



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 1 **E+W+N.I.**

#### SEXUAL OFFENCES

##### *Abuse of position of trust*

### 16 Abuse of position of trust: sexual activity with a child **E+W+N.I.**

- [<sup>F1</sup>(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—

*Status: Point in time view as at 01/10/2010.*

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- (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.]

#### Textual Amendments

- F1** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)

## 17 Abuse of position of trust: causing or inciting a child to engage in sexual activity **E+W+N.I.**

- [<sup>F2</sup>(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,

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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.]

#### Textual Amendments

**F2** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); [S.R. 2008/510](#), [art. 2](#)

## 18 Abuse of position of trust: sexual activity in the presence of a child **E+W+N.I.**

- [<sup>F3</sup>(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,

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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.]

#### Textual Amendments

**F3** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)

## 19 Abuse of position of trust: causing a child to watch a sexual act **E+W+N.I.**

- [<sup>F4</sup>(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.

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- (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.]

#### Textual Amendments

- F4** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)

## 20 Abuse of position of trust: acts done in Scotland **E+W+N.I.**

[<sup>F5</sup>Anything which, if done in England and Wales <sup>F6</sup>. . . , would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland [<sup>F7</sup>or Northern Ireland].]

#### Textual Amendments

- F5** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)
- F6** Words in s. 20 omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [5\(2\)](#); S.R. 2008/510, [art. 2](#)
- F7** Words in s. 20 inserted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [5\(3\)](#); S.R. 2008/510, [art. 2](#)

## 21 Positions of trust **E+W+N.I.**

- [<sup>F8</sup>(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) <sup>F9</sup>. . . , or
  - (b) accommodation is provided by a voluntary organisation under section 59(1) of that Act <sup>F10</sup>. . . ,
- 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,

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- (b) [<sup>F11</sup>in Wales,] an independent clinic,
- (c) a care home, <sup>F12</sup> . . .
- (d) a community home, voluntary home or children’s home, [<sup>F13</sup>or]
- (e) a home provided under section 82(5) of the Children Act 1989, <sup>F14</sup> . . .
- (f) <sup>F15</sup> . . . . .

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) <sup>F16</sup> . . . . .

- (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

[<sup>F17</sup>(b) section 68, 70(1)(b) or 74 of the Education and Skills Act 2008,]

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), <sup>F18</sup> . . .

(b) <sup>F18</sup> . . . . .

- (9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 <sup>F19</sup> . . . 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, <sup>F20</sup> . . .

(b) <sup>F20</sup> . . . . .

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 [<sup>F21</sup>or Welsh family proceedings officer (within the meaning given by section 35 of the Children Act 2004)] 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) <sup>F22</sup> . . . ,

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

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- (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.]

#### Textual Amendments

- F8** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)
- F9** Words in s. 21(3)(a) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(2\)\(a\)](#); S.R. 2008/510, [art. 2](#)
- F10** Words in s. 21(3)(b) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(2\)\(b\)](#); S.R. 2008/510, [art. 2](#)
- F11** Words in s. 21(4)(b) inserted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 13\(2\)](#)
- F12** Words in s. 21(4)(c) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(3\)\(a\)](#); S.R. 2008/510, [art. 2](#)
- F13** Word in s. 21(4)(d) inserted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(3\)\(b\)](#); S.R. 2008/510, [art. 2](#)
- F14** Word in s. 21(4)(e) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(3\)\(c\)](#); S.R. 2008/510, [art. 2](#)
- F15** S. 21(4)(f) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(3\)\(d\)](#); S.R. 2008/510, [art. 2](#)
- F16** S. 21(6) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(4\)](#); S.R. 2008/510, [art. 2](#)
- F17** S. 21(7)(b) substituted (26.1.2009) by [Education and Skills Act 2008 \(c. 25\)](#), ss. 169(1), 173(4), [Sch. 1 para. 81](#); S.I. 2008/3077, [art. 4\(g\)](#)
- F18** S. 21(8)(b) and preceding word omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(5\)](#); S.R. 2008/510, [art. 2](#)
- F19** Words in s. 21(9) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(6\)](#); S.R. 2008/510, [art. 2](#)
- F20** S. 21(10)(b) and preceding word omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(7\)](#); S.R. 2008/510, [art. 2](#)
- F21** Words in s. 21(12)(a) inserted (E.W.) (1.4.2005) by [Children Act 2004 \(c. 31\)](#), ss. 40, 67, [Sch. 3 para. 18](#); S.I. 2005/700, [art. 2\(2\)](#)
- F22** Words in s. 21(12)(c) omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [6\(8\)](#); S.R. 2008/510, [art. 2](#)

