



## Working within the Sexual Offences Act 2003

The Sexual Offences Act 2003 provides a clear, modern framework to protect the public from sexual crimes. This leaflet sets out the main laws affecting those who work with children, and those who provide care services to people with mental disorders.

Further leaflets in this series cover the laws designed to protect adults, and to protect children and families. These leaflets are:

*Adults: Safer from Sexual Crime*

*Children and Families: Safer from Sexual Crime*

For further information, visit:

[www.homeoffice.gov.uk/crime/sexualoffences/legislation/act.html](http://www.homeoffice.gov.uk/crime/sexualoffences/legislation/act.html)

## Protecting the public

Sexual crime, and the fear of sexual crime, has a profound and damaging effect on the lives of individuals and communities.

The Sexual Offences Act is a major piece of law reform, designed to protect the public from sexual crime.

The Act is the result of careful consultation and vigorous debate. Many organisations working with victims of sexual crime, and with people who are vulnerable to abuse, contributed to the consultation process.

The Act provides a comprehensive new legislative framework for sexual offences. It covers offences against adults (including people with mental disorders), offences against children, and familial sexual offences. It also makes amendments to the laws governing the sex offenders register.

The Sexual Offences Act puts victims first. It reflects the reality of life in the 21st century and sets out clear boundaries about what is, and is not, acceptable. It ensures that men, women and people of all sexual orientations are equally protected from sexual crime. It sets out strong penalties for offenders, and gives the courts and police the clarity they need to do their job and help protect the public from sexual crime.

It also sets clear new parameters for people working with children, and with people with mental disorders.

## Protecting people who are vulnerable to abuse

The risks to children from sexual abuse are now better understood than ever before. Less well understood are the risks faced by people of any age who have a mental disorder - especially a learning disability - that makes them vulnerable to sexual abuse and exploitation. The sexual offences review heard disturbing evidence about the extent and nature of the sexual abuse of this group of people.

The overwhelming majority of people working with children and vulnerable adults are conscientious and responsible people, intent on providing a good service to them. The law must be able to deal, however, with the minority of individuals who betray the trust placed in them and use their positions to take sexual advantage of those in their care and supervision.

Sections 16 to 24 of the Act extend existing laws relating to abuse of a position of trust by people who work with children.

Sections 38 to 44 contain new offences for people who are engaged in providing care, assistance or services to someone in connection with a mental disorder.

The specific offences set out in these clauses do not preclude the use of other general and child-specific offences set out elsewhere in the Act; these can also be applied to people working with children, or with people with mental disorders, where appropriate. For more detail on these offences, see the other leaflets in this series: *Adults: Safer from Sexual Crime*, and *Children and Families: Safer from Sexual Crime*.

## Children and young people: abuse of positions of trust

The Sexual Offences Act re-enacts and extends the abuse of position of trust offences set out in the Sexual Offences (Amendment) Act 2000.

### Protecting 16 and 17 year-olds

The position of trust offences in the new Act cover all children under 18. They are mainly designed to protect young people aged 16 and 17 who, even though they are over the age of consent, are potentially vulnerable to sexual abuse from people in positions of trust or authority.

Where young people are 12 or under, or between 13 and 15, offences against them are likely to be charged under the general laws in the Act for these age groups. A separate leaflet in this series, *Children and Families: Safer from Sexual Crime*, gives more detail on these offences.

### What are 'positions of trust'?

The Act sets down specific positions of trust to which offences relate. People who are in these positions of trust will normally have power and authority in a child's life, and may have a key influence on their future. They will have regular contact with the child, and may be acting in loco parentis.

## Abuse of trust: specific occupations

The Act sets out a series of occupations to which the abuse of position of trust laws apply. These include institutions set out in the Sexual Offences (Amendment) Act 2000, such as:

- Institutions looking after young people who are detained under a court order or enactment, such as a Young Offenders Institution.
- Accommodation provided by local authorities and voluntary organisations under statutory provision.
- Hospitals, independent clinics, care homes, residential care homes, private hospitals, community homes, voluntary homes, children's homes and residential family centres.
- Educational institutions.

