

## Understanding the implications of ‘positions of trust’ in sport

### Introduction

This briefing is for those who work within, or fund, sport and activity with young people. This briefing answers your frequently asked questions (FAQs) about the change to Section 21 of the Sexual Offences Act 2003, regarding abuse in positions of trust. Experienced NSPCC staff have based their answers on their knowledge of the principles behind the change in the law to try to answer some common questions from sports organisations while we await formal guidance from the Ministry of Justice.

**Note:** ‘Positions of trust’ is a legal term that refers to an adult who is “regularly involved in caring for, training, supervising or being in sole charge of [children and young people].”

As parents, coaches, officials, and volunteers working with young people, we must all help to promote responsible relationships within sport and prevent the manipulation and exploitation of young people.

Although young people aged 16 and 17 have reached the age of consent for sexual activity according to UK law, they could be vulnerable to sexual abuse and exploitation in certain situations. This includes sexual activity and manipulation by adults who are in a position of trust to them, who, as a result of the position of authority they hold, have a considerable amount of power and influence on their lives.

### The law previously

Before the law recently changed in England, Wales, and Northern Ireland, under the Sexual Offences 2003 Act,<sup>1</sup> it was illegal for adults in a number of statutory roles – including teachers, care workers and youth justice staff – to engage in sexual activity with a 16- or 17-year-old in a position of trust to them. However, this was limited to adults working in the statutory professions listed in the Act only. Legal protections therefore did not extend to adults in a position of trust to 16- and 17-year-olds in non-statutory settings, such as faith leaders, sports coaches, or providers of extracurricular activities.

The NSPCC has campaigned for many years, through its ‘Close the Loophole’ campaign, for the Government to amend the Sexual Offences Act 2003<sup>2</sup> to extend the position of trust definition to include all adults in positions of power and authority over children, whether employees or volunteers, regardless of the setting. The NSPCC believed that the previous specifications prevented the legislation from adequately protecting children across a range of non-statutory settings and meant that 16- and 17-year-olds were not protected in law from sexual activity by someone acting in a position of trust to them outside of the previously specified statutory settings.

### Changes to the law

The law has now been extended to include some additional situations when an adult may have the potential to abuse their position of trust over children and young people. The extension to the legislation states that it is illegal for those in positions of trust to engage in any form of sexual activity with a young person aged 16 or 17 in their care in sports organisations, faith groups, and a restricted number of additional circumstances.

It is the NSPCC’s opinion that this is a positive step towards protecting children and young people from those in positions of trust in additional scenarios. However, there is more work to be done to extend this legislation further.

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<sup>1</sup> In Northern Ireland this was The Sexual Offences (Northern Ireland) Order 2008

<sup>2</sup> In Northern Ireland this was The Sexual Offences (Northern Ireland) Order 2008

## Frequently asked questions

### 1. What is a 'position of trust'?

A 'position of trust' is a legal term that refers to certain roles and settings where an adult has regular and direct contact with children. Section 21 of the Sexual Offences Act 2003 outlines which statutory roles this applies to.<sup>3</sup> New legislation in 2022<sup>4</sup> creates a new section 22A(2) of the Sexual Offences Act 2003,<sup>5</sup> which extends the abuse of trust offences to the settings of religion and sport. (Note: The term 'position of trust' has also been used in the sports sector with codes of conducts and training to refer to those in regulated activities even before the legislation changed.)

### 2. When was the legislation enforceable from?

The law in England, Wales and Northern Ireland now states that those in a position of trust in sports organisations, such as a coach, cannot legally have a sexual relationship with young people they look after, under 18 years old. This legislation came into force on the 28 June 2022 in England and Wales and 27 November 2023 in Northern Ireland. The Scottish government is considering similar changes to better protect 16- and 17-year-olds at risk of abuse.

However, it would be against most organisations' codes of conduct for someone in a position of responsibility to have a sexual relationship with a young person under 18 that they were responsible for, and the organisation's disciplinary steps should be enacted anyway.

