

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 25: Sexual activity with a child family member

51. **Section 25** makes it an offence for a person (A) intentionally to touch a family member (as defined in sections 27) aged under 18, where the touching is sexual. The meaning of touching is explained at section 79(8). It covers all forms of physical contact including sexual intercourse. The definition of sexual is at section 78. Additional elements of the offence are that A must know, or be in a position where he could reasonably be expected to know, that the child is his family member and that, except where the child is under 13, he does not reasonably believe that the child is 18 or over.
52. So if, for example, A has never met the child before, and so does not know, and could not reasonably be expected to know, that she is his sister, and reasonably believes she is over 18, he will not commit this offence by engaging in sexual activity with her, even though she is in fact his sister, and only 14.
53. In relation to both these last two elements of the offence A is under an evidential burden (*subsections (2) and (3)*). This means that unless A shows from the evidence that there is an arguable case about these issues, it is presumed that he did not reasonably believe the child to be 18 or over, and that he knew or could reasonably have been expected to know that the child was his family member. Whether or not the child consented to the touching is irrelevant.