

16 Abuse of position of trust: sexual activity with a child

(1) A person aged 18 or over (A) commits an offence 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,
- (d) where subsection (2) applies, A knows 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, and
- (e) either-
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.

(2) This subsection applies where-A

- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
- (b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section

- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant 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.

(5) A person guilty of an offence under this section is liable

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

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

(1) A person aged 18 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,
- (c) A is in a position of trust in relation to B,
- (d) where subsection (2) applies, A knows 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, and
- (e) either-
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.

(2) This subsection applies where-A

- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
- (b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section

- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant 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.

(5) A person guilty of an offence under this section is liable

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

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

(1) A person aged 18 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,

(d) A is in a position of trust in relation to B,

(e) where subsection (2) applies, A knows 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, and

(f) either-

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This subsection applies where-A

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant 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.

(5) A person guilty of an offence under this section is liable

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

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

(1) A person aged 18 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,

(c) A is in a position of trust in relation to B,

(d) where subsection (2) applies, A knows 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, and

(e) either-

(i) B is under 18 and A does not reasonably believe that B is 18 or over,
or

(ii) B is under 13.

(2) This subsection applies where-A

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant 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.

(5) A person guilty of an offence under this section is liable

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

20 Abuse of position of trust: acts done in Scotland

Anything which, if done in England and Wales or Northern Ireland, would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland.

21 Positions of trust

(1) For the purposes of sections 16 to 19, a person (A) is in a position of trust in relation to another person (B) if-

(a) any of the following subsections applies, or

(b) any condition specified in an order made by the Secretary of State is met.

(2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.

(3) This subsection applies if A looks after persons under 18 who are resident in a home or other place in which-

(a) accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 (c. 41) or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), or

(b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order,

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

(4) This subsection applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions-

(a) a hospital,

(b) an independent clinic,

(c) a care home, residential care home or private hospital,

(d) a community home, voluntary home or children's home,

(e) a home provided under section 82(5) of the Children Act 1989, or

(f) a residential family centre,

and B is accommodated and cared for in that institution.

(5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This subsection applies if A is appointed to be the guardian of B under Article 15 or 160 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

(7) This subsection applies if A is engaged in the provision of services under, or pursuant to anything done under-

(a) sections 8 to 10 of the Employment and Training Act 1973 (c. 50), or

(b) section 114 of the Learning and Skills Act 2000 (c. 21),

and, in that capacity, looks after B on an individual basis.

(8) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means)-

(a) in the exercise of functions of a local authority under section 20 or 21 of the Children Act 1989 (c. 41), or

(b) in the exercise of functions of an authority under Article 21 or 23 of the Children (Northern Ireland) Order 1995.

(9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 or Article 4 of the Children (Northern Ireland) Order 1995 on matters relating to the welfare of B, regularly has unsupervised contact with B (whether

face to face or by any other means).

(10) This subsection applies if A is a personal adviser appointed for B under

(a) section 23B(2) of, or paragraph 19C of Schedule 2 to, the Children Act 1989,
or

(b) Article 34A(10) or 34C(2) of the Children (Northern Ireland) Order 1995,
and, in that capacity, looks after B on an individual basis.

(11) This subsection applies 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.

(12) This subsection applies if-A

(a) is an officer of the Service appointed for B under section 41(1) of the
Children Act 1989,

(b) is appointed a children's guardian of B under rule 6 or rule 18 of the Adoption
Rules 1984 (S.I. 1984/265), or

(c) is appointed to be the guardian ad litem of B under rule 9.5 of the Family
Proceedings Rules 1991 (S. I. 1991/1247) or under Article 60(1) of the Children
(Northern Ireland) Order 1995,

and, in that capacity, regularly has unsupervised contact with B (whether face to face or
by any other means).

(13) This subsection applies 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.

22 Positions of trust: interpretation

(1) The following provisions apply for the purposes of section 21.

(2) Subject to subsection (3), a person looks after persons under 18 if he is regularly
involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual 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).

(4) A person receives education at an educational institution if

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

(5) In section 21

"authority"-

- (a) in relation to England and Wales, means a local authority;
- (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

"care home" means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);

"care order" has-

- (a) in relation to England and Wales, the same meaning as in the Children Act 1989 (c. 41), and
- (b) in relation to Northern Ireland, the same meaning as in the Children (Northern Ireland) Order 1995;

"children's home" has-

- (a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000, and
- (b) in relation to Northern Ireland, the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) ("the 2003 Order") if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

"community home" has the meaning given by section 53 of the Children Act 1989;

"education supervision order" has-

- (a) in relation to England and Wales, the meaning given by section 36 of the Children Act 1989, and
- (b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995;

"hospital"-

- (a) in relation to England and Wales, means a hospital within the meaning given by section 128(1) of the National Health Service Act 1977 (c. 49), or any other establishment which is a hospital within the meaning given by section 2(3) of the Care Standards Act 2000 (c. 14);
- (b) in relation to Northern Ireland, means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

"independent clinic" has-

- (a) in relation to England and Wales, the meaning given by section 2 of the Care Standards Act 2000;
- (b) in relation to Northern Ireland, the meaning given by Article 2(2) of

the 2003 Order;

"private hospital" has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

"residential care home" means an establishment which is a residential care home for the purposes of the 2003 Order;

"residential family centre" has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

"supervision order" has-

(a) in relation to England and Wales, the meaning given by section 31(11) of the Children Act 1989 (c. 41), and

(b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2));

"voluntary home" has-

(a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989, and

(b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.

23 Sections 16 to 19: marriage exception

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if at the time -

(a) B is 16 or over, and

(b) A and B are lawfully married.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

24 Sections 16 to 19: sexual relationships which pre-date position of trust

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 16 to 19 it is for the defendant to prove that such a relationship existed at that time.