

CHAPTER 33

Sexual offences, child abduction and kidnapping

SEXUAL OFFENCES: INTRODUCTION

The law in relation to sexual offences was thoroughly overhauled and modernised by the Sexual Offences Act 2003 (SOA 2003). The only part of the previous principal Act, the Sexual Offences Act 1956, which survives are a handful of sections concerned with brothels. We deal with these sections in the next chapter.

Although the offender is often referred to as 'he' in the offences in the SOA 2003, it must not be forgotten that, with the exception of rape and the offence of intercourse with an animal, contrary to SOA 2003, s 69(1), all the offences under that Act can be committed by a female person, as well as by a male person.

Sexual

For the purposes of the various offences in SOA 2003, s 78 provides that, except sexual activity in a public lavatory, penetration, touching or any other activity is sexual if a reasonable person would consider that:

- (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual; or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

Consent

'Consent' is defined for the purposes of the offences under the SOA 2003 involving the absence of consent by SOA 2003, s 74 as follows: a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

The Sexual Offences Act 2003, ss 75 and 76 lay down some evidential and conclusive presumptions as to the absence of consent in respect of rape and similar non-consensual sexual offences described in this chapter. These presumptions are dealt with at the relevant points.

Under the above definition, a person who is asleep or otherwise unconscious at the time of the relevant act will not normally consent because he will not normally agree to what is done. If there appears to be an agreement, it may be vitiated as follows.

Incapacity to make a choice

A person may, for example, lack the capacity to make a choice about whether or not to agree because of mental disorder, because he is drugged or intoxicated or because he is semi-comatose. A person will lack capacity to consent if at the time he has no real understanding of what is involved, or (in other words) he has such limited knowledge or understanding as not to be in a position to decide whether or not to agree.

Lack of freedom to choose

A person may not have a freedom to make a choice whether or not to agree if violence is being used against him, or he is caused to fear that it is being used against another, at the time of the relevant conduct or immediately beforehand. The same is the case if he is caused to fear at the time of the relevant act or beforehand that violence would be used against him or another person. A person may also lack freedom of choice for other reasons, as where someone agrees because he is unlawfully detained or where there was the use, or threat, of violence to destroy property which was of special value, financially or emotionally, or threat of dismissal by an employer to an employee, or a threat to remove children. It would all depend on the nature of the threat and the other circumstances, and the perception of the complainant, and whether in the light of these factors the complainant was not in reality free to agree or disagree.

By mistake

Some mistakes may vitiate an apparent agreement. This will certainly be the effect of a mistaken belief as to the nature of the act or that the accused is someone known personally to the complainant. In neither case does the complainant agree to what is done. The same is true, it would seem, where there is a mistake as to the purpose of the act.

It remains to be seen whether the judges will recognise that a mistake as to any quality of an act, other than its purpose, or a mistaken belief of identity not involving a belief as to someone known personally can prevent 'agreement by choice' for the purposes of the law of sexual offences.

Penetration and parts of the body

By SOA 2003, s 79, 'penetration' is a continuing act from entry to withdrawal. It has long been established by the courts that the slightest degree of penetration is enough. Section 79 also provides that references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery); that 'vagina' includes vulva (external female genital organs); and that 'touching' includes touching with any part of the body, or with anything else, or through anything, and in

particular includes touching through penetration. An example of a touching by something other than a part of anyone's body would be holding a sex toy against a private part of the victim's body. Since the touching can be through anything, it would be irrelevant that B was fully dressed at the time, provided that there was some physical contact, however slight, with B's body through the clothing.

Arrestable offences

All offences under SOA 2003 are arrestable offences, besides the offences of sex with an adult relative under ss 64 and 65.

NON-CONSENSUAL SEXUAL OFFENCES

Rape

By SOA 2003, s 1(1), a person (A) commits an offence if:

- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis;
- (b) B does not consent to the penetration; and
- (c) A does not reasonably believe that B consents.

The absence of consent does not have to be demonstrated by offering resistance or by communicating it to the accused.

SOA 2003, s 1(2) provides that whether a belief in consent is reasonable is to be determined having regard to all the circumstances, including any steps A (the accused) has taken to ascertain whether B (the victim) consents. The words 'all the circumstances' must refer to those which might be relevant to the issue, including any characteristic of the accused, permanent or transient, which might affect his ability to perceive or understand whether or not the victim is consenting. Examples would be a learning disability, mental illness, deafness, blindness, maturity, extreme youth and sexual inexperience.

Proof of lack of consent and of the fault element relating to it is assisted by special provisions, which also apply to the offences of assault by penetration, sexual assault and causing a person to engage in sexual activity without consent. Both these provisions refer to the accused having done 'the relevant act'. For the purposes of rape, 'the relevant act' is that the accused intentionally penetrated, with his penis, the vagina, anus or mouth of another person ('the complainant').

The first provision (SOA 2003, s 75) is that if in proceedings for an offence to which this section applies it is proved:

- (a) that the accused did the relevant act;
- (b) that any of the circumstances specified below existed; and
- (c) that the accused knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the accused is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

The specified circumstances are that:

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) the complainant was, and the accused was not, unlawfully detained at the time of the relevant act;
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the accused whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

The second provision (SOA 2003, s 76) is that if in proceedings for an offence to which this section applies it is proved that the accused did the relevant act and that either of the circumstances specified below existed, it is to be conclusively presumed:

- (a) that the complainant did not consent to the relevant act; and
- (b) that the accused did not believe that the complainant consented to the relevant act.

The specified circumstances are that: the accused intentionally deceived the complainant as to the nature or purpose of the relevant act; and that the accused intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

Rape of a child under thirteen

By SOA 2003, s 5(1), a person commits an offence if:

- (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis; and
- (b) the other person is under thirteen.

Whether or not the other person consents to the penetration is irrelevant; a child under thirteen is legally incapable of giving a legally significant consent.

The offence is one of the offences in respect of which there are exceptions from criminal liability under SOA 2003, s 73, on the basis of aiding, abetting or counselling the commission of the offence if a person acts for the purpose of:

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

Assault by penetration

By SOA 2003, s 2(1), a person (A) commits an offence if:

- (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else;
- (b) the penetration is sexual;
- (c) B does not consent to the penetration; and
- (d) A does not reasonably believe that B consents.

SOA 2003, s 2(2) provides that whether a belief is reasonable must be determined having regard to all the circumstances, including whether the accused has taken reasonable steps to ascertain whether the complainant consents.

If it is proved that the accused intentionally penetrated, with a part of his body (eg a finger or tongue) or anything else (eg a dildo or bottle), the vagina or anus of B ('the complainant') in circumstances where the penetration was sexual, and that (as the accused knew) one of the specified circumstances referred to in SOA 2003, s 75 existed, the evidential presumptions about the absence of consent and of a reasonable belief in consent referred to in relation to rape also apply to the present offence.

If it is proved that the accused (A) intentionally penetrated, with a part of his body or anything else, the vagina or anus of another person (B, 'the complainant') in circumstances where the penetration was sexual, and that A intentionally deceived B as to the nature or purpose of that act, or that A intentionally induced B to consent to that act by impersonating someone known to B, it is to be conclusively presumed under SOA 2003, s 76 that B did not consent to that act and that A did not believe that the complainant consented to the relevant act.

Assault of a child under thirteen by penetration

By SOA 2003, s 6(1), a person commits an offence if:

- (a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else;
- (b) the penetration is sexual; and
- (c) the other person is under thirteen.

The absence of consent by the other person is not an element of this offence. The exceptions under SOA 2003, s 73 from liability for aiding, abetting or counselling apply to this offence.

