



Sexual Offences Act 2003

2003 CHAPTER 42

PART 1

SEXUAL OFFENCES

Familial child sex offences

28 Sections 25 and 26: [^{F1}exception for spouses and civil partners]

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 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 [^{F2}or civil partners of each other].
- (2) In proceedings for such an offence it is for the defendant to prove that A and B [^{F3}were at the time lawfully married or civil partners of each other].

Textual Amendments

- F1** S. 28: words in heading substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 174\(4\)](#); [S.I. 2005/3175](#), [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))
- F2** Words in s. 28(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 174\(2\)](#); [S.I. 2005/3175](#), [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))
- F3** Words in s. 28(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 174\(3\)](#); [S.I. 2005/3175](#), [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))

Changes to legislation:

Sexual Offences Act 2003, Section 28 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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 S. 60B already repealed (N.I.) (14.1.2015) by [2015 c. 2 \(N.I.\), s. 28\(2\), Sch. 5](#); and omitted (E.W.) (31.7.2015) by virtue of [2015 c. 30, Sch. 5 para. 5\(2\)](#); S.I.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\(15\)](#)