



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 1

#### SEXUAL OFFENCES

##### *Supplementary and general*

#### **73 Exceptions to aiding, abetting and counselling**

- (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if he acts for the purpose of—
- protecting the child from sexually transmitted infection,
  - protecting the physical safety of the child,
  - preventing the child from becoming pregnant, or
  - promoting the child's emotional well-being by the giving of advice,
- and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.
- (2) This section applies to—
- an offence under any of sections 5 to 7 (offences against children under 13);
  - an offence under section 9 (sexual activity with a child);
  - an offence under section 13 which would be an offence under section 9 if the offender were aged 18;
  - an offence under any of sections 16, 25, 30, 34 and 38 (sexual activity) against a person under 16.
- (3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

*Status: Point in time view as at 01/05/2004.*

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## 74 “Consent”

For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

## 75 Evidential presumptions about consent

- (1) If in proceedings for an offence to which this section applies it is proved—
  - (a) that the defendant did the relevant act,
  - (b) that any of the circumstances specified in subsection (2) existed, and
  - (c) that the defendant knew that those circumstances existed,the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (2) The circumstances are that—
  - (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;
  - (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
  - (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
  - (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
  - (e) because of the complainant’s physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
  - (f) any person had administered to or caused to be taken by the complainant, without the complainant’s consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.
- (3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

## 76 Conclusive presumptions about consent

- (1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed—
  - (a) that the complainant did not consent to the relevant act, and
  - (b) that the defendant did not believe that the complainant consented to the relevant act.
- (2) The circumstances are that—
  - (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

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- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

## 77 Sections 75 and 76: relevant acts

In relation to an offence to which sections 75 and 76 apply, references in those sections to the relevant act and to the complainant are to be read as follows—

<i>Offence</i>	<i>Relevant Act</i>
An offence under section 1 (rape).	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).
An offence under section 2 (assault by penetration).	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.
An offence under section 3 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under section 4 (causing a person to engage in sexual activity without consent).	The defendant intentionally causing another person (“the complainant”) to engage in an activity, where the activity is sexual.

## 78 “Sexual”

For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that—

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

## 79 Part 1: general interpretation

- (1) The following apply for the purposes of this Part.
- (2) Penetration is a continuing act from entry to withdrawal.
- (3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).
- (4) “Image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.
- (5) References to an image of a person include references to an image of an imaginary person.
- (6) “Mental disorder” has the meaning given by section 1 of the Mental Health Act 1983 (c. 20).

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- (7) References to observation (however expressed) are to observation whether direct or by looking at an image.
- (8) Touching includes touching—
  - (a) with any part of the body,
  - (b) with anything else,
  - (c) through anything,and in particular includes touching amounting to penetration.
- (9) “Vagina” includes vulva.
- (10) In relation to an animal, references to the vagina or anus include references to any similar part.

**Status:**

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