The Act also introduces new occupations to which the positions of trust laws apply. These cover people who look after young people under 18 in the following ways:

- Looking after them on an individual basis by providing services under the Learning and Skills Act 2000. This includes Connexions Personal Advisers.
- Regularly having unsupervised contact with them as part of local authority provision of accommodation to young people who are in need, under police protection or detention, or on remand.
- Having regular, unsupervised contact with them as someone who regularly reports to a court on matters of their welfare.
- Looking after them on an individual basis as a Personal Adviser appointed under relevant legislation, such as when young people leave local authority care.
- Looking after them in an official capacity on a regular basis when they are subject to a care order, supervision order, or education supervision order.
- Acting as their guardian as set out in the Children Act 1989, the Adoption Rules 1984 and the Family Proceedings Rule 1991.
- Looking after them on an individual basis after their release from detention or in pursuance of a court order. This includes Youth Offending Teams and treatment providers.

## The abuse of trust offences

The offences for those working in positions of trust cover the same kinds of behaviour as offences which apply to the general public – except that, where positions of trust are concerned, the offences apply where the young person is under 18, instead of under 16.

### Sexual activity with a child

This law covers all intercourse, other penetration or sexual touching of a child or young person. It includes sexual touching of any part of their body, clothed or unclothed, either with your body or with an object.

### Causing or inciting a child to engage in sexual activity

This covers causing or persuading a child or young person to engage in any sexual activity, including sexual acts with someone else, or making a child strip or masturbate. This offence applies where someone has incited a child to engage in sex, even if the intended sexual activity does not take place.

### Engaging in sexual activity in the presence of a child

Under this law, it is an offence to intentionally engage in sexual activity when you know that you can be seen by a child, or you believe or intend that they can see you, and where you do this in order to get sexual gratification from the fact that they may be watching you.

### Causing a child to watch a sexual act

This makes it an offence to intentionally cause a child to watch someone else taking part in sexual activity – including looking at images such as videos, photos, or webcams – for the purpose of your own sexual gratification.

### Positions of trust: exceptions

There are certain situations in which the position of trust offences do not apply. These are where a person is legally married to the young person, or where a lawful sexual relationship existed before the position of trust arose. This would apply, for instance, where a 17-year-old girl goes to stay in a hospital where her adult boyfriend works as a nurse.

## Child sex offences: exceptions

Specific amendments were made to the Act to ensure that people such as teachers, health professionals, social care professionals, sexual health counsellors, youth workers, teenage magazine writers, 'agony aunts' and parents are not liable to prosecution when they are acting to protect a child or young person, including those with a mental disorder.

The amendments apply to the offence of 'arranging or facilitating the commission of a child sex offence' and to aiding, abetting or counselling the commission of certain other child sex offences.

The exception covers people who are: protecting a child from sexually transmitted infection, protecting the physical safety of a child, preventing a child from becoming pregnant, or promoting the child's emotional well-being by the giving of advice.

This means that, for instance, a health professional who provides contraception to an under 16 year-old, a teacher who promotes contraception as part of sex education, or a Connexions Personal Adviser who accompanies a young person to a sexual health clinic, would be exempted from these offences, providing they are acting to protect the child.

These exceptions do not apply if someone acts to cause or encourage a sexual offence, or a child's participation in it, or for their own sexual gratification. This might include, for instance, someone explaining sexual intercourse to a child in order to assist their friend to engage in sexual activity with them.

## The age of consent

The legal age for young people to consent to have sex is still 16, whether they are straight, gay or bisexual. The aim of the law is to protect the rights and interests of young people, and make it easier to prosecute people who pressure or force others into having sex they don't want.

Although the age of consent remains at 16, the law is not intended to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation. Young people, including those under 13, will continue to have the right to confidential advice on contraception, condoms, pregnancy and abortion.

## Offences against people with mental disorders

The Sexual Offences Act uses the same definition of 'mental disorders' as the Mental Health Act 1983: "mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind". This includes learning disabilities.

Previously, there have been only a very small number of prosecutions for sexual offences against people with mental disorders. This can be exacerbated by the difficulties of gathering evidence from someone who may not understand or be able to articulate what has happened to them. There is evidence to suggest that people with a mental disorder are targeted for sexual abuse by offenders precisely because of this difficulty.

The Act frames important new legislation to protect people with mental disorders. Sections 30 to 33 relate to offences against people who cannot legally consent to sexual activity because of a mental disorder impeding choice. Sections 34 to 37 relate to offences against people who may or may not legally be able to consent to sexual activity but who are vulnerable to inducements, threats or deceptions because of a mental disorder.