## 22 Positions of trust: interpretation **E+W+N.I.**

[<sup>F23</sup>(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

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- (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) <sup>F24</sup> .....
  - “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); <sup>F25</sup> . . .
    - (b) <sup>F25</sup> .....
  - “children’s home” has—
    - (a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000; <sup>F26</sup> . . .
    - (b) <sup>F26</sup> .....
  - “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; <sup>F27</sup> . . .
    - (b) <sup>F27</sup> .....
  - [<sup>F28</sup>“hospital” means—
    - (a) a hospital as defined by section 275 of the National Health Service Act 2006, or section 206 of the National Health Service (Wales) Act 2006; or
    - (b) any other establishment—
      - (i) in England, in which any of the services listed in subsection (6) are provided; and
      - (ii) in Wales, which is a hospital within the meaning given by section 2(3) of the Care Standards Act 2000;]
  - “independent clinic” has—
    - (a) <sup>F29</sup> . . . the meaning given by section 2 of the Care Standards Act 2000;
    - (b) <sup>F30</sup> .....
  - <sup>F31</sup> .....
  - <sup>F31</sup> .....
  - <sup>F31</sup> .....
  - “supervision order” has—
    - (a) in relation to England and Wales, the meaning given by section 31(11) of the Children Act 1989 (c. 41); <sup>F32</sup> . . .
    - (b) <sup>F32</sup> .....
  - “voluntary home” has—



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- (a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989. <sup>F33</sup> . . .
- (b) <sup>F33</sup> . . . . .

[<sup>F34</sup>(6) The services referred to in paragraph (b)(i) of the definition of “hospital” are as follows—

- (a) medical treatment under anaesthesia or intravenously administered sedation;
- (b) dental treatment under general anaesthesia;
- (c) obstetric services and, in connection with childbirth, medical services;
- (d) termination of pregnancies;
- (e) cosmetic surgery, other than—
  - (i) ear and body piercing;
  - (ii) tattooing;
  - (iii) the subcutaneous injection of a substance or substances into the skin for cosmetic purposes; or
  - (iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current.]]

#### Textual Amendments

- F23** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); [S.R. 2008/510](#), [art. 2](#)
- F24** S. 22(5): paragraph (b) of the definition of "authority" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(a\)](#); [S.R. 2008/510](#), [art. 2](#)
- F25** S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "care order" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(b\)](#); [S.R. 2008/510](#), [art. 2](#)
- F26** S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "children's home" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(c\)](#); [S.R. 2008/510](#), [art. 2](#)
- F27** S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "education supervision order" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(d\)](#); [S.R. 2008/510](#), [art. 2](#)
- F28** S. 22(5): definition of "hospital" substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 13\(3\)\(a\)\(i\)](#)
- F29** S. 22(5): words in definition of "independent clinic" omitted (1.10.2010) by virtue of [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 13\(3\)\(a\)\(ii\)](#)
- F30** S. 22(5): paragraph (b) of the definition of "independent clinic" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(f\)](#); [S.R. 2008/510](#), [art. 2](#)
- F31** S. 22(5): definitions of "private hospital", "residential care home" and "residential family centre" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(g\)](#); [S.R. 2008/510](#), [art. 2](#)
- F32** S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "supervision order" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(h\)](#); [S.R. 2008/510](#), [art. 2](#)
- F33** S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "voluntary home" omitted (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), [7\(i\)](#); [S.R. 2008/510](#), [art. 2](#)

*Status: Point in time view as at 01/10/2010.*

*Changes to legislation: Sexual Offences Act 2003, Cross Heading: Abuse of position of trust is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F34** S. 22(6) added (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/81\)](#), [art. 13\(3\)\(b\)](#)

## 23 Sections 16 to 19: [<sup>F35</sup>exception for spouses and civil partners] **E+W+N.I.**

[<sup>F36</sup>(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 [<sup>F37</sup>or civil partners of each other].

(2) In proceedings for such an offence it is for the defendant to prove that A and B [<sup>F38</sup>were at the time lawfully married or civil partners of each other].]

### Textual Amendments

**F35** S. 23: words in heading substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 173\(4\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))

**F36** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)

**F37** Words in s. 23(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 173\(2\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))

**F38** Words in s. 23(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 173\(3\)](#); S.I. 2005/3175, [art. 2\(1\)\(2\)](#), Sch. 1 (subject to art. 2(3)-(5))

## 24 Sections 16 to 19: sexual relationships which pre-date position of trust **E+W+N.I.**

[<sup>F39</sup>(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.]

### Textual Amendments

**F39** Ss. 16-24 repealed (N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1, 78(b), [Sch. 3](#) (with Sch. 2 par. 1); S.R. 2008/510, [art. 2](#)

**Status:**

Point in time view as at 01/10/2010.

**Changes to legislation:**

Sexual Offences Act 2003, Cross Heading: Abuse of position of trust is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.