

# Sexual Offences (Scotland) Bill

[AS INTRODUCED]

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# Sexual Offences (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make new provision about sexual offences, and for connected purposes.

## PART 1

### RAPE ETC.

#### *Rape*

#### **1 Rape**

(1) If a person (“A”), with A’s penis—

(a) without another person (“B”) consenting, and

(b) without any reasonable belief that B consents,

penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B then A commits an offence, to be known as the offence of rape.

(2) For the purposes of this section, penetration is a continuing act from entry until withdrawal of the penis; but this subsection is subject to subsection (3).

(3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.

(4) In this Act—

“penis” includes an artificial penis if it forms part of A, having been created in the course of surgical treatment, and

“vagina” includes—

(a) the vulva, and

(b) an artificial vagina (together with any artificial vulva), if it forms part of B, having been created in the course of such treatment.

*Sexual assault and other sexual offences***2 Sexual assault**

- (1) If a person (“A”)—
- (a) without another person (“B”) consenting, and
  - (b) without any reasonable belief that B consents,
- does any of the things mentioned in subsection (2), then A commits an offence, to be known as the offence of sexual assault.
- (2) Those things are, that A—
- (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,
  - (b) intentionally or recklessly touches B sexually,
  - (c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,
  - (d) intentionally or recklessly ejaculates semen onto B.
- (3) For the purposes of—
- (a) paragraph (a) of subsection (2), penetration is sexual,
  - (b) paragraph (b) of that subsection, touching is sexual,
  - (c) paragraph (c) of that subsection, an activity is sexual,
- in any case if a reasonable person would, in all the circumstances of the case, consider the penetration, or as the case may be the touching or the activity, to be sexual.
- (4) For the purposes of paragraph (a) of subsection (2), penetration is a continuing act from entry until withdrawal of whatever is intruded; but this subsection is subject to subsection (5).
- (5) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (4) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.
- (6) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A’s penis.

**3 Sexual coercion**

- (1) If a person (“A”)—
- (a) without another person (“B”) consenting to participate in a sexual activity, and
  - (b) without any reasonable belief that B consents to participating in that activity,
- intentionally causes B to participate in that activity, then A commits an offence, to be known as the offence of sexual coercion.
- (2) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

#### **4 Coercing a person into being present during a sexual activity**

(1) If a person (“A”)—

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

5 either intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of B or intentionally and for a purpose mentioned in that subsection causes B to be present while a third person engages in such an activity, then A commits an offence, to be known as the offence of coercing a person into being present during a sexual activity.

10 (2) The purposes are—

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

(3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

15 (4) Without prejudice to the generality of subsection (1), the reference in that subsection—

- (a) to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and
- (b) to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.

#### **5 Coercing a person into looking at an image of a sexual activity**

(1) If a person (“A”) intentionally and for a purpose mentioned in subsection (2) causes another person (“B”)—

- 25
- (a) without B consenting, and
  - (b) without any reasonable belief that B consents,

to look at an image (produced by whatever means and whether or not a moving image) of A engaging in a sexual activity or of a third person or imaginary person so engaging, then A commits an offence, to be known as the offence of coercing a person into looking at an image of a sexual activity.

30 (2) The purposes are—

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

(3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

#### **6 Communicating indecently etc.**

(1) If a person (“A”), intentionally and for a purpose mentioned in subsection (3), sends, by whatever means, a sexual written communication to or directs, by whatever means, a sexual verbal communication at, another person (“B”)—

(a) without B consenting to its being so sent or directed, and  
 (b) without any reasonable belief that B consents to its being so sent or directed,  
 then A commits an offence, to be known as the offence of communicating indecently.

5 (2) If, in circumstances other than are as mentioned in subsection (1), a person (“A”),  
 intentionally and for a purpose mentioned in subsection (3), causes another person (“B”)  
 to see or hear, by whatever means, a sexual written communication or sexual verbal  
 communication—

(a) without B consenting to seeing or as the case may be hearing it, and  
 (b) without any reasonable belief that B consents to seeing or as the case may be  
 10 hearing it,

then A commits an offence, to be known as the offence of causing a person to see or  
 hear an indecent communication.

(3) The purposes are—

(a) obtaining sexual gratification,  
 15 (b) humiliating, distressing or alarming B.

(4) In this section—

“written communication” means a communication in whatever written form, and  
 without prejudice to that generality includes a communication which comprises  
 writings of a person other than A (as for example a passage in a book or  
 20 magazine), and

“verbal communication” means a communication in whatever verbal form, and  
 without prejudice to that generality includes—

(a) a communication which comprises sounds of sexual activity (whether  
 actual or simulated), and  
 25 (b) a communication by means of sign language.

(5) For the purposes of this section, a communication or activity is sexual in any case if a  
 reasonable person would, in all the circumstances of the case, consider it to be sexual.

## 7 Sexual exposure

30 (1) If a person (“A”) intentionally exposes A’s genitals in a sexual manner to another person  
 (“B”) with the intention that B will see them and A either—

(a) intends that B will be caused alarm or distress by the exposure, or  
 (b) is reckless as to whether B will be caused alarm or distress by it,

then A commits an offence, to be known as the offence of sexual exposure.

35 (2) For the purposes of subsection (1), a manner of exposure is sexual in any case if a  
 reasonable person would, in all the circumstances of the case, consider the manner of  
 exposure to be sexual.

(3) It is a defence to a charge under subsection (1) that what A did—

(a) was done in the course of a performance of a play, and  
 (b) conformed to the directions of the presenter or director of that performance.

- (4) In subsection (3)(a), “play” has the meaning given by section 18(1) of the Theatres Act 1968 (c.54) (interpretation of expressions used in that Act).

## **8 Administering a substance for sexual purposes**

- (1) If a person (“A”) intentionally administers a substance to, or causes a substance to be taken by, another person (“B”)—

- (a) without B knowing, and  
(b) without any reasonable belief that B knows,

and does so for the purpose of stupefying or overpowering B, so as to enable A to engage in a sexual activity which involves B, then A commits an offence, to be known as the offence of administering a substance for sexual purposes.