### 3. What is the definition of 'sport'?

'Sport' includes:

- (a) any game in which physical skill is the predominant factor, and
- (b) any form of physical recreation which is also engaged in for purposes of competition or display.

The advice we've received from the Ministry of Justice is that:

"Sport" could therefore include both "games", and other forms of "physical recreation" meeting the above definitions. It is not the case that both (a) and (b) must be met to meet the definition however – either one is sufficient. "Games" is not further defined in legislation but will instead be given its ordinary meaning."

### 4. Which roles does this apply to?

To assess who this applies to, the following four requirements need to be fulfilled to be classified as a position of trust:

**The setting** – in a sport or a religion, as defined.

**The activity** – the adult must be involved in coaching, teaching, training, supervising, or instructing a young person.

**Regularity** – there is requirement that this activity is carried out on a regular basis. (Note: It is not yet clear how this is defined by the government who have yet to develop statutory guidance.)

**Knowledge requirement** – the person must be aware that they carry out a certain activity on a regular basis in relation to the young person.

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<sup>3</sup> Section 28, Sexual Offences (Northern Ireland) Order 2008

<sup>4</sup> England and Wales – [Police, Crime, Sentencing and Courts Act 2022](#)

Northern Ireland – the [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#)

<sup>5</sup> New section 29A in the Sexual Offences (Northern Ireland) order 2008

Therefore, we advise that each role should be assessed against the above criteria. However, if you have a concern that someone is abusing their position of trust, you should report it to the police and inform your club safeguarding lead, even if you are not sure whether they fit within this criteria. It will then be up to the police to launch a criminal investigation to determine whether they do meet the criteria and therefore if they will be punishable by law.

## 5. What constitutes a 'regular' basis?

Government guidance states that, "it is a requirement that [A] carries out the activity on a regular basis, to avoid an approach that is too broad and capture someone who only helps with a coaching session, say, on one occasion or infrequently."<sup>6</sup> In the absence of any more specific guidance, an organisation may want to consider the guidance already defined by the Disclosure and Barring Service<sup>7</sup> as not 'on one occasion or infrequently'.

You must use your professional judgement to interpret this, but we would advise that any member of staff or volunteer who interacts with the club and/or its members often enough that they are known and recognised by the staff or members could be defined as being involved on a regular basis. Nevertheless, if you are in any doubt, you should report your concern to the police, inform your club safeguarding lead, and allow the police to determine if the law has been broken.

## 6. Do you need to be qualified or licensed to be classed as in a position of trust?

A position of trust is defined according to the setting, activity, regularity, and knowledge (see above answer to question 4) so qualification and licensing are not essential considerations.

## 7. Does this apply to all delivery types (such as face-to-face and virtual)?

Yes. This applies to online and face-to-face delivery where the criteria in question 4 above is fulfilled. Therefore, the person does not need to be in the same facility to be coaching, teaching, training, supervising, or instructing a 16- or 17-year-old in sport on a regular basis. This legislation only applies to sexual relationships that would be considered abusive under the law. Sexual abuse can be contact or non-contact, and in person or online. You can read more information on [protecting children from sexual abuse](#) on the NSPCC Learning website.

## 8. What about those not coaching, but with some responsibility or influence on selection (including welfare officers, scouts, chairs, treasurers, etc)?

If the role in question does not meet the criteria outlined in answer to question 4 above then it will not be covered by the extended abuse of trust offences. However, it would be against most organisations' codes of conduct for someone in any position of responsibility to have a sexual relationship with someone under 18 who takes part in activities within their organisation.

Clubs and organisations should already have this in their codes of conduct, policies, and procedures, with disciplinary sanctions for those who are in breach of these rules. If you think a role could meet the criteria above, you should assume that the role is deemed a position of trust. If in doubt, consult with your local police and record their advice.

