

SEXUAL OFFENCES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Abuse of Position of Trust

Section 43 – Positions of trust

122. This section defines “position of trust” for the purposes of the offence of sexual abuse of trust in section 42. Definitions of the terms used in this section are provided in section 44.
123. Subsection (1) states that person A is in a position of trust in relation to person B if any of the five conditions set out in the remainder of the section are fulfilled.
124. Subsection (2) provides that a position of trust is constituted where B is detained in an institution by virtue of an order of a court or under an enactment and A looks after persons under 18 in that institution.
125. Subsection (3) provides that a position of trust is constituted where B resides in accommodation provided by a local authority under section 26(1) of the Children (Scotland) Act 1995 and A looks after persons under 18 in that place.
126. Subsection (4) provides that a position of trust is constituted where B is accommodated in any of the places described in paragraphs (a) to (e) of this subsection and A looks after persons under the age of 18 in that place.
127. Subsection (5) provides that a position of trust is constituted where B is receiving education at a school and A looks after persons under the age of 18 in that school or where B is receiving education in a further or higher education institution and A looks after B in that institution.
128. Subsection (6) provides that a position of trust is constituted if A and B are members of the same household and A has (or had, or fulfils) parental rights or parental responsibilities in respect of B, or if A treats B as a child of A’s family.
129. Subsection (7) provides that A “looks after” a person for the purposes of this section if A cares for, teaches, trains, supervises or is in sole charge of the person, so long as A does so regularly.