- (2) For the purposes of subsection (1)—

- (a) an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual, and

- (b) if A, whether by act or omission, induces in B a reasonable belief that the substance administered or taken is (either or both)—

- (i) of a substantially lesser strength, or  
(ii) in a substantially lesser quantity,

than it is, any knowledge which B has (or belief as to knowledge which B has) that it is being administered or taken is to be disregarded.

## **PART 2**

### CONSENT AND REASONABLE BELIEF

#### *Consent*

## **9 Meaning of “consent” and related expressions**

In Parts 1 and 3, “consent” means free agreement (and related expressions are to be construed accordingly).

## **10 Circumstances in which conduct takes place without free agreement**

- (1) For the purposes of section 9, but without prejudice to the generality of that section, free agreement to conduct is absent in the circumstances set out in subsection (2).

- (2) Those circumstances are—

- (a) where the only indication or expression of consent by B to the conduct occurs at a time when B is incapable, because of the effect of alcohol or any other substance, of consenting to it,

- (b) where, at the time of the conduct, B is asleep or unconscious, in circumstances where B has not, prior to becoming asleep or unconscious, consented to the conduct taking place while B is in that condition,

- (c) where B agrees or submits to the conduct because of violence used against B or any other person, or because of threats of violence made against B or any other person,

- (d) where B agrees or submits to the conduct because B is unlawfully detained by A,
- (e) where B agrees or submits to the conduct because B is mistaken, as a result of deception by A, as to the nature or purpose of the conduct,
- 5 (f) where B agrees or submits to the conduct because A induces B to agree or submit to the conduct by impersonating a person known personally to B, or
- (g) where the only expression or indication of agreement to the conduct is from a person other than B.
- (3) References in this section to A and to B are to be construed in accordance with sections 1 to 6.

10 **11 Consent: scope and withdrawal**

- (1) This section applies in relation to sections 1 to 6.
- (2) Consent to conduct does not of itself imply consent to any other conduct.
- (3) Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during, the conduct.
- 15 (4) If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

*Reasonable belief*

**12 Reasonable belief**

20 In determining, for the purposes of Part 1, whether a person's belief as to consent or knowledge was reasonable, regard is to be had to whether the person took any steps to ascertain whether there was consent or, as the case may be, knowledge; and if so, to what those steps were.

**PART 3**

MENTALLY DISORDERED PERSONS

*Mentally disordered persons*

25 **13 Capacity to consent**

- (1) This section applies in relation to sections 1 to 6.
- (2) A mentally disordered person is incapable of consenting to conduct where, by reason of mental disorder, the person is unable to do one or more of the following—
- 30 (a) understand what the conduct is,
- (b) form a decision as to whether to engage in the conduct (or as to whether the conduct should take place),
- (c) communicate any such decision.
- 35 (3) In this Act, “mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (and related expressions are to be construed accordingly).

**PART 4**

CHILDREN

*Young children*

**14 Rape of a young child**

5 If a person (“A”), with A’s penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of rape of a young child.

**15 Sexual assault on a young child**

10 (1) If a person (“A”) does any of the things mentioned in subsection (2) (“B” being in each case a child who has not attained the age of 13 years), then A commits an offence, to be known as the offence of sexual assault on a young child.

(2) Those things are, that A—

15 (a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

(b) intentionally or recklessly touches B sexually,

(c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,

20 (d) intentionally or recklessly ejaculates semen onto B.

(3) For the purposes of—

(a) paragraph (a) of subsection (2), penetration is sexual,

(b) paragraph (b) of that subsection, touching is sexual,

(c) paragraph (c) of that subsection, an activity is sexual,

25 in any case if a reasonable person would, in all the circumstances of the case, consider the penetration, or as the case may be the touching or the activity, to be sexual.

(4) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A’s penis.

**16 Causing a young child to participate in a sexual activity**

30 (1) If a person (“A”) intentionally causes a child (“B”) who has not attained the age of 13 years to participate in a sexual activity, then A commits an offence, to be known as the offence of causing a young child to participate in a sexual activity.

35 (2) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

**17 Causing a young child to be present during a sexual activity**

- (1) If a person (“A”) either—
- (a) intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of a child (“B”) who has not attained the age of 13 years, or
  - (b) intentionally and for a purpose mentioned in subsection (2) causes B to be present while a third person engages in such an activity,

then A commits an offence, to be known as the offence of causing a young child to be present during a sexual activity.

- (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.
- (4) Without prejudice to the generality of subsection (1), the reference—
- (a) in paragraph (a) of that subsection to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and
  - (b) in paragraph (b) of that subsection to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.

**18 Causing a young child to look at an image of a sexual activity**

- (1) If a person (“A”) intentionally and for a purpose mentioned in subsection (2) causes a child (“B”) who has not attained the age of 13 years to look at an image (produced by whatever means and whether or not a moving image) of A engaging in a sexual activity or of a third person or imaginary person so engaging, then A commits an offence, to be known as the offence of causing a young child to look at an image of a sexual activity.

- (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

**19 Communicating indecently with a young child etc.**

- (1) If a person (“A”), intentionally and for a purpose mentioned in subsection (3)—
- (a) sends, by whatever means, a sexual written communication to, or
  - (b) directs, by whatever means, a sexual verbal communication at,
- a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of communicating indecently with a young child.

(2) If, in circumstances other than are as mentioned in subsection (1), a person (“A”), intentionally and for a purpose mentioned in subsection (3) causes a child (“B”) who has not attained the age of 13 years to see or hear, by whatever means, a sexual written communication or sexual verbal communication, then A commits an offence, to be known as the offence of causing a young child to see or hear an indecent communication.

- (3) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.

(4) In this section—

“written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine), and

“verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes—

- (a) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- (b) a communication by means of sign language.

(5) For the purposes of this section, a communication or activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.

## **20 Belief that child had attained the age of 13 years**

It is not a defence to a charge in proceedings under any of sections 14 to 19 that A believed that B had attained the age of 13 years.

### *Older children*

## **21 Having intercourse with an older child**

If a person (“A”), who has attained the age of 16 years, with A’s penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child (“B”), who—

- (a) has attained (or under section 30(1) is deemed to have attained) the age of 13 years, but
- (b) has not attained the age of 16 years,

then A commits an offence, to be known as the offence of having intercourse with an older child.