For further detail on these offences, visit:

[www.homeoffice.gov.uk/crime/sexualoffences/legislation/act.html](http://www.homeoffice.gov.uk/crime/sexualoffences/legislation/act.html)

None of the measures in the Act are intended to interfere with the right to a full and active life, including a sexual life, of people with a mental disorder who have the capacity to consent. The legislation has been carefully framed to reflect this, and the laws which apply to all non-consensual sexual offences against adults - for instance rape and sexual assault - apply just as much to them as anyone else. A separate leaflet in this series, *Adults: Safer from Sexual Crime*, gives more detail on these offences.

However, the Act recognises the importance of protecting people with mental disorders from sexual abuse by people with whom they are in a relationship of care, and contains new offences specifically for careworkers

## Care workers for people with a mental disorder

Under the Act, any sexual activity between a care worker and a person with a mental disorder is prohibited whilst that relationship of care continues.

A 'relationship of care' is defined as where one person has a mental disorder and another person is regularly involved, or is likely to be involved, face-to-face in their care, where that care arises from the mental disorder. It applies to people working on both a paid and a voluntary basis, and includes staff such as:

- Doctors, nurses, social workers, medical receptionists, cleaning staff, advocates and voluntary helpers.
- Workers in a care home, community home, voluntary home or children's home.
- Workers who provide services through the NHS or a private medical agency or independent clinic or hospital.
- Workers who provide services in the home or for a body or agency which brings them into, or could bring them into, regular face-to-face contact with people with mental disorders.
- Workers with regular face-to-face contact with people with mental disorders who provide any services where care or assistance are given. This could include paid or unpaid staff who take people with mental disorders on outings every week, or visit them at home to provide complementary therapy.
- It also includes anyone (including a friend or family member) if they provide care, assistance or services in connection with the person's mental disorder.

## The care workers offences

The laws in the Act relating to care workers of people with mental disorders apply whether or not the victim appears to consent, and whether or not they have the legal capacity to consent.

The apparent consent of the victim is only relevant in so far as it may mean that the care worker is not guilty of a non-consensual offence, such as rape or sexual assault.

Care workers may be charged with the following specific offences:

### Care workers: sexual activity with a person with a mental disorder

This law covers all intercourse, other penetration or sexual touching of someone with a mental disorder. It includes sexual touching of any part of their body, clothed or unclothed, either with your body or with an object.

### Care workers: causing or inciting sexual activity

This covers causing or persuading someone with a mental disorder to engage in any sexual activity, including sexual acts with someone else, or making them strip or masturbate. This offence applies where someone has incited a person with a mental disorder to engage in sex, even if the intended sexual activity does not take place.

### Care workers: sexual activity in the presence of a person with a mental disorder

This makes it an offence to intentionally engage in sexual activity when you know that you can be seen by a person with a mental disorder who is in your care, or you believe or intend that they can see you, and where you do this in order to get sexual gratification from the fact that they may be watching you.

## The care workers offences (*continued*)

### Care workers: causing a person with a mental disorder to watch a sexual act

This makes it an offence to intentionally cause a person with a mental disorder to watch someone else taking part in sexual activity – including looking at images such as videos, photos, or webcams – for the purpose of your own sexual gratification. It is not intended that this should prevent care workers from providing legitimate sex education. For instance, a care worker showing a person with a mental disorder a video of a sexual act as part of an approved care plan would not be liable for this offence.

### Care workers: exceptions

There are certain situations in which the care workers' offences do not apply. These are where the care worker is legally married to the person with a mental disorder, or where it can be proved that the sexual relationship pre-dated the start of the relationship of care, as long as that sexual relationship was lawful. This would apply, for instance, where someone who looks after his or her partner following the onset of a mental disorder continues to have a consensual sexual relationship with them.

## Working within the Act: implications for policy and practice

The Sexual Offences Act has important implications for organisations working with children and with people with mental disorders.

### The public sector

In the light of the Act, Government departments and initiatives will be issuing guidance to public sector organisations.