Sexual assault

By SOA 2003, s 3(1), a person (A) commits an offence if:

- (a) he intentionally touches another person (B);

- (b) the touching is sexual;
- (c) B does not consent to the touching; and
- (d) A does not reasonably believe that B consents.

SOA 2003, s 3(2) provides that whether a belief is reasonable must be determined with regard to all the circumstances, including any steps the accused has taken to ascertain whether the complainant consents.

In terms of the requirement of the absence of consent by the complainant and 'no reasonable belief' in consent on the accused's part, the prosecution is assisted by the evidential and conclusive presumptions referred to on p 867, which also apply to the present offence. For the purposes of the present offence, the 'relevant act' is that the accused intentionally touched the complainant, where the touching was sexual.

Sexual assault of a child under thirteen

By SOA 2003, s 7(1), a person commits an offence if:

- (a) he intentionally touches another person;
- (b) the touching is sexual; and
- (c) the other person is under thirteen.

The absence of the other person's consent is not an element of the offence. The exceptions under SOA 2003, s 73 from liability for aiding, abetting or counselling apply to this offence.

Causing a person to engage in sexual activity without consent

By SOA 2003, s 4(1), a person (A) commits an offence if:

- (a) he intentionally causes another person (B) to engage in an activity;
- (b) the activity is sexual;
- (c) B does not consent to engaging in the activity; and
- (d) A does not reasonably believe that B consents.

A more serious offence is committed if the activity caused 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.

SOA 2003, s 4(1) provides that whether a belief is reasonable must be determined with regard to all the circumstances, including any steps the accused has taken to ascertain whether the complainant consents. In terms of the requirements of the absence of consent by the complainant and of no reasonable belief in consent, the prosecution is assisted by the evidential and conclusive presumptions referred to on p 867, which also apply to the present offence. For the purposes of the present offence, the 'relevant act' is that the accused intentionally caused the complainant to engage in an activity, where the activity was sexual.

Causing or inciting a child under thirteen to engage in sexual activity

By the SOA 2003, s 8(1), a person commits an offence if:

- (a) he intentionally causes or incites another person (B) to engage in an activity;
- (b) the activity is sexual, and
- (c) B is under thirteen.

A more serious offence is committed 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.

The absence of B's consent is not an element of an offence under s 8.

Advice in non-consensual sex cases

- (1) To be fully effective, anonymity for complainants must start from the moment when the allegation is made to the police.
- (2) Tactful and sympathetic questioning of complainants is important. Experience and sympathy in the interviewing officer are more important than his or her sex.
- (3) Medical examination in a clinical environment, such as a hospital or surgery, should reduce distress, produce an atmosphere of care and concern, and provide for immediate treatment where desirable. As, however, there may be difficulties in the way of having such examinations away from a police station, adequate and suitable facilities for medical examination in police stations are needed in case it is necessary for such examinations to take place there.
- (4) If possible, and if time permits, the police should ensure that the complainant is referred to the appropriate services, whether medical or social; this is best done before the complainant leaves the police station.

This advice is included in the report of the Advisory Group on the Law of Rape (1976). It is extremely important and is obviously applicable not just to rape but to any other non-consensual sexual offence. The complainant has just undergone an extremely frightening experience and will require all the assurance which it is possible to give.

CHILD SEX OFFENCES

In these offences, it is irrelevant that the child may have consented.

Sexual activity with a child

By SOA 2003, s 9(1), a person aged eighteen or over (A) commits an offence if:

- (a) he intentionally touches another person (B);

- (b) the touching is sexual; and
- (c) either:
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
 - (ii) B is under thirteen.

A more serious offence is committed 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.

The exceptions from liability for aiding, abetting or counselling under SOA 2003, s 73, described on p 868, apply to such an offence.

Causing or inciting a child to engage in sexual activity

By SOA 2003, s 10(1), a person aged eighteen or over (A) commits an offence if:

- (a) he intentionally causes or incites another person (B) to engage in an activity;
- (b) the activity is sexual; and
- (c) either:
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
 - (ii) B is under thirteen.

A more serious offence is committed if the activity caused or incited involved:

- (a) penetration of B's anus or vagina (with a part of the body or anything else);
- (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.

Engaging in sexual activity in the presence of a child

By SOA 2003, s 11(1), a person aged eighteen or over (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; and
- (d) either:
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
 - (ii) B is under thirteen.

‘Observed’ in (c) and elsewhere in the Act means observation whether direct or by looking at an image produced by any means.

Causing a child to watch a sexual act

By SOA 2003, s 12(1), a person aged eighteen or over (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; and
- (c) either:
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over, or
 - (ii) B is under thirteen.

‘Image’ in (a), and elsewhere in the Act, includes a moving or still image, however produced, and, where—as here—the context permits, a three-dimensional image. It does not include written material. References to an image of a person include references to an image of an imaginary person.

Child sex offences committed by children or young persons

By SOA 2003, s 13(1), a person under eighteen commits an offence if he does anything which would be an offence under SOA 2003, ss 9 to 12 if he were aged eighteen. It is, however, a less serious offence than those offences. The exceptions from liability for aiding, abetting or counselling under the SOA 2003 (p 868) apply to this offence.

Arranging or facilitating the commission of a child sex offence

By SOA 2003, s 14(1), a person commits an offence if:

- (a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world; and
- (b) doing it will involve the commission of an offence under SOA 2003, ss 9 to 13.

SOA 2003, s 14(2) and (3) provides exceptions for people who seek to protect a child from pregnancy or sexually transmitted disease or to protect a child’s physical safety or to give it advice, where they do not intend that the child will commit an offence under SOA 2003, ss 9 to 13 but believe that it will.

The exceptions are part of a theme which lies at the heart of the Act: the promotion of the protection of those who are vulnerable.

A person does not commit an offence under s 14 if:

- (a) he intentionally arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do; and
- (b) any offence within ss 9 to 13 which the doing of that thing would involve would be an offence against a child for whose protection he acts.

In this context, a person acts for the protection of a child if he acts for the purpose of:

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting an offence within ss 9 to 13 or the child's participation in it.

Examples of conduct falling within s 14(3) would be giving an under-age boy a condom (if done for the purpose of protecting the boy against a sexually-transmitted infection, but not if done to protect the boy against the risk of his sixteen-year-old girlfriend becoming pregnant); giving an under-age girl a condom (if done for the purpose of protecting her against a sexually-transmitted infection or pregnancy); giving advice (eg by an 'agony aunt' or counsellor) to an under-age child or children about protected sex (if done for the purpose of protection against sexually-transmitted infection, or, where the advice is given to a girl, pregnancy, or to promote the child's emotional well-being).

Meeting a child following sexual grooming with a view to engaging in sexual activity with it

Paedophiles have not been slow to make use of the internet to gain the trust and confidence of children in 'chatroom conversations' and thereby to befriend them. Typically, the paedophile pretends that he is a teenager sharing the same interests and then arranges a meeting with the child. Grooming, however, is not limited to the internet.

SOA 2003, s 15(1) deals with grooming by providing that a person aged eighteen or over (A) commits an offence if:

- (a) having met or communicated with another person (B) anywhere in the world on at least two earlier occasions, he:
 - (i) intentionally meets B; or
 - (ii) travels with the intention of meeting B in any part of the world;
- (b) at the time, he intends to do anything to or in respect of B, during or after the meeting, and in any part of the world, which if done will involve the commission by A of any offence described in this chapter or under the corresponding law of Northern Ireland or of another country;
- (c) B is under sixteen; and
- (d) A does not reasonably believe that B is sixteen or over.