## **22 Engaging in sexual activity with or towards an older child**

(1) If a person (“A”), who has attained the age of 16 years, does any of the things mentioned in subsection (2), “B” being in each case a child who—

- (a) has attained (or under section 30(1) is deemed to have attained) the age of 13 years, but

(b) has not attained the age of 16 years,

then A commits an offence, to be known as the offence of engaging in sexual activity with or towards an older child.

(2) Those things are, that A—

(a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

(b) intentionally or recklessly touches B sexually,

(c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,

(d) intentionally or recklessly ejaculates semen onto B.

(3) For the purposes of—

(a) paragraph (a) of subsection (2), penetration is sexual,

(b) paragraph (b) of that subsection, touching is sexual,

(c) paragraph (c) of that subsection, an activity is sexual,

in any case if a reasonable person would, in all the circumstances of the case, consider the penetration, or as the case may be the touching or the activity, to be sexual.

(4) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.

### **23 Causing an older child to participate in a sexual activity**

(1) If a person (“A”), who has attained the age of 16 years, intentionally causes a child (“B”), who—

(a) has attained (or under section 30(1) is deemed to have attained) the age of 13 years, but

(b) has not attained the age of 16 years,

to participate in a sexual activity, then A commits an offence, to be known as the offence of causing an older child to participate in a sexual activity.

(2) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

### **24 Causing an older child to be present during a sexual activity**

(1) If a person (“A”), who has attained the age of 16 years either—

(a) intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of a child (“B”), who—

(i) has attained (or under section 30(1) is deemed to have attained) the age of 13 years, but

(ii) has not attained the age of 16 years, or

(b) intentionally, and for a purpose mentioned in subsection (2) causes B to be present while a third person engages in such an activity,

then A commits an offence, to be known as the offence of causing an older child to be present during a sexual activity.

- 5 (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.
- 10 (4) Without prejudice to the generality of subsection (1), the reference—
- (a) in paragraph (a) of that subsection to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and
  - (b) in paragraph (b) of that subsection to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.
- 15

## **25 Causing an older child to look at an image of a sexual activity**

(1) If a person (“A”), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (2) causes a child (“B”), who—

- 20 (a) has attained (or under section 30(1) is deemed to have attained) the age of 13 years, but
- (b) has not attained the age of 16 years,

to look at an image (produced by whatever means and whether or not a moving image) of A engaging in a sexual activity or of a third person or imaginary person so engaging, then A commits an offence, to be known as the offence of causing an older child to look at an image of a sexual activity.

25

- (2) The purposes are—
- (a) obtaining sexual gratification,
  - (b) humiliating, distressing or alarming B.
- (3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.
- 30

## **26 Communicating indecently with an older child etc.**

(1) If a person (“A”), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3), sends, by whatever means, a sexual written communication to or directs, by whatever means, a sexual verbal communication at, a child (“B”) who—

35

- (a) has attained (or under section 30(1) is deemed to have attained) the age of 13 years, but
- (b) has not attained the age of 16 years,

then A commits an offence, to be known as the offence of communicating indecently with an older child.

- (2) If, in circumstances other than are as mentioned in subsection (1), a person (“A”), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3), causes another person (“B”) who is a child described in paragraphs (a) and (b) of subsection (1) to see or hear, by whatever means, a sexual written communication or sexual verbal communication, then A commits an offence, to be known as the offence of causing an older child to see or hear an indecent communication.

- (3) The purposes are—

- (a) obtaining sexual gratification,  
(b) humiliating, distressing or alarming B.

- (4) In this section—

“written communication” means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine), and

“verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes—

- (a) a communication which comprises sounds of sexual activity (whether actual or simulated), and  
(b) a communication by means of sign language.

- (5) For the purposes of this section, a communication or activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.

## **27 Older children engaging in penetrative sexual conduct with each other**

- (1) If a child (“A”), being a child mentioned in subsection (2), does a thing mentioned in subsection (3), “B” being in each case a child mentioned in subsection (2), then A commits an offence, to be known as the offence of engaging while an older child in penetrative sexual conduct with or towards another older child.

- (2) The child is a child who—

- (a) has attained the age of 13 years, but  
(b) has not attained the age of 16 years,

- (3) The thing is that A penetrates sexually, by any means (other than A’s mouth) and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of B.

- (4) In the circumstances specified in subsection (1), if B engages by consent in the conduct in question, then B commits an offence, to be known as the offence of engaging while an older child in consensual penetrative sexual conduct with another older child.

- (5) Without prejudice to the generality of subsection (3), the reference in the subsection to penetration by any means is to be construed as including a reference to penetration with A’s penis.

- (6) In subsection (3), the reference to A’s mouth is to be construed as including a reference to A’s tongue or teeth.

(7) The Lord Advocate may issue instructions to chief constables in relation to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed under this section; and chief constables must secure compliance with any such instructions issued to them.

5 (8) Subsection (7) is without prejudice to any other powers of the Lord Advocate to issue instructions in relation to the reporting or prosecution of offences.

## **28 Penetration and consent for the purposes of section 27**

(1) This section applies for the purposes of section 27.

10 (2) Penetration is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the penetration to be sexual.

(3) Penetration is a continuing act from entry until withdrawal of whatever is intruded.

(4) “Consent” means free agreement (and related expressions are to be construed accordingly).

15 (5) Without prejudice to the generality of subsection (4), free agreement to conduct is absent in the circumstances set out in section 10(2) (references in that section to A and B being construed in accordance with section 27).

(6) Consent to conduct does not of itself imply consent to any other conduct.

(7) Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during, the conduct.

20 (8) If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

## **29 Defences in relation to offences against older children**

(1) It is a defence to a charge in proceedings—

25 (a) against A under any of sections 21 to 27(1) that A reasonably believed that B had attained the age of 16 years,

(b) against B under section 27(4) that B reasonably believed that A had attained the age of 16 years.

(2) But—

30 (a) the defence under subsection (1)(a) is not available to A if A has previously been charged by the police with a relevant offence,

(b) the defence under subsection (1)(b) is not available to B if B has previously been charged by the police with a relevant offence.

