

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 21: Positions of trust

Section 22: Positions of trust: interpretation

35. *Section 21* defines “position of trust” for the purposes of the offences in sections 16, 17, 18 and 19. *Subsection (1)(b)* of section 21 also provides a power for the Secretary of State to specify further conditions that will constitute a position of trust. The power is subject to the affirmative parliamentary procedure (section 137(2)).
36. The conditions in *subsections (2) to (5)* use the term “looks after”. This term is defined, in broad terms, at *subsection (2)* of section 22.
37. *Subsection (2)* applies where the child is detained following conviction for a criminal offence, for example in a secure training centre or a young offenders institution.
38. *Subsection (3)* applies to a wide range of settings in which young people are accommodated, including foster care; residential care (local authority, private or voluntary, including secure accommodation); and semi-independent accommodation.
39. *Subsection (4)* covers places where young people with medical conditions, physical or learning disabilities, mental illness or behavioural problems might be accommodated and includes NHS, private and voluntary accommodation.
40. *Subsection (5)* covers the situation where the child is receiving education in an educational institution. This concept is further explained at *subsection (4)* of section 22. The effect of that subsection is that where the child is registered at a college but receives education at another college with which the former has arrangements, A will still be in a position of trust in relation to the child if A works at the former college.
41. *Subsection (6)* covers children's guardians appointed under Northern Ireland legislation.
42. *Subsection (7)* includes persons who, in their capacity as, for example, Connexions Personal Advisers (“CPAs”) look after children on an individual basis. The definition of looking after a child on an individual basis, for the purposes of this subsection, and *subsections (10) (11) and (13)* is at section 22(3). The reference at this definition to contact “by other means” (section 22(3)) is designed to include persons such as CPAs whose normal means of providing support to children is by telephone or via the Internet.
43. *Subsection (8)* covers those who have unsupervised contact with children in the context of their duties under section 20 or 21 of the Children Act 1989 and equivalent legislation in Northern Ireland. Such persons arrange accommodation for children who, for whatever reason, are not being looked after by those who have parental responsibility for them, and check that their welfare is being looked after once such accommodation has been found. They include local authority staff such as social workers and family

*These notes refer to the Sexual Offences Act 2003 (c.42)
which received Royal Assent on 20 November 2003*

centre staff who visit the accommodation in which a child has been placed in order to oversee the child's welfare.

44. *Subsection (9)* covers persons who have unsupervised contact with children by virtue of their appointment as children and family reporters under section 7 of the Children Act 1989 or under Article 4 of the Children (Northern Ireland) Order 1995. These persons present reports for the court relating to children's welfare.
45. *Subsection (10)* covers personal advisers who look after children on an individual basis (as defined at section 22(3)) having been appointed by a local authority under the Children Act 1989. Such personal advisers generally provide help and support to children aged 16-17 who have been in local authority care.
46. *Subsection (11)* covers persons who supervise children pursuant to a care order, supervision order or educational supervision order under various provisions in the Children Act 1989 or the Children (Northern Ireland) Order 1995 and, in that capacity, look after children on an individual basis (again, as defined at section 22(3)).
47. *Subsection (12)* covers a range of persons who, in the course of their duties, regularly have unsupervised contact with children. These are officers of the Children and Family Court Advisory and Support Service appointed to act as children's guardians under section 41(1) of the Children Act 1989; persons appointed as children's guardians in relation to adoption proceedings under Rules 6 and 18 of the Adoption Rules 1984; and persons appointed under Rule 9.5 of the Family Proceedings Rules 1991 to act as children's guardians ad litem in private law Children Act 1989 proceedings and cases determining wardship.
48. *Subsection (13)* includes adults who supervise children under bail supervision, a community sentence (for example a probation order, combination order, community service order, supervision order, attendance centre order) and children under conditions following release from detention resulting from a criminal conviction (e.g. those released on licence from a young offenders institution) This would include members of Youth Offending Teams provided they have sufficient contact and connection with the child or someone providing counselling or drug rehabilitation services to the child pursuant to the terms of a court order.