

CHAPTER No. 3

**SEXUAL OFFENCES
(AMENDMENT) ACT 2006**

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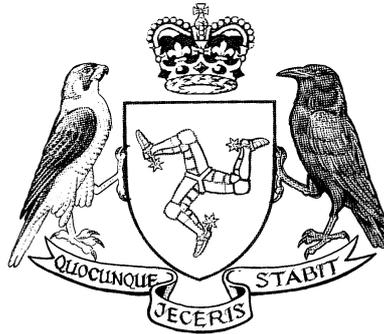
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SEXUAL OFFENCES (AMENDMENT) ACT 2006

Arrangement of Sections

Section

- 1.** Abuse of position of trust.
- 2.** Meeting a person under 16 following sexual grooming etc.
- 3.** Sections 1 & 2 : consequential amendments to notification requirements for sex offenders.
- 4.** Age at which certain sexual acts are lawful.
- 5.** Repeal of s.38 of 1992 Act.
- 6.** Short title and commencement.



Isle of Man } Signed in Tynwald: 11th July 2006
 to Wit } Received Royal Assent: 11th July 2006
 Announced to Tynwald: 11th July 2006

AN ACT

to make it an offence for a person aged 18 or over to engage in sexual activity with or directed towards a person under that age if the older person is in a position of trust in relation to the younger person; to make it an offence for a person aged 18 or over to meet or travel with the intention of meeting a person under the age of 16 and intending to commit a sexual offence in respect of the latter person during or after the meeting; to add those offences to the list of offences for which registration is required under Schedule 1 to the Criminal Justice Act 2001; and to amend the age at which, and to make provision with respect to the circumstances in which, certain sexual acts are lawful; and to repeal section 38 of the Sexual Offences Act 1992.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

1. After section 9 of the Sexual Offences Act 1992 (unnatural offences) insert —

Abuse of position of trust.

“Abuse of position of trust.

9A. (1) Subject to subsections (2) and (3), it shall be an offence for a person aged 18 or over —

- (a) to commit a sexual act with a person under that age; or
- (b) to engage in any other sexual activity with or directed towards such a person,

if (in either case) the first mentioned person is in a position of trust in relation to that person.

(2) Where a person (“A”) is charged with an offence under this section of committing a sexual act with, or engaging in any other sexual activity with or directed towards, another person (“B”), it shall be a defence for A to prove that, at the time of the act or activity —

- (a) A did not know, and could not reasonably have been expected to know, that B was under the age of 18;
- (b) A did not know, and could not reasonably have been expected to know, that B was a person in relation to whom A was in a position of trust; or
- (c) A was lawfully married to B.

(3) It shall not be an offence under this section for a person (“A”) to commit a sexual act with, or engage in any other sexual activity with or directed towards, another person (“B”) if immediately before the commencement of this Act —

- (a) A was in a position of trust in relation to B; and
- (b) a sexual relationship existed between them.

(4) A person guilty of an offence under this section shall be liable —

- (a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both;
- (b) on conviction on information, to custody for a term not exceeding 5 years, or to a fine, or to both.

(5) In this section, “sexual activity” —

- (a) does not include any activity which a reasonable person would regard as sexual only with knowledge of the intentions, motives or feelings of the parties; but
- (b) subject to that, means any activity which such a person would regard as sexual in all the circumstances.

Meaning of
“position of
trust”.

9B. (1) For the purposes of section 9A, a person aged 18 or over (“A”) is in a position of trust in relation to a person under that age (“B”) if any of the four conditions set in subsections (2) to (5) is fulfilled.

(2) The first condition is that A looks after persons under the age of 18 who are detained in an institution by virtue of an order of a court or under a statutory provision, and B is so detained in that institution.

(3) The second condition is that A looks after persons under the age of 18 who are resident in a home or other place in which —

- (a) accommodation is provided by the Department of Health and Social Security; or
- (b) accommodation is provided or managed by any other organisation,

and B is resident, and is so provided with accommodation, in that place.