35 (3) It is a defence to a charge in proceedings under any of the sections mentioned in subsection (4) that at the time when the conduct to which the charge relates took place, the difference between A’s age and B’s age did not exceed 2 years.

(4) Those sections are—

(a) section 21 in so far as the charge is founded on penetration of B’s mouth,

(b) section 22 in so far as the charge is founded on—

40 (i) subsection (2)(a) of that section and penetration was of B’s mouth, or by A’s mouth, tongue or teeth,

(ii) subsection (2)(b), (c) or (d) of that section,

(c) any of sections 23 to 26.

(5) In paragraphs (a) and (b) of subsection (2), “a relevant offence” means such offence, or an offence of such description, as may be specified in an order made by the Scottish Ministers.

(6) It is not a defence to a charge in—

(a) proceedings under any of sections 21 to 27(1) against A that A believed that B had not attained the age of 13 years,

(b) proceedings under section 27(4) against B that B believed that A had not attained the age of 13 years.

### *General*

#### **30 Special provision as regards failure to establish whether child has or has not attained age of 13 years**

(1) If in a trial where A is charged with an offence under any of sections 21 to 26 there is a failure to establish beyond reasonable doubt that B was a person who had attained the age of 13 years when the conduct to which the proceedings relate occurred, B is to be deemed for the purposes of the proceedings to be such a person.

(2) If in a trial where A is charged with an offence under any of sections 14 to 19 there is a failure to establish beyond reasonable doubt that B was a person who had not attained the age of 13 years when the conduct to which the proceedings relate occurred, but the court (or, in the case of a trial of an indictment, the jury) is satisfied—

(a) in every other respect that A committed the offence charged, and

(b) that it is established beyond reasonable doubt that B was a person who had not attained the age of 16 years when that conduct occurred,

A may be dealt with as mentioned in subsection (3).

(3) A may be acquitted of the charge but found guilty of an offence against B under—

(a) section 21 (having intercourse with an older child) where A is charged with an offence under section 14 (rape of a young child),

(b) section 22 (engaging in sexual activity with or towards an older child) where A is charged with an offence under section 15 (sexual assault on a young child),

(c) section 23 (causing an older child to participate in a sexual activity) where A is charged with an offence under section 16 (causing a young child to participate in a sexual activity),

(d) section 24 (causing an older child to be present during a sexual activity) where A is charged with an offence under section 17 (causing a young child to be present during a sexual activity),

(e) section 25 (causing an older child to look at an image of sexual activity) where A is charged with an offence under section 18 (causing a young child to look at an image of sexual activity),

(f) section 26(1) (communicating indecently with an older child) where A is charged with an offence under section 19(1) (communicating indecently with a young child), or

(g) section 26(2) (causing an older child to see or hear an indecent communication) where A is charged with an offence under section 19(2) (causing a young child to see or hear an indecent communication),

(A then being liable to be punished accordingly).

5 (4) If, but for a failure to establish beyond reasonable doubt that B had not attained the age of 13 years, a court or jury would, by virtue of section 38(1), find that A committed an offence mentioned in the third column of schedule 2, it may, provided that—

(a) the condition in section 38(2) has been fulfilled, and

10 (b) it is satisfied that B was a person who had not attained the age of 16 years when the conduct to which the proceedings relate occurred,

deal with A as mentioned in subsection (5).

(5) A may be acquitted of the charge but found guilty of an offence against B under—

15 (a) section 22 (engaging in sexual activity with or towards an older child) where the offence mentioned in the third column of schedule 2 is an offence under section 15 (sexual assault on a young child),

(b) section 23 (causing an older child to participate in a sexual activity) where the offence so mentioned is an offence under section 16 (causing a young child to participate in a sexual activity),

20 (c) section 24 (causing an older child to be present during a sexual activity) where the offence so mentioned is an offence under section 17 (causing a young child to be present during a sexual activity),

(d) section 25 (causing an older child to look at an image of sexual activity) where the offence so mentioned is an offence under section 18 (causing a young child to look at an image of sexual activity),

25 (e) section 26(1) (communicating indecently with an older child) where the offence so mentioned is an offence under section 19(1) (communicating indecently with a young child), or

30 (f) section 26(2) (causing an older child to see or hear an indecent communication) where the offence so mentioned is an offence under section 19(2) (causing a young child to see or hear an indecent communication),

(A then being liable to be punished accordingly).

(6) Subsections (3) and (4) of section 38 apply for the purposes of this section as they apply for the purposes of that section.

(7) A reference in this section to an offence includes a reference to—

35 (a) an attempt to commit,

(b) incitement to commit,

(c) counselling or procuring the commission of, and

(d) involvement art and part in,

an offence.

**PART 5**

ABUSE OF POSITION OF TRUST

*Children*

**31 Sexual abuse of trust**

- 5 (1) If a person (“A”) who has attained the age of 18 years—
- (a) intentionally engages in a sexual activity with or directed towards another person (“B”) who is under 18, and
  - (b) is in a position of trust in relation to B,
- then A commits an offence, to be known as the offence of sexual abuse of trust.
- 10 (2) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.

**32 Positions of trust**

- 15 (1) For the purposes of section 31, a person (“A”) is in a position of trust in relation to another person (“B”) if any of the five conditions set out below, or any condition specified in an order made by the Scottish Ministers, 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 B 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 B in that place.
- 20 (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,
  - 25 (d) a residential establishment, or
  - (e) accommodation provided by a school care accommodation service or a secure accommodation service,
- and A looks after B in that place.
- (5) The fourth condition is that B is receiving education at an educational establishment, and A looks after B in that establishment.
- 30 (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,
  - 35 (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 B for the purposes of this section if A regularly cares for, trains, supervises, or is in sole charge of B.