ABUSE OF POSITION OF TRUST

Abuse of position of trust: sexual activity with a child

Provided that he has any necessary mens rea, a person aged eighteen or over (A) commits an offence under SOA 2003, s 16(1) if:

- (a) he intentionally touches another person (B);

- (b) the touching is sexual;
- (c) A is in a position of trust in relation to B; and
- (d) B is under eighteen.

B's consent is, of course, irrelevant in offences involving abuse of a position of trust. The exceptions from liability for aiding, abetting or counselling this offence under SOA 2003, s 73 (p 868) apply to this offence if B is under sixteen.

Abuse of position of trust: causing or inciting a child to engage in sexual activity

Provided that he has any necessary mens rea, a person aged eighteen or over (A) commits an offence under s 17(1) if:

- (a) he intentionally causes or incites another person (B) to engage in an activity;
- (b) the activity is sexual;
- (c) A is in a position of trust in relation to B; and
- (d) B is under eighteen.

Abuse of position of trust: sexual activity in the presence of a child

Provided that he has any necessary mens rea, a person aged eighteen or over (A) commits an offence under SOA 2003, s 18(1) 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) A is in a position of trust in relation to B, and
- (e) B is under eighteen.

Abuse of position of trust: causing a child to watch a sexual act

Provided that he has any necessary mens rea, a person aged eighteen or over (A) commits an offence under SOA 2003, s 19(1) 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) A is in a position of trust in relation to B; and
- (d) B is under eighteen.

Position of trust

For the purposes of the above offences, a person (A) is, by SOA 2003, s 22, in a position of trust in relation to another person (B) if:

- (a) any of paras (1) to (12) below apply; or
- (b) any condition specified in an order made by the Secretary of State is met. No order has yet been made.
- (1) If A looks after persons under eighteen who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.
 - (2) If A looks after persons under eighteen who are resident in a home or other place for children in residential care, and B is in residential care there.
 - (3) If A looks after persons under eighteen who are accommodated and cared for in a hospital, an independent clinic, a care home, residential care home or private hospital, a community home, voluntary home or children's home, or the like, and B is accommodated and cared for in that institution.
 - (4) If A looks after persons under eighteen who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.
 - (5) If A is appointed to be the guardian of B under the Children (Northern Ireland) Order 1995, art 159 or 160.
 - (6) If A is engaged in the provision of a careers service or similar service and, in that capacity, looks after B on an individual basis.
 - (7) If A regularly has unsupervised contact with B (whether face to face or by any other means) in the provision of accommodation for children in need thereof or in police protection or detention or on remand.
 - (8) If A, as a person who is to report to the court on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).
 - (9) If A is a personal adviser appointed for B under the Children Act 1989 or its Northern Irish equivalent, and, in that capacity, looks after B on an individual basis.
 - (10) If:
 - (a) B is subject to a care order, a supervision order or an education supervision order; and
 - (b) in the exercise of functions conferred by virtue of the order on an authorised person or the authority designated by the order, A looks after B on an individual basis.
 - (11) If A is an officer of the Children and Family Court Advisory Support Service (CAFCASS) or has a similar function in Northern Ireland, and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).
 - (12) If:
 - (a) B is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings; and
 - (b) A looks after B on an individual basis in pursuance of the requirements.

For the purposes of paras (1), (2), (3) and (4), a person looks after persons under eighteen at an institution or the like if he is regularly involved in caring for, training,

supervising or being in sole charge of such persons there, not necessarily the child abused.

Paragraphs (6), (9), (10) and (12) refer to a person looking after another on an individual basis. A person (A) looks after another (B) on such a basis if:

- (a) A is regularly involved in caring for, training or supervising B; and
- (b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

Mens rea

In addition to requiring the accused intentionally to do the thing specified by each individual section, ss 16 to 19 make further provision as to the mens rea required in respect of the child's age and the existence of a position of trust.

In terms of the mens rea as to the age of the child (B), the accused (A) must not reasonably believe that B is eighteen or over. However, this provision does not apply if B is under thirteen at the material time; in such a case the offences are undoubtedly ones of strict liability as to age. Although the prosecution ultimately has the persuasive burden of proof of the fault element as to the age of B where B is aged thirteen to seventeen, the prosecution is assisted by the provision that where in proceedings for an offence under these provisions it is proved that the other person was under eighteen, the accused is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

Where A is in a position of trust in relation to B by virtue of circumstances within para (1), (2), (3) or (4) above, ie:

- (a) B detained in an institution by virtue of a court order or under an enactment;
- (b) B in residential care;
- (c) B accommodated and cared for in a hospital, care home, children's or residential family centre etc; or
- (d) B receiving education at an educational institution,

and, in each case, A is not also in a position of trust by virtue of other circumstances, it must be proved that A knew or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B. Proof of this is aided by the provision that, where it is proved that A was in a position of trust in relation to the other person by virtue of the four circumstances just referred to, and it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be presumed that A knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

Where a position of trust arises wholly or partly by virtue of the other categories of circumstance referred to above, the Act does not require proof of any mens rea as to the position of trust where such a position of trust is involved.

Exceptions: marriage and existing sexual relationships

Conduct by a person (A) which would otherwise be one of the offences under SOA 2003, ss 16 to 19 against another person (B) is not such an offence if:

- (a) B was sixteen or over, and the accused proves that A and B were lawfully married; or
- (b) the accused proves that immediately before the position of trust arose, a sexual relationship existed between A and B, but this exception does not apply if at that time sexual intercourse between A and B would have been unlawful, eg because B was under sixteen.

FAMILIAL SEXUAL OFFENCES

Sexual activity with a child family member

A person (A) commits an offence under SOA 2003, s 25(1) if:

- (a) he intentionally touches another person (B);
- (b) the touching is sexual;
- (c) the relation of A to B is within the specified relationships;
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within those relationships; and
- (e)
 - (i) either B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

The Act has the effect of distinguishing between three types of offence. The most serious is committed where A is eighteen or over at the time of the offence and 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 part of B's body (but not with anything else); or
- (d) penetration of A's mouth by B's penis.

The next offence is where A is eighteen or over at the material time but the activity is not penetrative in one of these ways. The least serious offence is where A was not eighteen or over at the material time, whatever type of activity was involved.

Where it is proved that the relation of the accused to the other person was of a description falling within the specified relationships, it is to be taken that the accused knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue (ie to raise a *prima facie* case) as to whether he knew or could reasonably have been expected to know that it was.

In respect of the *mens rea* in (e)(i) (no reasonable belief (where B is not under thirteen) that B is eighteen), where it is proved that B was under eighteen, A is to be taken

not to have reasonably believed that B was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

Inciting a child family member to engage in sexual activity

A person (A) commits an offence under SOA 2003, s 26 if:

- (a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A;
- (b) the touching is sexual;
- (c) the relation of A to B is within the specified relationships;
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within those relationships; and
- (e) either:
 - (i) B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

There are three types of offence under s 26, distinguished in a similar way as in s 25. The mens rea in respect of the fact that the relation of A to B is within the specified relationships is the same as that in the offences described in relation to s 25. Thus, where it is proved that the relation of A to B was of a description falling within the specified relationships, it is to be taken that A knew or could reasonably have been expected to know that his relation to B was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

Likewise, in respect of the mens rea in para (e)(i) (no reasonable belief (where B is not under thirteen) that B is eighteen or over), where it is proved that B was under eighteen, A is to be taken not to have reasonably believed that B was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

Family relationships

For the purposes of SOA 2003, ss 25 and 26, the relation of the accused and the 'victim' must be within s 27. The relation of one person (A) to another (B) is within the specified relationships if it is within paras (a) to (c) below, including an adoptive relationship (as well as a biological one).

