



# Mental Health (Scotland) Act 1984

## 1984 CHAPTER 36

### PART XI

#### MISCELLANEOUS AND GENERAL

##### *Offences*

#### **104 False statements**

- (1) Any person who makes any statement or entry which is false in a material particular in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement which he knows to be false, shall be guilty of an offence.
- (2) Any person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### **105 Ill-treatment of patients**

- (1) It shall be an offence for any person being an officer on the staff of or otherwise employed in a hospital or nursing home, or being a manager of a hospital or a person carrying on a nursing home—
  - (a) to ill-treat or wilfully neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or nursing home ; or
  - (b) to ill-treat or wilfully neglect, on the premises of which the hospital or nursing home forms part, a patient for the time being receiving such treatment there as an outpatient.

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*Status: This is the original version (as it was originally enacted).*

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- (2) It shall be an offence for any individual to ill-treat or wilfully neglect a patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care.
- (3) Any person guilty of an offence against this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both ;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

### **106 Protection of mentally handicapped females**

- (1) It shall be an offence, subject to the exception mentioned in this section,—
  - (a) for a man to have unlawful sexual intercourse with a woman who is protected by the provisions of this section;
  - (b) for any person to procure or encourage any woman who is protected by the provisions of this section to have unlawful sexual intercourse;
  - (c) for the owner or occupier of any premises or any person having or assisting in the management or control of premises to induce any woman who is protected by the provisions of this section to resort to or be upon such premises for the purpose of unlawful sexual intercourse with any man.
- (2) A person shall not be guilty of an offence against this section if he did not know and had no reason to suspect that the woman in respect of whom he is charged was protected by the provisions of this section.
- (3) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine.
- (4) Section 18 of the Sexual Offences (Scotland) Act 1976 (which relates to warrants to search where there is reasonable cause to suspect that a woman or girl is being unlawfully detained for immoral purposes) shall apply in the case of a woman who is protected by the provisions of this section in the same manner as that section applies in the case of a girl who is under the age of 16 years.
- (5) If on the trial of an indictment for rape the jury are satisfied that the accused is guilty of an offence against paragraph (a) of subsection (1) of this section, but are not satisfied that he is guilty of rape, the jury may acquit him of rape and find him guilty of such offence as aforesaid, and in that event he shall be liable to be punished as if he had been convicted on an indictment for such offence as aforesaid.
- (6) A woman is protected by the provisions of this section if she is suffering from a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.
- (7) In this section " woman " includes girl.

### **107 Protection of patients**

- (1) Without prejudice to the last foregoing section, it shall be an offence, subject to the exception mentioned in this section,—
  - (a) for a man who is an officer on the staff or is otherwise employed in a hospital or nursing home, or who is a manager of a hospital or who is a person carrying

on a nursing home to have unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder as an in-patient in that hospital or nursing home, or to have such intercourse on the premises of which the hospital or nursing home forms part with a woman who is for the time being receiving such treatment there as an out-patient;

- (b) for a man to have unlawful sexual intercourse with a woman suffering from mental disorder who is subject to his guardianship under this Act or is otherwise in his custody or care under this Act or in the care of a local authority under the Social Work (Scotland) Act 1968 or resident in a house provided by a local authority under that Act.
- (2) It shall not be an offence under this section for a man to have sexual intercourse with a woman if he does not know and has no reason to suspect her to be a person suffering from mental disorder.
- (3) In this section any reference to having unlawful sexual intercourse with a woman shall include a reference to committing a homosexual act as defined in section 80(6) of the Criminal Justice (Scotland) Act 1980.
- (4) Any person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine.

#### **108 Assisting patients to absent themselves without leave etc.**

- (1) Any person who induces or knowingly assists any other person—
- (a) being liable to be detained in a hospital or being subject to guardianship under this Act, to absent himself without leave; or
  - (b) being in legal custody by virtue of section 120 of this Act, to escape from such custody,
- shall be guilty of an offence.
- (2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Act, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both ;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### **109 Obstruction**

- (1) Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person, by a person authorised in that behalf by or under this Act, or to produce for the inspection of any person so authorised any document or record the production of which is duly required by him, or otherwise obstructs any such person in the exercise of his functions, shall be guilty of an offence.

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- (2) Without prejudice to the generality of the last foregoing subsection, any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private, shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale, or both.