### **33 Interpretation of section 32**

In section 32—

5 “care home service” has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8) (“the 2001 Act”),

“educational establishment” has the same meaning as in section 135(1) of the Education (Scotland) Act 1980 (c.44) except that it includes—

(a) a university,

10 (b) a theological college,

“hospital” means a health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c.29)),

“independent health care service” has the meaning given by section 2(5) of the 2001 Act,

15 “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“parental responsibilities” and “parental rights” have the same meanings as in the Children (Scotland) Act 1995 (c.36),

20 “residential establishment” has the meaning given by section 93(1)(a) of that Act of 1995,

“school care accommodation service” has the meaning given by section 2(4) of the 2001 Act, and

“secure accommodation service” has the meaning given by section 2(9) of the 2001 Act.

### **34 Sexual abuse of trust: defences**

- (1) It is a defence to a charge in proceedings under section 31 that A reasonably believed—

(a) that B had attained the age of 18, or

(b) that B was not a person in relation to whom A was in a position of trust.

- (2) It is a defence to a charge in proceedings under section 31—

30 (a) that B was A’s spouse or civil partner, or

(b) that immediately before the position of trust came into being, a sexual relationship existed between A and B.

- (3) Subsection (2) does not apply if A was in a position of trust in relation to B by virtue of section 32(6).

- 35 (4) For the purposes of subsection (2), a relationship is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the relationship to be sexual.

*Mentally disordered persons*

**35 Sexual abuse of trust of a mentally disordered person**

- (1) If a person (“A”)—
- (a) intentionally engages in a sexual activity with or directed towards a mentally disordered person (“B”), and
- (b) is a person mentioned in subsection (2),
- then A commits an offence, to be known as sexual abuse of trust of a mentally disordered person.
- (2) Those persons are—
- (a) a person providing care services to B,
- (b) a person who—
- (i) is an individual employed in, or contracted to provide services in or to, or
- (ii) not being the Scottish Ministers, is a manager of,
- a hospital, independent health care service or state hospital in which B is being given medical treatment.
- (3) For the purposes of subsection (1), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the activity to be sexual.
- (4) References in this section to the provision of care services are references to anything done by way of such services—
- (a) by,
- (b) by an employee of, or
- (c) in the course of a service provided or supplied by,
- a care service, whether by virtue of a contract of employment or any other contract or in such other circumstances as may be specified in an order made by the Scottish Ministers.
- (5) In this section—
- “care service” has the meaning given by subsection (1)(a), (b), (e), (g), (h), (k) and (n) as read with subsections (2), (3), (6), (9), (10), (16) and (27) of section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8),
- “hospital” and “independent health care service” have the meanings given in section 33, and
- “state hospital” means a hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978 (c. 29).

**36 Sexual abuse of trust of a mentally disordered person: defences**

- (1) It is a defence to a charge in proceedings under section 35 that A reasonably believed—
- (a) that B did not have a mental disorder, or
- (b) that A was not a person specified in section 35(2).
- (2) It is a defence to a charge in proceedings under section 35—
- (a) that B was A’s spouse or civil partner, or

(b) in a case where A was—

(i) a person specified in section 35(2)(a), that immediately before A began to provide care services to B, a sexual relationship existed between A and B,

(ii) a person specified in section 35(2)(b), that immediately before B was admitted to the hospital (or other establishment) referred to in that provision or (where B has been admitted to that establishment more than once) was last admitted to it, such a relationship existed.

(3) For the purposes of subsection (2)(b), a relationship is sexual in any case if a reasonable person would, in all the circumstances of the case, consider the relationship to be sexual.

## **PART 6**

### **PENALTIES**

#### *Penalties*

### **37 Penalties**

A person guilty of an offence mentioned in the first column of schedule 1 is liable—

(a) on summary conviction, to the penalty mentioned in the third column,

(b) on conviction on indictment, to the penalty mentioned in the fourth column.

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

#### *Miscellaneous*

### **38 Power to convict for offence other than that charged**

(1) If, in a trial—

(a) on an indictment for an offence mentioned in the first column of schedule 2 the jury are not satisfied that the accused committed the offence charged but are satisfied that the accused committed the alternative offence (or as the case may be one of the alternative offences) mentioned in the third column, they may, or

(b) in summary proceedings for an offence mentioned in the first column of that schedule the court is not satisfied that the accused committed the offence charged but is satisfied that the accused committed the alternative offence (or as the case may be one of the alternative offences) mentioned in the third column, it may,

provided that the condition in subsection (2) has been fulfilled, acquit the accused of the charge but find the accused guilty of the alternative offence in respect of which so satisfied (the accused then being liable to be punished accordingly).

(2) The condition is that the accused was given fair notice of the effect which subsection (1) might have in the accused's case.

(3) Without prejudice to the generality of subsection (2), the condition mentioned in that subsection is to be taken to be satisfied where a notice, in a prescribed form, of the alternative verdicts which would be available in the accused's case in the circumstances mentioned in subsection (1) is appended to the indictment or as the case may be to the complaint.

(4) In subsection (3), “prescribed” means prescribed by Act of Adjournal.

(5) A reference in this section to an offence includes a reference to—

- (a) an attempt to commit,
  - (b) incitement to commit,
  - 5 (c) counselling or procuring the commission of, and
  - (d) involvement art and part in,
- an offence.

### **39 Exceptions to inciting or being involved art and part in offences under Part 4 or 5**

A person (“X”) is not guilty of inciting, or being involved art and part in, an offence under Part 4 or 5 if, as regards another person (“Y”), X acts—

- (a) for the purpose of—
  - (i) protecting Y from sexually transmitted infection,
  - (ii) protecting the physical safety of Y,
  - (iii) preventing Y from becoming pregnant, or
  - 15 (iv) promoting Y’s emotional well-being by the giving of advice, and
- (b) not for the purpose of—
  - (i) obtaining sexual gratification,
  - (ii) humiliating, distressing or alarming Y, or
  - 20 (iii) causing or encouraging the activity constituting the offence or Y’s participation in it.

### **40 Common law offences**

For all purposes not relating to offences committed before the coming into force of this section—

- (a) the common law offences of—
  - 25 (i) rape,
  - (ii) clandestine injury to women,
  - (iii) lewd, indecent or libidinous practice or behaviour, and
  - (iv) sodomy,
 are abolished, and
- 30 (b) without prejudice to paragraph (a), in so far as the provisions of this Act regulate any conduct they replace any rule of law regulating that conduct.