The relation of A and B is within the specified relationships if:

- (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or A is or has been B's foster parent;
- (b) A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and:
 - (i) one of them is or has been the other's step-parent;
 - (ii) A and B are cousins;
 - (iii) one of them is or has been the other's stepbrother or stepsister; or
 - (iv) the parent or present or former foster parent of one of them is or has been the other's foster parent;

- (c) A and B live in the same household, and A is regularly involved in caring for, training, supervising or being in sole charge of B, eg a nanny or au pair. It will be noted that (c) only applies while A is living in the same household.

Exceptions: marriage and existing sexual relationships

By SOA 2003, ss 28 and 29, conduct by a person (A) which would otherwise be an offence under s 25 or s 26 against another person (B) is not an offence thereunder if at the time:

- (a) B is sixteen or over, and A and B are lawfully married; or
- (b) (i) the relation of A to B is not within para (a) of the specified relationships above, either biologically or adoptively; and
 - (ii) immediately before the relation of A to B first became such as to fall within the specified relationships, a sexual relationship existed between A and B (as where when A's mother marries B's father, A and B were already in a sexual relationship).

The defence in para (b) does not apply if at the time referred to in para (b)(ii) sexual intercourse between A and B would have been unlawful, for example because one of them was under sixteen.

It is for the accused to prove the matters mentioned in para (a) or para (b).

Sex with an adult relative

A person aged sixteen or over (A) commits an offence under SOA 2003, s 64(1) if:

- (a) he intentionally penetrates another person's vagina or anus with a part of his body or anything else, or penetrates another person's mouth with his penis;
- (b) the penetration is sexual;
- (c) the other person (B) is aged eighteen or over;
- (d) A is related to B in a specified way; and
- (e) A knows or could reasonably be expected to know that he is related to B in that way.

A person aged sixteen or over (A) commits an offence under SOA 2003, s 65(1) if:

- (a) another person (B) penetrates A's vagina or anus with a part of B's body or anything else, or penetrates A's mouth with B's penis;
- (b) A consents to the penetration;
- (c) the penetration is sexual;
- (d) B is aged eighteen or over;
- (e) A is related to B in a specified way; and
- (f) A knows or could reasonably be expected to know that he is related to B in that way.

The specified ways that A may be related to B are as a parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

In terms of the requirement that the prosecution must prove that the accused (A) knew or could reasonably be expected to know that he is related to B in a specified way,

it is to be taken that the accused knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

OFFENCES AGAINST PEOPLE WITH A MENTAL DISORDER

Meaning of mental disorder

For the purposes of these offences, 'mental disorder' means 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'. A person with a learning disability falls within this definition.

Sexual activity with a person with a mental disorder impeding choice

A person (A) commits an offence under SOA 2003, s 30(1) if:

- (a) he intentionally touches another person (B);
- (b) the touching is sexual;
- (c) B is unable to refuse because of or for a reason related to a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

A person commits a more serious offence 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 (but not with anything else); or
- (d) penetration of A's mouth with B's penis.

B is unable to refuse if:

- (a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or
- (b) he is unable to communicate such a choice to A.

The exceptions under SOA 2003, s 73 from liability for aiding, abetting or counselling apply to an offence under s 30.

Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity

A person (A) commits an offence under SOA 2003, s 31(1) if:

- (a) he intentionally causes or incites another person (B) to engage in an activity;
- (b) the activity is sexual;
- (c) B is unable to refuse because of or for a reason related to a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

A person commits a more serious offence 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.

B is unable to refuse if:

- (a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or
- (b) he is unable to communicate such a choice to A.

Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

A person (A) commits an offence under SOA 2003, s 32(1) 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 is unable to refuse because of or for a reason related to a mental disorder; and
- (e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

B is unable to refuse if:

- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or
- (b) he is unable to communicate such a choice to A.

Causing a person with a mental disorder impeding choice to watch a sexual act

A person (A) commits an offence under SOA 2003, s 33(1) 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 is unable to refuse because of or for a reason related to a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

B is unable to refuse if:

- (a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or
- (b) he is unable to communicate such a choice to A.

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

A person (A) commits an offence under SOA 2003, s 34(1) if:

- (a) with the agreement of another person (B) he intentionally touches that person;
- (b) the touching is sexual;
- (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose;
- (d) B has a mental disorder; and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

A person commits a more serious offence 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.

It is not necessary in either of these offences or in the case of the related offences under SOA 2003, ss 35 to 37 that the victim's mental disorder made the victim unable to refuse. These offences are concerned with gaining the consent of a mentally vulnerable person by inducement (eg a reward), a threat (eg 'I won't tell on you if you agree . . .') or a deception (eg 'This is what everyone does').

Causing a person with a mental disorder to engage in, or agree to engage in, sexual activity by inducement, threat or deception

A person (A) commits an offence under SOA 2003, s 35(1) if:

- (a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity;
- (b) the activity is sexual;
- (c) B has a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder.

A more serious offence is committed if the activity caused or agreed on is penetrative in the sense set out above.

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

A person (A) commits an offence under SOA 2003, s 36(1) 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 agrees to be present or in the place referred to in para (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (e) B has a mental disorder; and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

A person (A) commits an offence under SOA 2003, s 37(1) 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 agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (d) B has a mental disorder; and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

Sexual activity by a care worker with a person with a mental disorder

A person (A) commits an offence under SOA 2003, s 38(1) 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 the provisions described on p 886.

A more serious offence is committed 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.

If it is proved that the other person had a mental disorder, it is to be taken that the accused 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.

The exceptions under SOA 2003, s 73 (p 868) from liability for aiding, abetting or counselling apply to an offence under s 38.

Offences under s 38, and the other 'care worker offences' referred to below, are designed to protect those mentally disordered people who have the capacity to refuse consent from exploitation by a care worker of his or her relationship with the mentally disordered person.

Care worker causing or inciting a person with mental disorder to engage in sexual activity

A person (A) commits an offence under SOA 2003, s 39(1) 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 the provisions described on p 886.

A more serious offence is committed if the sexual activity is penetrative in one of the ways described in relation to s 38. If it is proved that B had a mental disorder, it is to be taken as proved that the accused knew or could reasonably have been expected to know that B had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably be expected to know it.

Sexual activity by care worker in presence of person with mental disorder

A person (A) commits an offence under SOA 2003, s 40(1) 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;
- (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 the provisions described on p 886.

If it is proved that the other person had a mental disorder, it is to be taken that the accused 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 be expected to know it.

Care worker causing person with mental disorder to watch a sexual act

A person (A) commits an offence under SOA 2003, s 41(1) 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 the provisions described on p 886.

If it is proved that the other person had a mental disorder, it is to be taken that the accused 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.

Definition of care worker

For the purposes of the offences described in SOA 2003, ss 38 to 41, a person (A) is involved in the care of another (B) ('care worker' for short) if para (a), (b) or (c) below applies, that is:

- (a) if:
 - (i) B is accommodated and cared for in a care home, community home, voluntary home or children's home; and
 - (ii) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face-to-face contact with B;
- (b) if B is a patient for whom services are provided:
 - (i) by a National Health Service body or an independent medical agency; or
 - (ii) in an independent clinic or an independent hospital,and A has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him or are likely to bring him into regular face to face contact with B;
- (c) if:
 - (i) 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
 - (ii) as such, has had or is likely to have regular face to face contact with B.

Exceptions

By SOA 2003, ss 43 and 44, conduct by a person (A) which would otherwise be an offence under ss 38 to 41 against another person (B) is not such an offence if respectively:

- (a) B was sixteen or over, at the time of the conduct and the accused proves A and B were lawfully married at that time; or
- (b) the accused proves that immediately before A became involved in B's care in a way described above, a sexual relationship existed between A and B. This exception does not apply if at that time—ie the 'immediately before' time—sexual intercourse between A and B would have been unlawful (eg because B was under sixteen).

