

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

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

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

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

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

31. These sections re-enact and amend the offence of abuse of position of trust under sections 3 and 4 of the Sexual Offences (Amendment) Act 2000. The sections each provide that it is an offence for a person (A) aged 18 or over intentionally to behave in certain sexual ways in relation to a child aged under 18, where A is in a position of trust (as defined in section 21) in respect of the child. The prohibited behaviour in each of the sections is identical to that prohibited by the child sex offences in sections 9, 10, 11 and 12 respectively, except that for the abuse of position of trust offences, the child may be 16 or 17.
32. Except where the child is under 13, one of the requirements of the offence is that A does not reasonably believe that the child is 18 or over, and A is subject to an evidential burden in relation to this aspect of the offence (*subsection (3)* of each section). An evidential burden means that, unless A shows from the evidence that there is an arguable case as to whether he reasonably believed the child to be 18 or over, it is presumed that he did not reasonably believe this. Where the child is under 13, the offence is committed regardless of any belief A might have in relation to the child's age.
33. The effect of *subsection (1)(d)* (or in the case of section 18, *subsection (1)(e)*) is that, where A is in a position of trust by virtue of one of the first four categories of position of trust set out at section 21, the prosecution must prove, in addition to the other requirements, that he knew or could reasonably have been expected to know of the facts placing him in a position of trust with the child. *Subsection (4)* of each section puts an evidential burden on A in this respect. This means that, unless A shows from the evidence that there is an arguable case as to whether or not he knew or could reasonably have been expected to know of the facts giving rise to the position of trust, it is presumed that he did know or could reasonably have been expected to know them. The first four categories of position of trust all concern situations where A looks after persons under 18 at an institution and the child is at that institution. *Subsection (4)* is designed to cover cases where, for example, the institution where A works is very large or has a number of different sites, and A may not therefore know that the child is at the institution.