### **41 Continuity of law on sexual offences**

(1) This section applies where, in any trial—

- 35 (a) the accused is charged in respect of the same conduct both with an offence under this Act (“the new offence”) and with an offence specified in subsection (2) (“the existing offence”),

- (b) there is a failure to establish beyond reasonable doubt that—
- (i) the time when the conduct took place was after the coming into force of the provision providing for the new offence, and
  - (ii) the time when the conduct took place was before the abolishment or replacement of or, as the case may be, the coming into force of the repeal of the enactment providing for, the existing offence, and
- (c) the court (or, in the case of a trial of an indictment, the jury) is satisfied in every other respect that the accused committed the offences charged.

(2) The offences referred to in subsection (1)(a) are—

- (a) rape (at common law),
- (b) clandestine injury to women,
- (c) lewd, indecent or libidinous practice or behaviour,
- (d) any other common law offence which is replaced by an offence under this Act,
- (e) an offence under section 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (intercourse of person in position of trust with child under 16),
- (f) an offence under section 5(1), (2) or (3) (intercourse with girl under 16) or 6 (indecent behaviour towards girl between 12 and 16) of that Act,
- (g) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c.44) (abuse of position of trust).

(3) Where this section applies, the accused may be found guilty—

- (a) if the maximum penalty for the existing offence is less than the maximum penalty for the new offence, of the existing offence,
- (b) in any other case, of the new offence.

(4) In subsection (3) the reference, in relation to an offence, to the maximum penalty is a reference to the maximum penalty by way of imprisonment or other detention that could be imposed on the accused on conviction of the offence in the proceedings in question.

(5) A reference in this section to an offence includes a reference to—

- (a) an attempt to commit an offence,
- (b) incitement to commit an offence,
- (c) counselling or procuring the commission of an offence,
- (d) involvement art and part in an offence, and
- (e) an offence as modified by section 16A or 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39).

#### **42 Incitement to commit certain sexual acts outside the United Kingdom**

(1) If a person does an act in Scotland which would amount to the offence of incitement to commit a listed offence but for the fact that what the person had in view (referred to in this section as “the relevant conduct”) is intended to occur in a country outside the United Kingdom, then—

- (a) the relevant conduct is to be treated as the listed offence, and

(b) the person accordingly commits the offence of incitement to commit the listed offence.

(2) However, a person who is not a UK national commits an offence by virtue of subsection (1) only if the relevant conduct would also involve the commission of an offence under the law in force in the country where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in the country is an offence under that law for the purposes of subsection (2) however it is described in that law.

(4) The condition specified in subsection (2) is to be taken as satisfied unless, not later than such time as may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice—

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in the accused’s opinion satisfied,

(b) setting out the grounds for the accused’s opinion, and

(c) requiring the prosecutor to prove that the condition is satisfied.

(5) But the court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under that subsection.

(6) In proceedings on indictment, the question whether the condition is satisfied is to be determined by the judge alone.

(7) Any act of incitement by means of a message (however communicated) is to be treated as done in Scotland if the message is sent or received in Scotland.

(8) In this section—

“country” includes territory,

“listed offence” means an offence listed in Part 1 of schedule 3,

“UK national” means an individual who was at the time the act mentioned in subsection (1) took place, or who has subsequently become—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act.

### **43 Offences committed outside the United Kingdom**

(1) If a UK national does an act in a country outside the United Kingdom which would, if it had been done in Scotland, constitute a listed offence then the UK national commits that offence.

(2) If—

(a) a UK resident does an act in a country outside the United Kingdom which would, if it had been done in Scotland, constitute a listed offence, and

(b) the act constitutes an offence under the law in force in that country,

then the UK resident commits the listed offence.

(3) For the purposes of subsection (2)(b), conduct punishable under the law in force in the country is an offence under that law however it is described in that law.

(4) The condition specified in subsection (2)(b) is to be taken as satisfied unless, not later than such time as may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice—

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the accused's opinion satisfied,

(b) setting out the grounds for the accused's opinion, and

(c) requiring the prosecutor to prove that the condition is satisfied.

(5) But the court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under that subsection.

(6) In proceedings on indictment, the question whether the condition is satisfied is to be determined by the judge alone.

(7) A person may be proceeded against, indicted, tried and punished for any offence to which this section applies—

(a) in any sheriff court district in Scotland in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district; and the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed in that district.

(8) In this section—

“country” includes territory,

“listed offence” means an offence listed in Part 2 of schedule 3,

“sheriff court district” is to be construed in accordance with section 307(1) (interpretation) of the Criminal Procedure (Scotland) Act 1995 (c.46),

“UK national” has the meaning given in section 42,

“UK resident” means an individual who was at the time the act mentioned in subsection (2) took place, or who has subsequently become, resident in the United Kingdom.

#### **44 Continuity of law on sexual offences committed outside the United Kingdom**

(1) This section applies where, in any trial—

(a) the accused is charged in respect of the same conduct both—

(i) with an offence mentioned in subsection (2) as modified by section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual acts outside the United Kingdom), and

(ii) with that offence as modified by section 43,

(b) there is a failure to establish beyond reasonable doubt that—

(i) the time when the conduct took place was after the coming into force of section 43, and

(ii) the time when the conduct took place was before the coming into force of the repeal of section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995, and

(c) the court (or, in the case of a trial of an indictment, the jury) is satisfied in every other respect that the accused committed the offences charged.

(2) The offences referred to in subsection (1)(a) are—

(a) an offence under section 52 of the Civic Government (Scotland) Act 1982 (c.45) (taking and distribution of indecent images of children),

(b) an offence under section 52A of that Act (possession of indecent images of children),

(c) an offence under section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (paying for sexual services of a child),

(d) an offence under section 10 of that Act (causing or inciting provision by child of sexual services or pornography),

(e) an offence under section 11 of that Act (controlling a child providing sexual services or involved in pornography),

(f) an offence under section 12 of that Act (arranging or facilitating provision by child of sexual services or pornography).

(3) Where this section applies, the accused may be found guilty of the offence mentioned in subsection (2) as modified by section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995.

(4) A reference in this section to an offence includes a reference to—

(a) an attempt to commit,

(b) incitement to commit,

(c) counselling or procuring the commission of, and

(d) involvement art and part in,

an offence.

