



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 1

#### SEXUAL OFFENCES

##### *Care workers for persons with a mental disorder*

### **38 Care workers: sexual activity with a person with a mental disorder**

- (1) A person (A) commits an offence if—
  - (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section, if the touching involved—
  - (a) penetration of B's anus or vagina with a part of A's body or anything else,
  - (b) penetration of B's mouth with A's penis,
  - (c) penetration of A's anus or vagina with a part of B's body, or
  - (d) penetration of A's mouth with B's penis,is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **39 Care workers: causing or inciting sexual activity**

- (1) A person (A) commits an offence if—
  - (a) he intentionally causes or incites another person (B) to engage in an activity,
  - (b) the activity is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section, if the activity caused or incited involved—
  - (a) penetration of B's anus or vagina,
  - (b) penetration of B's mouth with a person's penis,
  - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
  - (d) penetration of a person's mouth with B's penis,
 is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **40 Care workers: sexual activity in the presence of a person with a mental disorder**

- (1) A person (A) commits an offence if—
  - (a) he intentionally engages in an activity,
  - (b) the activity is sexual,
  - (c) for the purpose of obtaining sexual gratification, he engages in it—
    - (i) when another person (B) is present or is in a place from which A can be observed, and
    - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
  - (d) B has a mental disorder,

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- (e) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (f) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **41 Care workers: causing a person with a mental disorder to watch a sexual act**

- (1) A person (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
  - (b) the activity is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **42 Care workers: interpretation**

- (1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.
- (2) This subsection applies if—
- (a) B is accommodated and cared for in a care home, community home, voluntary home <sup>F1</sup>, children's home, or premises in Wales at which a secure accommodation service is provided], and
  - (b) A has functions to perform <sup>F2</sup>... in the course of employment [<sup>F3</sup>in the home or the premises] which have brought him or are likely to bring him into regular face to face contact with B.

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- [<sup>F4</sup>(3) This subsection applies if B is a patient for whom services are provided—
- (a) by a National Health Service body or an independent medical agency;
  - (b) in an independent hospital; or
  - (c) in Wales, in an independent clinic,
- and A has functions to perform for the body or agency or in the hospital or clinic in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.]
- (4) This subsection applies if A—
- (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B’s mental disorder, and
  - (b) as such, has had or is likely to have regular face to face contact with B.
- (5) In this section—
- [<sup>F5</sup>“care home” means—
- (a) an establishment in England which is a care home for the purposes of the Care Standards Act 2000 (c. 14); and
  - (b) a place in Wales at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to persons aged 18 or over;]
- [<sup>F6</sup>“children’s home”—
- (a) has the meaning given by section 1 of the Care Standards Act 2000 in relation to a children’s home in England, and
  - (b) means a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to persons under the age of 18;]
- “community home” has the meaning given by section 53 of the Children Act 1989 (c. 41);
- “employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;
- [<sup>F7</sup>“independent clinic” has the meaning given by section 2 of the Care Standards Act 2000;
- “independent hospital”—
- (a) in England, means—
    - (i) a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; or
    - (ii) any other establishment in which any of the services listed in section 22(6) are provided and which is not a health service hospital as so defined; and
  - (b) in Wales, has the meaning given by section 2 of the Care Standards Act 2000;
- “independent medical agency” means an undertaking (not being an independent hospital, or in Wales an independent clinic) which consists of or includes the provision of services by medical practitioners;]
- “National Health Service body” means—
- (a) a [<sup>F8</sup>Local Health Board],
  - (b) a National Health Service trust,

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- (ba) [<sup>F9</sup>the Secretary of State in relation to the exercise of functions under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, the National Health Service Act 2006,
- (bb) a local authority in relation to the exercise of functions under section 2B or 111 of, or any of paragraphs 1 to 7B, or 13 of Schedule 1 to, the National Health Service Act 2006,]
- (c) <sup>F10</sup> ...
- (d) a Special Health Authority;  
[<sup>F11</sup>“secure accommodation service” has the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016;]  
“voluntary home” has the meaning given by section 60(3) of the Children Act 1989.

