

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 61: Administering a substance with intent

114. **Section 61** makes it an offence for a person (A) intentionally to administer a substance or to cause any substance to be taken by another person (B) where A knows that B does not consent to taking that substance and where A intends to stupefy or overpower B so that any person can engage in sexual activity involving B.
115. The offence is intended to cover use of so-called “date rape drugs” administered without the victim’s knowledge or consent, but would also cover the use of any other substance with the relevant intention. It would cover A ‘spiking’ B’s drinks with alcohol where B did not know he was consuming alcohol, but it would not cover A encouraging B to get drunk so that A could have sex with B, where B knew that he was consuming alcohol.
116. The substance may be administered to B in any way, for example, in a drink (as in the example given above), by injection or by covering B’s face with a cloth impregnated with the substance.
117. The offence applies both where A himself administers the substance to B, and where A causes the substance to be taken by B, for example where A persuades a friend (C) to administer a substance to B, so that A can have sex with B, because C knows B socially and can more easily slip the substance into B’s drink than A can.
118. However, the intended sexual activity need not involve A. In the example given above it could be intended that C or any other person would have sex with B.
119. The term “sexual”, used in this section in the phrase “sexual activity”, is defined in section 78. The sexual activity in this offence could involve A having sexual intercourse with or masturbating B; could involve A causing B to commit a sexual act upon himself (for example, masturbation); or could involve B and a third party engaging in sexual activity together, regardless of whether the third party had administered the substance.
120. The offence would be made out where A administers the substance or causes B to take it (with the relevant intent) regardless of whether any sexual activity took place, for example because a friend of B saw what was happening and intervened to protect B.