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<sup>6</sup> Positions of trust: Police, Crime, Sentencing and Courts Act 2022 factsheet – point 2

<sup>7</sup> DBS Checks in Sport – Working with Children (PDF)

## **9. Does this impact on self-employed or lone workers, such as fitness instructors?**

If the four requirements of setting, activity, regularity and knowledge (see question 4 above) are fulfilled, we believe that fitness instructors are included within this legislation under definition (b) as outlined in answer to question 3 above: “any form of physical recreation which is also engaged in for purposes of competition or display.”

If you have concerns about a self-employed person in a position of trust having a sexual relationship with a 16- or 17-year-old, this should be discussed with them and consideration given to making a report to the police. If operating in England, Wales or Northern Ireland the Local Authority Designated Officer must be informed.

## **10. Who is responsible for reporting potential breaches of the position of trust?**

All concerns about the risk of child abuse must be reported using the organisation’s child protection and safeguarding procedures. It is good practice for an adult abusing their position of trust to be against the code of conduct of an organisation, which would already initiate disciplinary action. It is important to follow the safeguarding procedures of your organisation.

If you are concerned that a crime has been committed, you must report directly to the police and ensure the safeguarding officer in your organisation is consulted. If you remove someone from your organisation for breach of a position of trust, your organisation must refer the individual to the Disclosure and Barring Service. If you are registered with the Charity Commission, you should also consult the Commission about making a report to them on your organisation’s actions.

## **11. How will this legislation work with regards to cross-border coaches (i.e. registered in Scotland but operating in England, Wales or Northern Ireland)?**

If you have a concern, you should always report it to the NGB safeguarding lead and to the police. If there has been a breach of an adult’s position of trust, it is an offence in the jurisdiction the person is operating in (England, Wales or Northern Ireland), therefore the police in those areas will consider any charges. The person must meet the criteria set out in answer to question 4 above and should be informed of the standards expected of them before taking up the role, therefore meeting the ‘knowledge’ criteria as well.

## **12. Do you have to be over 18 to be in a position of trust?**

Yes. The abuse of trust offences hasn’t changed, it is just that additional settings – sport and religion – have been added. As per Sections 16-19 of the Sexual Offences Act 2003,<sup>8</sup> you must be aged 18 or over to be in a position of trust.

## **Communicating the change in the law**

### **Who is responsible for making procedure changes in response to this change of legislation?**

All organisations must include breach of the position of trust role within their codes of conduct and safeguarding procedures. The person who should lead this will depend on the structure of the organisation but may be the safeguarding officer for that organisation.

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<sup>8</sup> Sections 23-26 of the Sexual Offences (Northern Ireland) Order 2008

## Where should I get training on this area?

Safeguarding training is available from the NSPCC, UK Coaching, local authorities, Sport NI, NGBs and Active Partnerships, as well as a number of other providers.

## How can I disseminate this new information to my colleagues?

Consider communication of NSPCC and CPSU messages (see below) through your existing channels. You should incorporate this within your current safeguarding procedures and you should review your training plans to ensure the messaging is consistent across your resources and is communicated with all staff members.

You can download the infographics (below) to use to communicate the change in legislation on your social media channels.



### Sample text:

As a result of the NSPCC's #closethe loophole campaign, governments in England, Wales and Northern Ireland will now hold sports coaches to the same standards in law as those already in 'positions of trust' such as teachers and social workers.

### Read more:

<https://thecpsu.org.uk/resource-library/best-practice/abuse-of-positions-of-trust-within-sport/>



### Sample text:

Following the work of the NSPCC, with the incredible support of sports governing bodies, the loophole has been closed! It is now illegal for sports coaches to have a sexual relationship with young people under 18 in their care.

### Read our briefing to find out more:

<https://thecpsu.org.uk/resource-library/best-practice/abuse-of-positions-of-trust-within-sport/>

## Further information

### Government factsheet

[Positions of trust: Police, Crime, Sentencing and Courts Act 2022 factsheet](#)

### Full legislation

[Police, Crime, Sentencing and Courts Act 2022](#)

### CPSU briefing

[Preventing abuse of positions of trust in sport](#)

### CPSU resource

[Safeguarding reporting procedure flowcharts](#)