



Sexual Offences (Scotland) Act 2009

2009 asp 9

PART 5

ABUSE OF POSITION OF TRUST

Children

43 **Positions of trust**

- (1) For the purposes of section 42, a person (“A”) is in a position of trust in relation to another person (“B”) if any of the five conditions set out below is fulfilled.
- (2) The first condition is that B is detained by virtue of an order of court or under an enactment in an institution and A looks after persons under 18 in that institution.
- (3) The second condition is that B is resident in a home or other place in which accommodation is provided by a local authority under section 26(1) of the Children (Scotland) Act 1995 (c. 36) and A looks after persons under 18 in that place.
- (4) The third condition is that B is accommodated and cared for in—
 - (a) a hospital,
 - (b) accommodation provided by an independent health care service,
 - (c) accommodation provided by a care home service,
 - (d) a residential establishment, or
 - (e) accommodation provided by a school care accommodation service or a secure accommodation service,and A looks after persons under 18 in that place.
- (5) The fourth condition is that B is receiving education at—
 - (a) a school and A looks after persons under 18 in that school, or
 - (b) a further or higher education institution and A looks after B in that institution.
- (6) The fifth condition is that A—
 - (a) has any parental responsibilities or parental rights in respect of B,
 - (b) fulfils any such responsibilities or exercises any such rights under arrangement with a person who has such responsibilities or rights,

Status: This is the original version (as it was originally enacted).

- (c) had any such responsibilities or rights but no longer has such responsibilities or rights, or
 - (d) treats B as a child of A's family,
- and B is a member of the same household as A.
- (7) A looks after a person for the purposes of this section if A regularly cares for, teaches, trains, supervises, or is in sole charge of the person.
- (8) The Scottish Ministers may by order modify this section (other than this subsection) and section 44 so as to add, delete or amend a condition.