PREPARATORY OFFENCES

Administering a substance with intent

A person commits an offence under SOA 2003, s 61(1) if he intentionally administers a substance to, or causes a substance to be taken by, another person (B):

- (a) knowing that B does not consent; and
- (b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.

This offence is aimed at the activity which has become known as 'date rape' which is frequently carried out following the 'spiking' of a drink with a stupefying drug. However, it would also include circumstances in which a person's drink was spiked with strong alcohol if that person believed that he or she was drinking a non-alcoholic drink. It would not, of course, cover circumstances in which a person was merely encouraged to drink alcoholic drinks where that person was aware that he or she was drinking alcohol.

The nature of the act is not restricted provided that it will have the specified effect. The victim could be given an injection which causes stupefaction or enables the person to be overpowered and the same effect could be caused by chloroform. The person need not carry out the act so that *he* may thereby be enabled to engage in sexual activity, it will be sufficient if he does so to enable some other person to so engage in that activity. The nature of the sexual activity envisaged by the section would include sexual intercourse, masturbation, oral sex and any other associated activity. It does not matter whether sexual activity actually takes place, it is sufficient that the perpetrator administered the substance, knowing that there was no consent and with the appropriate intention.

Committing an offence with intent to commit a sexual offence

A person commits an offence under SOA 2003, s 62(1) if he commits any offence with the intention of committing a relevant sexual offence. A 'relevant sexual offence' is any offence under SOA 2003, Part 1 (ss 1 to 79), dealt with on pp 867–890, including an offence of aiding, abetting, counselling or procuring such an offence. A person who commits such an offence by kidnapping or false imprisonment is guilty of a more serious offence.

Trespass with intent to commit a sexual offence

A person commits an offence under SOA 2003, s 63(1) if:

- (a) he is a trespasser on any premises;
- (b) he intends to commit a relevant sexual offence (as defined in the last paragraph) on the premises; and
- (c) he knows that, or is reckless as to whether, he is a trespasser.

MISCELLANEOUS SEXUAL OFFENCES

Exposure

A person commits an offence under SOA 2003, s 66(1) if:

- (a) he intentionally exposes his genitals; and
- (b) he intends that someone will see them and be caused alarm or distress.

Voyeurism: observing

A person commits an offence under SOA 2003, s 67(1) if:

- (a) for the purpose of obtaining sexual gratification, he observes another person doing a private act; and
- (b) he knows that the other person does not consent to being observed for his sexual gratification.

For the purposes of s 67, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and:

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;
- (b) the person is using a lavatory; or
- (c) the person is doing a sexual act not of a kind ordinarily done in public.

A person commits an offence under SOA 2003, s 67(4) if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit the above offence. 'Structure' includes a tent, vehicle or vessel or other temporary or movable structure.

Voyeurism: operating equipment

A person commits an offence under SOA 2003, s 67(2) if:

- (a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act (as defined above); and
- (b) he knows that B does not consent to his operating equipment with that intention.

'Observation' means any observation, whether direct or by looking at a moving or still image (eg by installing a web cam).

Voyeurism: recording

A person commits an offence under SOA 2003, s 67(3), if:

- (a) he records another person (B) doing a private act (as defined above);
- (b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at a moving or still image of B doing the act; and
- (c) he knows that B does not consent to his recording the act with that intention.

Intercourse with an animal

A person commits an offence under SOA 2003, s 69(1) if:

- (a) he intentionally performs an act of penetration with his penis;
- (b) what is penetrated is the vagina or anus of a living animal; and
- (c) he knows that, or is reckless as to whether, that is what is penetrated.

In relation to an animal, references to the vagina or anus include references to any similar part.

A person (A) commits an offence under SOA 2003, 69(2) if:

- (a) A intentionally causes, or allows, A's vagina or anus to be penetrated;
- (b) the penetration is by the penis of a living animal; and
- (c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

Sexual penetration of a corpse

A person commits an offence under SOA 2003, s 70(1) if:

- (a) he intentionally performs an act of penetration with a part of his body or anything else;
- (b) what is penetrated is a part of the body of a dead person;
- (c) he knows that, or is reckless as to whether, that is what is penetrated;
- (d) the penetration is sexual.

The wording of this offence shows that this offence is not committed if the person penetrated dies during the act of penetration.

Sexual activity in a public lavatory

A person commits an offence under SOA 2003, s 71(1) if:

- (a) he is in a lavatory to which the public or a section of the public has, or is permitted to have access, whether on payment or otherwise;
- (b) he intentionally engages in an activity; and
- (c) the activity is sexual.

The definition of 'sexual' provided by SOA 2003, s 78, referred to on p 865, does not apply to this offence. Instead, for the purposes of s 71, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.

EVIDENCE

Corroboration

A trial judge is not required to give a corroboration direction to a jury in respect of the evidence of a complainant of any sexual offence. However, in some cases, such as failure to make an early complaint, or a history of the complainant making false allegations, the judge would be justified in warning the jury against relying on the complainant's unsupported evidence.

Restrictions on evidence or questions about complainant's sexual history

The Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999), s 41 imposes such restrictions where a person is charged with any sexual offence under SOA 2003, Part 1 (ss 1 to 79), ie all the offences discussed so far in this chapter, as well as those under the 2003 Act relating to child prostitution, prostitution and sex trafficking referred to in the next chapter, or aiding, abetting, counselling or procuring the commission of such an offence or an incitement, conspiracy or attempt to commit such an offence.

YJCEA 1999, s 41 requires that where someone is charged with a sexual offence then, except with the leave of the court, no evidence may be adduced, and no questions may be asked in cross-examination, by or on behalf of any accused about the 'sexual behaviour' of the complainant. 'Sexual behaviour' means any sexual behaviour or other sexual experience, whether or not involving any accused or other persons.

If the defence wishes to introduce evidence or ask questions about such matters, it must apply to the court. The court will decide the application in private and in the absence of the complainant, after the prosecution has had the chance to oppose the application. The court can only grant leave when two conditions are satisfied. The first is that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) of the court on any relevant issue in the case. The second condition is that:

- (a) the evidence in question relates to a relevant issue in the case and either:
 - (i) that issue is not an issue of consent (for example, as the Court of Appeal has held, if the defence is that the accused *believed* the victim was consenting, evidence of recent consensual activity between them is admissible in relation to the issue of the accused's *belief*, but not as to whether the victim had consented); or
 - (ii) it is an issue of consent and the complainant's sexual behaviour to which the evidence or question relates is alleged to have occurred at or about the same time as the event which is the subject matter of the charge against the accused (for example, that the complainant had consented to intercourse with the

- accused a couple of hours earlier, but not the fact that the complainant was a prostitute); or
- (iii) it is an issue of consent and the complainant's sexual behaviour to which the evidence or question relates is so similar either to any sexual behaviour of the complainant which (according to the defence's version) took place as part of the event which is the subject matter of the charge, or to any other sexual behaviour of the complainant which (according to the defence's version) took place at or about the same time as that event, that the similarity cannot reasonably be explained as a coincidence; or
- (b) the evidence or question relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant, and would go no further than necessary to enable the evidence adduced by the prosecution to be rebutted or explained by the accused.

To be admitted under the above provisions, the evidence must relate to a specific instance, or instances, of sexual behaviour. If the court considers that the purpose (or main purpose) of the evidence which the defence seeks to have admitted is to undermine or diminish the complainant's credibility, it will not allow the evidence to be given.

