2009 asp 9

### PART 5

#### ABUSE OF POSITION OF TRUST

##### *Mentally disordered persons*

#### **47 Sexual abuse of trust of a mentally disordered person: defences**

- (1) It is a defence to a charge in proceedings under section 46 that A reasonably believed—
  - (a) that B did not have a mental disorder, or
  - (b) that A was not a person specified in section 46(2).
- (2) It is a defence to a charge in proceedings under section 46—
  - (a) that B was A's spouse or civil partner, or
  - (b) in a case where A was—
    - (i) a person specified in section 46(2)(a), that immediately before A began to provide care services to B, a sexual relationship existed between A and B,
    - (ii) a person specified in section 46(2)(b), that immediately before B was admitted to the hospital (or other establishment) referred to in that provision or (where B has been admitted to that establishment more than once) was last admitted to it, such a relationship existed.