



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—

Status: Point in time view as at 29/06/2021.

Changes to legislation: Sexual Offences Act 2003, Cross Heading: Care workers for persons with a mental disorder is up to date with all changes known to be in force on or before 24 June 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. (See end of Document for details)

- (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,

Status: Point in time view as at 29/06/2021.

Changes to legislation: Sexual Offences Act 2003, Cross Heading: Care workers for persons with a mental disorder is up to date with all changes known to be in force on or before 24 June 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. (See end of Document for details)

- (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 [^{F1}, children's home, or premises in Wales at which a secure accommodation service is provided], and
 - (b) A has functions to perform ^{F2}... in the course of employment [^{F3}in the home or the premises] which have brought him or are likely to bring him into regular face to face contact with B.

Status: Point in time view as at 29/06/2021.

Changes to legislation: Sexual Offences Act 2003, Cross Heading: Care workers for persons with a mental disorder is up to date with all changes known to be in force on or before 24 June 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. (See end of Document for details)

- [^{F4}(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—
- [^{F5}“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;]

[^{F6}“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;

[^{F7}“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 [^{F8}Local Health Board],
 - (b) a National Health Service trust,

Status: Point in time view as at 29/06/2021.

Changes to legislation: Sexual Offences Act 2003, Cross Heading: Care workers for persons with a mental disorder is up to date with all changes known to be in force on or before 24 June 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. (See end of Document for details)

- (ba) [^{F9}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) ^{F10} ...
- (d) a Special Health Authority;
[^{F11}“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.

[^{F12}(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)**

Status: Point in time view as at 29/06/2021.

Changes to legislation: Sexual Offences Act 2003, Cross Heading: Care workers for persons with a mental disorder is up to date with all changes known to be in force on or before 24 June 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. (See end of Document for details)

43 Sections 38 to 41: ^{F13}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 [^{F14}or civil partners of each other].
- (2) In proceedings for such an offence it is for the defendant to prove that A and B [^{F15}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.

Status:

Point in time view as at 29/06/2021.

Changes to legislation:

Sexual Offences Act 2003, Cross Heading: Care workers for persons with a mental disorder is up to date with all changes known to be in force on or before 24 June 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.