The House of Lords has held that (a)(iii) above must be construed, like any other statutory provision impinging on a Convention right, so as to give effect to that right so far as is possible. It held, therefore, that under (a)(iii) the test of admissibility was whether the evidence, and questioning relating to it, was so relevant to the issue of consent that to exclude it would endanger the fairness of the trial, contrary to the accused's right to a fair trial under art 6 of the European Convention on Human Rights. If that test was satisfied, the sexual behaviour evidence should not be excluded.

PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY ACCUSED IN PERSON—SEXUAL OFFENCES

Complainants in proceedings for sexual offences

YJCEA 1999, s 34 provides that no person charged with a sexual offence (ie an offence under SOA 2003, Part 1 (ss 1 to 79), discussed above or in the next chapter) may in any criminal proceedings cross-examine in person a witness who is a complainant, either in connection with the offence, or in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

Child complainants and other witnesses who are children

In relation to an offence to which it applies, YJCEA 1999, s 35 makes similar provisions concerning a 'protected witness'. A 'protected witness' is a witness who:

- (a) either is a complainant or a witness to the offence; and
- (b) either is a child or falls to be cross-examined after giving evidence-in-chief as a child (even if by the time of the cross-examination he or she is no longer a child).

YJCEA 1999, s 35 applies to any offence under the Protection of Children Act 1978 (indecent photographs etc of a child) and any offence under the Sexual Offences Act

2003, Part I. It also includes kidnapping, false imprisonment, child abduction, cruelty to children or any offence involving an assault on, or injury (or a threat of injury) to, any person.

For the purposes of YJCEA 1999, s 35, where an offence is under one of the pieces of legislation just specified, a 'child' is someone under seventeen. For the purposes of the other specified offences, a 'child' is someone under fourteen.

Direction prohibiting cross-examination

YJCEA 1999, s 36 permits a court to prohibit an unrepresented defendant from cross-examining witnesses in other cases, where the provisions of ss 34 and 35 do not apply. This may be done where the court is satisfied that the quality of the evidence given by the witness on cross-examination is likely to be diminished if cross-examination is undertaken or continued by the accused in person, and would be likely to be improved if a direction was given, and that such a prohibition will not be contrary to the interests of justice. The court may discharge such a direction at any time.

A direction may be made on application by the prosecutor, or on the court's own motion.

The term 'witness' does not include any other person who is charged with an offence within the proceedings.

Representation of such persons for the purpose of cross-examination

Where a defendant is prohibited from cross-examining a witness under the provisions of YJCEA 1999, s 34, 35 or 36, the court must invite the accused to appoint a legal representative to cross-examine on his behalf. If no such appointment is made within the prescribed time limits, the court must consider whether it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative. If the court considers that it is necessary, it must appoint a legal representative. Such a court-appointed representative will not have been instructed by the accused and will not, therefore, be responsible to him. Material relating to the proceedings must be made available to an appointee.

In such a case, the judge must give the jury such warning as he considers necessary to ensure that the accused is not prejudiced:

- (a) by any inferences which might be drawn from the fact that he has been prevented from carrying out a cross-examination in person;
- (b) where the witness has been cross-examined by a legal representative appointed by the court, by the fact that such cross-examination was carried out by a representative other than a person acting as the accused's own legal representative.

ANONYMITY OF COMPLAINANTS

The Sexual Offences (Amendment) Act 1992 provides for the anonymity of complainants (male or female) in the case of any offence under the provisions of Part 1 of the Sexual Offences Act 2003 except s 64 (sexual offence of penetration with an adult relative), s 65 (sex with adult relative where consent to penetration), s 69 (intercourse with

an animal) or s 71 (sexual activity in a public lavatory). The same restrictions apply to similar offences against legislation which existed before the SOA 2003.

Where an allegation is made that one of these offences has been committed against a person, no matter relating to that person may, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the person against whom the offence was committed. These matters include particularly (if their inclusion in any publication is likely to have such a result):

- (a) the person's name;
- (b) the person's address;
- (c) the identity of any school or other educational establishment attended by the person;
- (d) the identity of any place of work; and
- (e) any still or moving picture of the person.

For the above purpose, and for the purpose of the next paragraph but one, 'publication' is widely defined. It includes, for example, a television or radio programme, a film, a written communication or a speech, addressed to the public at large or a section of the public.

This prohibition ceases to apply once a person has been accused of an offence. In such a case, the law thereafter is as set out in the next paragraph.

Where a person has been *accused* of one of the above offences, no matter whatsoever which is likely to lead to the identification of the complainant may be included in any publication during the complainant's lifetime. Provision is made for the requirements of the Sexual Offences (Amendment) Act 1992 to be set aside on application being made to the trial judge where it is considered necessary to induce persons to come forward as witnesses and that the applicant's defence will be substantially prejudiced if the direction is not given. The judge also has a 'public interest' discretion to set aside these provisions.

If any matter is published in breach of the above rules, an offence is committed:

- (a) in the case of a newspaper or periodical, by any proprietor, editor or publisher of it;
- (b) in the case of any other publication, by its publisher; or
- (c) in the case of a programme, by any body corporate engaged in providing the service and by anyone involved in the programme corresponding to an editor of a newspaper.

NOTIFICATION REQUIREMENTS

The Sexual Offences Act 2003, Part 2 requires a person subject to the notification requirements under the Act to notify the police of his date of birth, his national insurance number and his name and address (and any other name and any other address which he uses). Notification must be made within three days of the relevant date and must be made by attending at any prescribed police station in his local police area, and giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station. The relevant date is the date of conviction, finding or caution (including a reprimand or warning) but the three-day period does not include any time when the offender is in custody or in prison, detained

in hospital or outside the United Kingdom. On giving notification, the person may be required by the police officer or authorised person to have his fingerprints and a photograph taken.

After such an original notification, a person subject to the procedure must give notice, within a period of three days of the change, of a new (ie unnotified) name, of a change of home address, of a new (ie unnotified) place of residence in the United Kingdom where he has resided for a qualifying period of seven days, or periods amounting to seven days in a twelve-month period, or of his release from custody, imprisonment or detention in hospital. (Although notification is permitted before use of the new name or the change of address, if the change subsequently takes place more than two days before the date notified that notification is invalid.) Moreover, if the event to which an advance notification relates has not occurred within three days of the date notified, the offender must within six days of the notified date notify the police that it did not occur within that period.

A person subject to the procedure must notify the police of his intention to leave the United Kingdom, and of his return, in accordance with the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004.

A person subject to the procedure must also annually renotify the police of the information required to be given on initial notification. Where that person is in custody, prison, detained in hospital or outside the United Kingdom at the relevant time, the renotification period is three days from release, or return to the United Kingdom.

The persons affected by the notification requirements under the Sexual Offences Act 2003, Part 2 are those convicted of an offence listed in Sch 3 to the 2003 Act; those found not guilty of such an offence by reason of insanity; those found to be under a disability (ie unfit to plead) and to have done the act charged in respect of the offence; or cautioned (or reprimanded or warned in the case of a child) in respect of such an offence. Persons previously convicted of offences which made them subject to the Sex Offenders Act 1997, Part 1 remain subject to the notification requirements then imposed, until the completion of the period for which notification was required.

Schedule 3 offences

SOA 2003, Sch 3 includes the offences under previous legislation of rape; intercourse with a girl under thirteen; intercourse with a girl between thirteen and sixteen and abuse of a position of trust if in either case the offender was twenty years of age or more; gross indecency with a child; inciting a girl under sixteen to incest; taking, distributing etc indecent photographs of children (where the child was under sixteen); possessing indecent photographs of children (where the child was under sixteen); or importing indecent photographs of children (where the child was under sixteen); or causing the prostitution of, intercourse with, or indecent assault on a girl under sixteen. Where the victim is under eighteen, the offences of incest by a man; buggery if the offender was aged twenty or more; and assault with intent to commit buggery are also included. Indecent assault on a man or woman are included where the victim is under eighteen or where the offender was sentenced to at least thirty months' imprisonment or admitted to a hospital under a restriction order.

