

Defences in Relation to Sexual Offences Which Relate to a Specific Age¹ or Person with Impairment of the Mind

- A. If the offence is alleged to have been committed in respect of a child it is a defence to prove that the accused person believed on reasonable grounds that the Complainant was of, or above, the age specified in the charge.**

The burden is upon the accused on the balance of probabilities.

- B. It is a defence to prove that:**

- 1. the accused person believed on reasonable grounds that the person was not a person with impairment of the mind; or**
- 2. the doing of the acts which constitute the offence did not in the circumstances constitute sexual exploitation of the person with impairment of the mind.**

A mere mistake is not enough. The mistaken belief must have been both honest and reasonable. An honest belief is one which is genuinely held by the defendant. To be reasonable, the belief must be one held by the defendant, in his particular circumstances on reasonable grounds.²

¹ See also s 229 – knowledge of age immaterial except as otherwise expressly stated. It is immaterial in the case of the offences (defined in Chapter 22) committed with respect to a person under a specified age, that the accused person did not know that the person was under that age, or believed that the person was not under that age.

² See direction on mistake of fact – s 24.