#### *General provisions*

#### **45 Ancillary provision**

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, this Act or any provision of it.

(2) An order under this section may modify any enactment, instrument or document.

#### **46 Orders**

(1) Any power of the Scottish Ministers to make orders under this Act—

(a) must be exercised by statutory instrument,

(b) may be exercised so as to make different provision for different purposes,

(c) includes power to make incidental, supplemental, consequential, transitional, transitory or saving provision.

(2) A statutory instrument containing an order made under this Act (except an order made under section 49(2)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.

5 (3) A statutory instrument containing an order under section 45 containing provisions which add to, replace or omit any part of the text of an Act, is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

#### **47 Interpretation**

In this Act—

“mental disorder” has the meaning given by section 13(3),

10 “penis” and “vagina” have the meanings given by section 1(4).

#### **48 Modification of enactments**

(1) Schedule 4 (which contains modifications of enactments) has effect.

(2) The enactments mentioned in the first column of schedule 5 are repealed to the extent specified in the second column of that schedule.

#### **49 Short title and commencement**

15 (1) This Act may be cited as the Sexual Offences (Scotland) Act 2008.

(2) This Act (other than sections 1(4), 13(3), 45 to 47 and this section) comes into force in accordance with provision made by the Scottish Ministers by order.

SCHEDULE 1  
(introduced by section section 37))

PENALTIES

<i>Offence</i>	<i>Section introducing offence</i>	<i>Maximum penalty on summary conviction</i>	<i>Maximum penalty on conviction on indictment</i>
Rape	Section 1		Life imprisonment or a fine (or both)
Sexual assault	Section 2	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Life imprisonment or a fine (or both)
Sexual coercion	Section 3	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Life imprisonment or a fine (or both)
Coercing a person into being present during a sexual activity	Section 4	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
Coercing a person into looking at an image of a sexual activity	Section 5	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
Communicating indecently	Section 6(1)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
Causing a person to see or hear an indecent communication	Section 6(2)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
Sexual exposure	Section 7	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
Administering a substance for sexual purposes	Section 8	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)

	<i>Offence</i>	<i>Section introducing offence</i>	<i>Maximum penalty on summary conviction</i>	<i>Maximum penalty on conviction on indictment</i>
5	Rape of a young child	Section 14		Life imprisonment or a fine (or both)
	Sexual assault on a young child	Section 15	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Life imprisonment or a fine (or both)
10	Causing a young child to participate in a sexual activity	Section 16	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Life imprisonment or a fine (or both)
15	Causing a young child to be present during a sexual activity	Section 17	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
20	Causing a young child to look at an image of a sexual activity	Section 18	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
25	Communicating indecently with a young child	Section 19(1)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
	Causing a young child to see or hear an indecent communication	Section 19(2)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
30	Having intercourse with an older child	Section 21	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
35	Engaging in sexual activity with or towards an older child	Section 22	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
40	Causing an older child to participate in a sexual activity	Section 23	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)

	<i>Offence</i>	<i>Section introducing offence</i>	<i>Maximum penalty on summary conviction</i>	<i>Maximum penalty on conviction on indictment</i>
5	Causing an older child to be present during a sexual activity	Section 24	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
10	Causing an older child to look at an image of a sexual activity	Section 25	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
15	Communicating indecently with an older child	Section 26(1)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
	Causing an older child to see or hear an indecent communication	Section 26(2)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
20	Engaging while an older child in penetrative sexual conduct with or towards another older child	Section 27(1)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
25				
30	Engaging while an older child in consensual penetrative sexual conduct with another older child	Section 27(4)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 10 years or a fine (or both)
35	Sexual abuse of trust	Section 31	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
	Sexual abuse of trust of a mentally disordered person	Section 35	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both).

SCHEDULE 2  
*(introduced by section 38)*

ALTERNATIVE VERDICTS

<i>Offence</i>	<i>Section introducing offence</i>	<i>Alternative offence</i>
5 Rape	Section 1	Sexual assault Having intercourse with an older child Assault at common law
10 Sexual assault	Section 2	Engaging in sexual activity with or towards an older child Assault at common law
15 Sexual coercion	Section 3	Coercing a person into being present during a sexual activity Coercing a person into looking at an image of a sexual activity Communicating indecently Causing a person to see or hear an indecent communication Causing an older child to participate in a sexual activity Assault at common law
20 25 Coercing a person into being present during a sexual activity	Section 4	Sexual coercion Coercing a person into looking at an image of a sexual activity Communicating indecently Causing a person to see or hear an indecent communication Sexual exposure Assault at common law

<i>Offence</i>	<i>Section introducing offence</i>	<i>Alternative offence</i>
5  10	Coercing a person into looking at an image of a sexual activity  Section 5	Sexual coercion  Coercing a person into being present during a sexual activity  Communicating indecently  Causing a person to see or hear an indecent communication  Sexual exposure  Assault at common law
15	Communicating indecently  Section 6(1)	Sexual coercion  Coercing a person into being present during a sexual activity  Coercing a person into looking at an image of a sexual activity  Causing a person to see or hear an indecent communication  Sexual exposure
20	Causing a person to see or hear an indecent communication  Section 6(2)	Sexual coercion  Coercing a person into being present during a sexual activity  Coercing a person into looking at an image of a sexual activity  Communicating indecently  Sexual exposure
25	Rape of a young child  Section 14	Sexual assault on a young child  Assault at common law
	Sexual assault on a young child  Section 15	Assault at common law