The schedule also includes offences under the 2003 Act of rape, assault by penetration, most sexual assaults, child sex offences, sexual grooming, offences

involving an abuse of trust in relation to children, familial child sexual offences, offences against persons with a mental disorder including offences by care workers, paying for the sexual services of a child, administering substances with intent, trespassing with intent to commit a sexual offence, sex with an adult relative, exposure, voyeurism, intercourse with an animal, and sexual penetration with a corpse. In brief, this list includes every offence under the SOA 2003, Part 1 (ss 1 to 79) besides those relating to prostitution or child pornography, to trafficking or to sexual activity in a public lavatory. These listed offences are described on pp 867–889 and 908 ('paying for the sexual services of a child'). Reference should be made to the schedule as the offences often only give rise to the notification requirements in particular circumstances or in the case of particular penalties.

Attempts, conspiracy to commit, incitement and aiding and abetting such offences are also covered by these provisions.

Duration of notification requirement

Offenders who are sentenced to life imprisonment, or to thirty months' imprisonment or more, or who are admitted to hospital under a restriction order, are indefinitely subject to the notification requirement; offenders sentenced to more than six months but less than thirty months are subject for a period of ten years; offenders sentenced to less than six months or admitted to a hospital without a restriction order are subject for a period of seven years; and persons of any other description, for a period of five years. However, where the offender is under eighteen, the periods of ten, seven and five years are halved. Persons who are cautioned are subject to the requirements for two years (one year in the case of a reprimand or warning to an under-eighteen-year-old). Those who are conditionally discharged are subject to the requirements during the period of conditional discharge.

In the case of a young offender the court may direct a person with parental responsibility for the offender to comply with the notification requirements until the offender reaches the age of eighteen or until an earlier date specified in the order.

Offence of failure to comply with notification requirements

It is an arrestable offence for a person to fail without reasonable excuse to comply with these requirements. It is also an offence to notify to the police, in purported compliance with these requirements, any information which the person concerned knows to be false.

The offence of failure to notify is a continuing one so that proceedings may be taken at any time after such a failure. It may be dealt with at any place where the offender resides or where he is found.

PREVENTATIVE ORDERS

Notification orders

The Sexual Offences Act 2003, s 97 provides that a chief officer of police may apply to a magistrates' court for a civil order (a notification order) in respect of a defendant

who resides in his police area, or whom he believes is in, or is intending to come to, his police area, where it appears to him that the following conditions are satisfied with respect to the defendant:

- (a) under the law in force in a country outside the United Kingdom:
 - (i) he has been convicted of a relevant offence (whether or not he has been punished for it);
 - (ii) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity;
 - (iii) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of that offence; or
 - (iv) he has been cautioned in respect of the relevant offence;
- (b) condition (a) above is met because of a conviction, finding or caution which occurred on or after 1 September 1997 (or although a person was convicted before that date he was dealt with after it) or because, although there was a conviction before that date, the person concerned was detained in the foreign country, or subject to supervision or a community sentence;
- (c) the period specified for the purposes of Part 2 in respect of the relevant offence has not expired.

If it is proved that these conditions exist the court must make a notification order. A 'relevant offence' means an act which constituted an offence under the law in force in the country concerned and would have constituted an offence listed in SOA 2003, Sch 3 if it had been done in any part of the United Kingdom.

The effect of a notification order is to subject the defendant to the notification requirements under the SOA 2003, Part 2 for a period corresponding to that which would apply if he had been convicted in the United Kingdom. The notification period runs from the date of the foreign conviction etc. The initial notification must be made within three days of the service of the order.

Interim notification orders

Provision is made for an 'interim notification order' pending determination of an application for a notification order. Where a relevant offence has been committed abroad it may take some time to obtain the necessary documentation to put before the court. A person subject to an interim order is subject to the notification requirements while the order is in force and must make that notification within three days of service of the order.

Sexual offences prevention orders

Sexual offences prevention orders replace restraining orders and sex offender orders which existed under previous legislation. Such an order prohibits the person concerned from doing any act specified in the order. The order will remain in force for a period specified in the order (not less than five years). If, without reasonable excuse, a person does an act prohibited by a sexual offences prevention order, he is guilty of

an offence. A person subject to the order is subject to the notification requirements of SOA 2003, Part 2 for the duration of the order.

By SOA 2003, s 104 a 'sexual offences prevention order' may be made when a court deals with a person convicted in respect of the offences listed in SOA 2003, Sch 3 or Sch 5, or where that court makes a finding in relation to a person charged with such an offence who is mentally incapacitated, if it is necessary to protect the public or any particular member of it from serious sexual harm from that person. Sch 3 offences were described above. Sch 5 offences include offences relating to child abuse through prostitution or pornography, to trafficking for sex, as well as murder and other offences of serious violence.

Sexual offences prevention orders may also be made under s 104 in civil proceedings in magistrates' courts on application by the chief officer of police for the police area. If, on a police application, it is proved that the defendant is a qualifying offender, the magistrates' court may make an order in respect of the defendant if satisfied that his behaviour since the 'appropriate date' makes it *necessary to make such an order, for the purpose of protecting the public or any particular members (or member) of the public from serious sexual harm from him* (ie protecting the public in the United Kingdom or any particular members of the public from serious physical or psychological harm caused by him committing a Sch 3 offence or offences).

A person is a qualifying offender if, whether before or after 1 May 2004, he has:

- (a) been convicted of a Sch 3 or 5 offence;
- (b) been found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence; or
- (c) in England and Wales or Northern Ireland, been cautioned in respect of such an offence.

A person is also a qualifying offender if, under the law of a country outside the United Kingdom and before or after 1 May 2004:

- (a) he has been convicted of a relevant offence;
- (b) a foreign court has made, in respect of a relevant offence, a finding equivalent to a finding of not guilty by reason of insanity, or a finding that he is under a disability and did the act charged against him in respect of such an offence; or
- (c) he has been cautioned in respect of a relevant offence.

A 'relevant' offence means an act which constituted an offence under the law of the country concerned, *and would have constituted a Sch 3 or 5 offence if it had been done in any part of the United Kingdom.*

The 'appropriate date', in relation to a qualifying offender, means the date (or first date) on which he was convicted, found or cautioned as mentioned above.

Interim orders may also be obtained in appropriate circumstances in civil proceedings in a magistrates' court pending determination of an application.

The defendant may apply for variation or discharge of the order but it may not be discharged without the consent of both parties before the end of a period of five years.

Foreign travel orders

SOA 2003, s 114 makes provision for a new civil order which enables a court to prohibit for a period not exceeding six months persons who are 'qualifying offenders'

(generally persons convicted of sexual offences against children under sixteen either in this country or abroad) from travelling abroad, where it is considered necessary to do so to protect children from serious sexual harm outside the United Kingdom. The order may be made by a magistrates' court on the application of a chief officer of police and it may refer to a named country or countries, or it may prohibit travel to any other country other than a named one, or to anywhere in the world. A person becomes a 'qualifying offender' if he is convicted of a relevant sexual offence or a corresponding foreign offence (or there is a 'finding' or 'caution' in this respect). It does not matter when such a person was dealt with for the relevant offence. It is an offence to breach without reasonable excuse any prohibition contained in such an order.

CHILD ABDUCTION

Two offences of child abduction are provided by the Child Abduction Act 1984 (CAA 1984). These offences contain a number of common features; these will be dealt with after the separate offences have been outlined.