[<sup>F12</sup>(6) In subsection (5), in the definition of “independent medical agency”, “undertaking” includes any business or profession and—

- (a) in relation to a public or local authority, includes the exercise of any functions of that authority; and
- (b) in relation to any other body of persons, whether corporate or unincorporate, includes any of the activities of that body.]

#### Textual Amendments

- F1** Words in s. 42(2)(a) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 23(a)**
- F2** Words in s. 42(2)(b) omitted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 23(b)(i)**
- F3** Words in s. 42(2)(b) inserted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 23(b)(ii)**
- F4** S. 42(3) substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), **art. 13(4)(a)**
- F5** Words in s. 42(5) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 23(c)(i)**
- F6** Words in s. 42(5) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 23(c)(ii)**
- F7** S. 42(5): definitions of "independent clinic", "independent hospital" and "independent medical emergency" substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), **art. 13(4)(b)**
- F8** S. 42(5): words in definition of "National Health Service body" substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), **art. 3, Sch. para. 33**
- F9** S. 42(5) definition of “National Health Service body” paras. (ba), (bb) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 117\(a\)](#); [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)
- F10** S. 42(5) definition of “National Health Service body” para. (c) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 117\(b\)](#); [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)
- F11** Words in s. 42(5) inserted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 23(c)(iii)**
- F12** S. 42(6) added (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), **art. 13(4)(c)**

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#### 43 Sections 38 to 41: <sup>F13</sup>exception for spouses and civil partners]

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if at the time—
  - (a) B is 16 or over, and
  - (b) A and B are lawfully married [<sup>F14</sup>or civil partners of each other].
- (2) In proceedings for such an offence it is for the defendant to prove that A and B [<sup>F15</sup>were at the time lawfully married or civil partners of each other].

#### Textual Amendments

- F13** S. 43: words in heading substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 175\(4\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))
- F14** Words in s. 43(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 175\(2\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))
- F15** Words in s. 43(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 175\(3\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))

#### 44 Sections 38 to 41: sexual relationships which pre-date care relationships

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if, immediately before A became involved in B's care in a way that falls within section 42, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.
- (3) In proceedings for an offence under any of sections 38 to 41 it is for the defendant to prove that such a relationship existed at that time.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 60B(5)(i) substituted for s. 60B(5)(i)(ii) by [2015 c. 9 \(N.I.\) Sch. 1 para. 123\(1\)Sch. 9 Pt. 1](#) (This amendment not applied to legislation.gov.uk. S. 60B already repealed (N.I.) (14.1.2015) by [2015 c. 2 \(N.I.\), s. 28\(2\), Sch. 5](#); and omitted (E.W.) (31.7.2015) by virtue of [2015 c. 30, Sch. 5 para. 5\(2\)](#); S.I. 2015/1476, reg. 2(j))
- s. 103C(4B) inserted by [2022 c. 32 s. 178\(7\)\(b\)](#)
- s. 103E(5C)(5D) inserted by [2022 c. 32 s. 178\(8\)](#)
- s. 103F(3B) inserted by [2022 c. 32 s. 178\(9\)\(a\)](#)
- s. 103FA103FB inserted by [2022 c. 32 s. 178\(10\)](#)
- s. 108(9) inserted by [2011 c. 18 s. 17\(2\)](#)
- s. 122A(8A) inserted by [2022 c. 32 s. 178\(11\)\(a\)](#)
- s. 122A(9B) inserted by [2022 c. 32 s. 178\(11\)\(b\)](#)
- s. 122D(4C)(4D) inserted by [2022 c. 32 s. 178\(12\)](#)
- s. 122E(3B) inserted by [2022 c. 32 s. 178\(13\)\(a\)](#)
- s. 122EA122EB inserted by [2022 c. 32 s. 178\(14\)](#)
- s. 136ZA(3) inserted by [2022 c. 32 s. 178\(15\)](#)