(4) The third condition is that A looks after persons under the age of 18 who are accommodated and cared for in a home, hospital or institution and B is accommodated and cared for in that home, hospital or institution.

(5) The fourth condition is that A looks after persons under the age of 18 who are receiving education at any school, college or other educational institution, and B is receiving education at that institution.

(6) A person looks after persons under the age of 18 for the purposes of this section if that person is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(7) For the purposes of this section a person receives education at a school, college or other educational institution if that person —

- (a) is registered or otherwise enrolled as a pupil or student at the institution; or
- (b) receives education at the institution under arrangements with another educational institution at which that person is so registered or otherwise enrolled.”.

Meeting a person under 16 following sexual grooming etc.
[c. 6]

2. After section 18 of the Sexual Offences Act 1992 (procurement of young person) insert —

“Meeting a person under 16 following sexual grooming etc.
18A. (1) A person aged 18 or over (“A”) commits an offence if —

- (a) A intentionally meets, or travels with the intention of meeting, another person (“B”), having met or communicated with B on at least two earlier occasions; and
- (b) at the time, A 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 a relevant offence; and
- (c) B is under the age of 16; and
- (d) A does not reasonably believe that B is aged 16 or over.

(2) In subsection (1) —

- (a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;
- (b) “relevant offence” means —
 - (i) an offence under this Act;
 - (ii) anything done outside the Island which is not an offence within sub-paragraph (i) but would be if done in the Island.

(3) A person guilty of an offence under this section shall be liable —

- (a) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000, or to both;
- (b) on conviction on information, to custody for a term not exceeding 5 years or to a fine, or to both.”.

3. In paragraph 2 of Schedule 1 to the Criminal Justice Act 2001 (sexual offences in respect of which registration is required) —

Sections 1 & 2: consequential amendments to notification requirements for sex offenders.

- (a) in sub-paragraph (1), the word “and” immediately following head (g) shall be omitted and after head (g) insert —

[c. 4]

“(ga) an offence under section 9A of the Sexual Offences Act 1992 (abuse of position of trust);

[c. 6]

(gb) an offence under section 18A of the Sexual Offences Act 1992 (meeting a person under 16 following sexual grooming); and”;

- (b) in sub-paragraph (2)(a), for “head (a)(iv) and (viii)” substitute “heads (a)(iv) and (viii), (ga) and (gb)”.

4. (1) In section 9 of the Sexual Offences Act 1992 (unnatural offences) —

Age at which certain sexual acts are lawful.

- (a) for subsection (1) substitute —

[c. 6]

“(1) A person (“A”) who commits buggery with another person (“B”) —

- (a) where A has attained the age of 16 and B is under the age of 16, or

- (b) elsewhere than in private,

shall be guilty of an offence.”;

- (b) for subsection (4)(a) (gross indecency between men) substitute —

“(a) where he has attained the age of 16 and the other man is under the age of 16, or”.

[c. 4] (2) Section 5 of the Criminal Justice Act 2001 (amendment of section 9 of the 1992 Act) is repealed.

Repeal of
s.38 of 1992
Act.
[c. 6]
[c.33] **5.** (1) Section 38 of the Sexual Offences Act 1992 (prohibition of promotion of homosexuality by public bodies) is repealed.

(2) In Schedule 10 of the Education Act 2001, entry 20 (amendment of section 38 of 1992 Act) and the cross-heading relating to that entry are repealed.

Short title and
commencement.
[c. 6] **6.** (1) This Act may be cited as the Sexual Offences (Amendment) Act 2006 and the Sexual Offences Act 1992 and this Act may be together cited as the Sexual Offences Acts 1992 and 2006.

(2) This Act shall come into operation on such day as the Council of Ministers may by order appoint; and different days may be appointed for different provisions and for different purposes.