Abduction from the United Kingdom by parent etc

By CAA 1984, s 1, a person connected with a child under sixteen commits an offence if he takes or sends the child *out of the United Kingdom* without the appropriate consent. A person is regarded as 'sending' a child if he causes the child to be sent. A prosecution for this offence may only be instituted by or with the consent of the Director of Public Prosecutions.

For the purposes of the offence, a person is 'connected with' a child if:

- (a) he is the child's parent, guardian or special guardian; or
- (b) he has custody of the child; or
- (c) in the case of a child, whose parents were not married to each other at the time of his birth, there are reasonable grounds for believing that he is its father; or
- (d) he is the person in whose favour a residence order is in force in respect of the child.

Only persons falling within these categories can commit the present offence.

The reference to the 'appropriate consent', in relation to the removal or sending of the child out of the United Kingdom, means:

- (a) the consent of *each* of the following:
 - (i) the child's mother;
 - (ii) the child's father, if he has parental responsibility for him;
 - (iii) any guardian or special guardian of the child;
 - (iv) any person in whose favour a residence order is in force with respect to the child;
 - (v) any person who has custody of the child; or
- (b) the leave of the court granted under or by virtue of Part II of the Children Act 1989; or
- (c) if any person has custody of the child, the leave of the court which granted custody to him.

A person does not commit the present offence by taking or sending a child out of the United Kingdom without the appropriate consent:

- (a) if he is the person in whose favour there is a residence order in respect of the child; or
- (b) if he takes or sends him out of the United Kingdom for less than one month,

unless he is in breach of an order under Part II of the Children Act 1989.

A person does not commit the present offence by doing anything without the consent of another person whose consent is required if:

- (a) he does it in the belief that the other person has consented or would consent if he was aware of all the relevant circumstances; or
- (b) he has taken all reasonable steps to communicate with the other person but has been unable to communicate with him; or
- (c) the other person has unreasonably refused to consent.

However, the last alternative (ie (c)) does not apply where the person who refused consent is a person in whose favour there is a residence order, or who is a special guardian of the child, or who has custody of the child; or where the taking or sending is in breach of any court direction under certain statutory provisions.

There are special provisions where the child is in the care of a local authority or a voluntary organisation, or is the subject of custodianship proceedings or of proceedings (or an order) for adoption.

Abduction of child by other persons

This offence is governed by CAA 1984, s 2. It can be committed by anyone other than:

- (a) the father or mother (if they were married when the child was born) or the mother (if they were not); or
- (b) the child's guardian; or
- (c) a person with a residence order, or custody, in respect of the child.

Another important difference from the offence under CAA 1984, s 1 is that the child need not be abducted from the United Kingdom.

CAA 1984, s 2 provides that anyone, other than a person mentioned above, commits an offence if, without lawful authority or reasonable excuse, he takes or detains a child under sixteen so as either to remove him from the lawful control of anyone having lawful control of him or to keep him out of the lawful control of any person entitled to it. Removal from control does not require any removal in a geographical sense; it suffices to deflect the child from what he would be otherwise doing with the consent of those having lawful control of him into some activity induced by the accused, as where the accused finds a child in a park pursuing a particular activity (eg playing football) and induces it to go elsewhere in the park for another activity (eg to look for an alleged lost bicycle).

There can be a 'taking' for the purposes of CAA 1984, s 2 despite the fact that a child consents provided that the acts of the accused were a cause of the child accompanying him and such acts are more than just peripheral or inconsequential. If the acts of the accused are an effective cause of the child accompanying him, that is sufficient.

A person is regarded as detaining a child if he causes him to be detained or induces the child to remain with him or another.

It must be proved that the accused intended, when taking the child, to keep him out of the control of someone known to be entitled to such control.

It is a defence for the accused to prove that, at the time of the alleged offence, he believed the child was sixteen or over. Alternatively, in the case where the father and mother of 'the child in question' (ie the child taken or detained) were not married to each other at the time of birth, it is a defence for the accused to prove that he is the father of the child taken or detained or that he had reasonable grounds to believe he was that child's father. Lastly, a person is not guilty of an offence under CAA 1984, s 2 if he mistakenly believed, reasonably or not, in facts which—if they had been as he believed—would have given him a lawful authority or reasonable excuse. On this basis, a man who takes a child, thinking that it is his child whereas in truth it is another child, will not be guilty if, on the facts as he believes them to be, he would have a lawful authority or reasonable excuse for taking the child.

General

For the purposes of both offences, a person is regarded as taking a child if he causes or induces the child to accompany him or any other person, or causes the child to be taken.

It is irrelevant that the child consents to what occurs.

Both offences are arrestable offences.

KIDNAPPING

The offences which have just been discussed are concerned with the abduction of particular persons, specially protected because of their age. The common law offence of kidnapping knows no such boundaries and can be committed whenever there is an unlawful taking or carrying away of any person against his or her will.

In 1984 the House of Lords held that the offence involves four requirements:

(a) The taking or carrying away of one person by another

It is irrelevant whether the taking or carrying away is to some other place within the jurisdiction or to some place outside it. Although the person taken or carried away is often secreted thereafter, this is not a requirement of the offence.

(b) The taking or carrying away must be by force or by fraud

'Force' is not limited to physical force or the threat of it. It encompasses any conduct which, coupled with the taking or carrying away (ingredient (a)), overrides the true consent of the person taken or carried away (ingredient (c)). Thus, the exercise of

mental or moral power or influence to compel another to do something against his will can suffice if it overcomes his will. Any fraud which induces the victim to consent to being taken or carried away will suffice, and will invalidate the victim's apparent consent.

(c) The taking or carrying away must be without the consent of the person taken or carried away

This requirement must be satisfied whatever the age of that person. However, there can be a kidnapping, even though the person carried away consents at first, if he changes his mind and ceases to consent while still being carried away. In the case of a very young child, it does not have the understanding or intelligence to give consent so that the absence of consent will be a necessary inference from its age. In the case of an older child, it is a question of fact for the jury whether the child had sufficient understanding or intelligence to give consent and, if so, whether absence of consent has been proved. Unlike child abduction, the presence or absence of consent on the part of the person having custody or care and control of a child victim is immaterial (except that such consent may support a defence of lawful excuse). Likewise the presence or absence of consent on the part of other people, such as the spouse of a person who is taken, is immaterial.

The Court of Appeal has stated that, since any fraud invalidates an apparent consent, there is probably no need for the prosecution to prove absence of consent in such a case.

It must be proved that a person charged with kidnapping knew or was reckless that he did not have the victim's consent.

(d) The taking or carrying away must be without lawful excuse

Clearly, for example, a parent (or other person) with custody of a child will often have a lawful excuse for taking or carrying away the child. An exception would be where this contravenes a court order in relation to the child.

Procedural points

Kidnapping is an arrestable offence. It is a serious arrestable offence for the purposes of the law relating to search warrants.

The House of Lords has held that the conduct of a parent who snatches his own child in defiance of a court order relating to its custody or care and control (such as one making the child a ward of court) should normally be dealt with as a contempt of court rather than as the subject matter of a prosecution for kidnapping, unless the parent's conduct was particularly bad.

The Child Abduction Act 1984, s 5 provides that the consent of the Director of Public Prosecutions to the institution of a prosecution for kidnapping is required wherever the victim is under sixteen or where the prosecution is against a parent or guardian etc.

HOSTAGE TAKING

The Taking of Hostages Act 1982, s 1 makes it an offence for a person of any nationality to detain in the United Kingdom or elsewhere any other person (a hostage) and, in order to compel any state, international governmental organisation, or person, to do or abstain from doing any act, to threaten to kill, injure or continue to detain the hostage. The consent of the Attorney-General is required before a prosecution may be brought for this offence.