Home Office guidance on Parts 1 and 2 of the Sexual Offences Act has been issued to organisations working in the Criminal Justice System. The guidance explains the purpose of all the new offences in the Act, and gives information about how the offences and notification requirements for sex offenders are intended to operate in practice. Copies of the guidance can be ordered by telephone on 020 7272 3123, or by email from [sexual.offences@homeoffice.gsi.gov.uk](mailto:sexual.offences@homeoffice.gsi.gov.uk).

They can also be downloaded at Home Office website:

[www.homeoffice.gov.uk/justice/sentencing/sexualoffencesbill/index.html](http://www.homeoffice.gov.uk/justice/sentencing/sexualoffencesbill/index.html)

From July 2004, revised guidance for health professionals on the provision of contraception to under 16s and updated existing guidance for social workers, foster carers, youth workers and Connexions Personal Advisers will be available on the Department for Education and Skills' Teenage Pregnancy Unit website at [www.teenagepregnancyunit.gov.uk](http://www.teenagepregnancyunit.gov.uk)

Department for Education and Skills has issued guidance to schools on Sex and Relationship Education, which is available online at [www.dfes.gov.uk/sreguidance](http://www.dfes.gov.uk/sreguidance)

## Working within the Act: implications for policy and practice (*continued*)

### The private and voluntary sectors.

The Sexual Offences Act has implications for private and voluntary sector organisations working with children, and with people with mental disorders.

It is envisaged that organisations working with children and with people with mental disorders will:

- Update policies and guidelines on inappropriate sexual relationships between staff and children or vulnerable adults.
- Take account of the Act when delivering training.
- Disseminate information about the offences affecting care workers and people in a position of trust within their organisations.

In particular, it will be important to ensure that people working with children are aware that they can continue to provide sex education, advice and contraception to under 16s in confidence and without fear of prosecution.

To find out more about the implications for professionals - including teachers - of the Sexual Offences Act, the Children's Bill, and the 'Safeguarding Children' guidance, you can visit the Sex Education Forum website at [www.ncb.org.uk/sef](http://www.ncb.org.uk/sef)

## Relevant organisations and websites

### **ACEVO**

The professional organisation for chief executives in the voluntary sector.

[www.acevo.org.uk](http://www.acevo.org.uk)

### **Brook**

Helpline and online enquiry service with free, confidential sexual health advice and contraception to young people up to the age of 25.

**Helpline 0800 0185 023**

[www.brook.org.uk](http://www.brook.org.uk)

### **Business Link**

Support, advice and information service for small businesses, run by the Department for Trade and Industry.

[www.businesslink.gov.uk](http://www.businesslink.gov.uk)

### **Mencap**

A leading learning disability charity working with people with a learning disability and their families and carers.

[www.mencap.org.uk](http://www.mencap.org.uk)

### **National Council of Voluntary Child Care Organisations**

Umbrella organisation for registered charities that work with children, young people and their families.

[www.ncvcco.org.uk](http://www.ncvcco.org.uk)

### **NCVO**

Umbrella body for the voluntary sector in England. Their website, 'askNCVO', is a best practice resource for the voluntary sector.

[www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

[www.askncvo.org.uk](http://www.askncvo.org.uk)

### **NSPCC Inform**

Website to share information with researchers, trainers and practitioners working to protect children.

[www.nspcc.org.uk/inform](http://www.nspcc.org.uk/inform)

**Respond**

Charity providing a range of services to victims and perpetrators of sexual abuse who have learning disabilities, and training and support to those working with them.

**Helpline 0808 808 0700**

**[www.respond.org.uk](http://www.respond.org.uk)**

**Sex Education Forum**

Information for professionals on sex education.

**[www.ncb.org.uk/sef](http://www.ncb.org.uk/sef)**

**Teachernet**

Online resource to support the education profession.

**[www.teachernet.gov.uk](http://www.teachernet.gov.uk)**

**Teenage Magazine Arbitration Panel**

The magazine industry's self-regulatory body which ensures that the sexual content of teenage magazines is presented in a responsible and appropriate manner.

**[www.tmap.org.uk](http://www.tmap.org.uk)**

**Turning Point**

A social care organisation working with individuals and their communities in the areas of drug and alcohol misuse, mental health and learning disability.

**[www.turning-point.co.uk](http://www.turning-point.co.uk)**

**Voice UK**

Charity supporting people with learning disabilities who have experienced crime or abuse. Also supports their families, carers and professional workers.

**[www.voiceuk.org.uk](http://www.voiceuk.org.uk)**