<i>Offence</i>	<i>Section introducing offence</i>	<i>Alternative offence</i>
<p>5 10</p> <p>Causing a young child to participate in a sexual activity</p>	<p>Section 16</p>	<p>Causing a young child to be present during a sexual activity</p> <p>Causing a young child to look at an image of a sexual activity</p> <p>Communicating indecently with a young child</p> <p>Causing a young child to see or hear an indecent communication</p> <p>Assault at common law</p>
<p>15</p> <p>Causing a young child to be present during a sexual activity</p>	<p>Section 17</p>	<p>Causing a young child to participate in a sexual activity</p> <p>Causing a young child to look at an image of a sexual activity</p> <p>Communicating indecently with a young child</p> <p>Causing a young child to see or hear an indecent communication</p>
<p>20 25</p> <p>Causing a young child to look an image of a sexual activity</p>	<p>Section 18</p>	<p>Causing a young child to participate in a sexual activity</p> <p>Causing a young child to be present during a sexual activity</p> <p>Communicating indecently with a young child</p> <p>Causing a young child to see or hear an indecent communication</p>
<p>30</p> <p>Communicating indecently with a young child</p>	<p>Section 19(1)</p>	<p>Causing a young child to participate in a sexual activity</p> <p>Causing a young child to be present during a sexual activity</p> <p>Causing a young child to look at an image of a sexual activity</p> <p>Causing a young child to see or hear an indecent communication</p>
<p>35</p> <p>Causing a young child to see or hear an indecent communication</p>	<p>Section 19(2)</p>	<p>Causing a young child to participate in a sexual activity</p> <p>Causing a young child to be present during a sexual activity</p> <p>Causing a young child to look at an image of a sexual activity</p> <p>Communicating indecently with a young child</p>

<i>Offence</i>	<i>Section introducing offence</i>	<i>Alternative offence</i>
5 Having intercourse with an older child	Section 21	Engaging in sexual activity with or towards an older child
10 Causing an older child to participate in a sexual activity	Section 23	Causing an older child to be present during a sexual activity Causing an older child to look at an image of a sexual activity Communicating indecently with an older child Causing an older child to see or hear an indecent communication
15 Causing an older child to be present during a sexual activity	Section 24	Causing an older child to participate in a sexual activity Causing an older child to look at an image of a sexual activity Communicating indecently with an older child Causing an older child to see or hear an indecent communication
20 Causing an older child to look at an image of a sexual activity	Section 25	Causing an older child to participate in a sexual activity Causing an older child to be present during a sexual activity Communicating indecently with an older child Causing an older child to see or hear an indecent communication
25 Communicating indecently with an older child	Section 26(1)	Causing an older child to participate in a sexual activity Causing an older child to be present during a sexual activity Causing an older child to look at an image of a sexual activity Causing an older child to see or hear an indecent communication

<i>Offence</i>	<i>Section introducing offence</i>	<i>Alternative offence</i>
Causing an older child to see or hear an indecent communication	Section 26(2)	Causing an older child to participate in a sexual activity Causing an older child to be present during a sexual activity Causing an older child to look at an image of a sexual activity Communicating indecently with an older child

5

SCHEDULE 3  
(introduced by section 42)

LISTED OFFENCES

**PART 1**

INCITEMENT TO COMMIT CERTAIN SEXUAL ACTS OUTSIDE UK

- 5
- 1 An offence under Part 1 of this Act against a person under the age of 18.
- 2 An offence under Part 4 of this Act.
- 3 Sexual abuse of trust (section 31 of this Act).
- 4 Sexual abuse of trust of a mentally disordered person (section 35 of this Act) where the  
10 mentally disordered person is under the age of 18.
- 5 Indecent assault of a person under the age of 18.

**PART 2**

OFFENCES COMMITTED OUTSIDE UK

- 6 An offence under Part 1 of this Act against a person under the age of 18.
- 15 7 An offence under Part 4 of this Act.
- 8 Sexual abuse of trust (section 31 of this Act).
- 9 Sexual abuse of trust of a mentally disordered person (section 35 of this Act) where the  
mentally disordered person is under the age of 18.
- 10 Indecent assault of a person under the age of 18.
- 20 11 An offence under section 52 of the Civic Government (Scotland) Act 1982 (c.45)  
(taking and distribution of indecent images of children).
- 12 An offence under section 52A of that Act (possession of indecent images of children).
- 13 An offence under section 9 of the Protection of Children and Prevention of Sexual  
Offences (Scotland) Act 2005 (asp 9) (paying for sexual services of a child).
- 25 14 An offence under section 10 of that Act (causing or inciting provision by child of sexual  
services or pornography).
- 15 An offence under section 11 of that Act (controlling a child providing sexual services or  
involved in pornography).
- 16 An offence under section 12 of that Act (arranging or facilitating provision by child of  
30 sexual services or pornography).
- 17 Conspiracy or incitement to commit any offence specified in paragraphs 6 to 16.
- 18 An offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (c.46)  
(aiding and abetting etc. the commission of a statutory offence) relating to any offence  
mentioned in paragraphs 6 to 9 or 11 to 16.

SCHEDULE 4  
*(introduced by section 48)*

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)*

- 5 1 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- (2) In section 4 (proceedings and penalties for offences under sections 1 to 3), in each of subsections (1) and (5), for the words “, 2 or 3” there is substituted “or 2”.
- (3) In the section title of that section, for the words “to 3” there is substituted “and 2”.
- (4) In section 9 (permitting girl under 16 years to use premises for intercourse)—
- 10 (a) in subsection (2), for the words “man under the age of 24 years” there is substituted “person”,
- (b) in subsection (3)(b), for paragraph (b) there is substituted—
- “(b) section 21 of the Sexual Offences (Scotland) Act 2008 (asp 00) (having intercourse with an older child);
- 15 (ba) section 27(1) of that Act (engaging while an older child in penetrative sexual conduct with or towards another older child);
- (bb) section 27(4) of that Act (engaging while an older child in consensual penetrative sexual conduct with another older child);”,
- (c) in subsection (3)(c)—
- 20 (i) at the beginning there is inserted “section 5(3) of this Act,”,
- (ii) for the words “paragraphs (a) and (b)” there is substituted “paragraph (a), (b) or, as the case may be, (ba)”.
- (5) In section 10(3) (application of provisions of section 10 to offence of indecent behaviour towards girl under 16), for “section 6 of this Act” there is substituted “sections 16 to 19 and 22 to 26 of the Sexual Offences (Scotland) Act 2008 (asp 00) (certain sexual offences relating to children)”.
- 25

*The Criminal Procedure (Scotland) Act 1995 (c.46)*

- 2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 3(6) (jurisdiction and powers of solemn courts), after the word “rape” there is inserted “(whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2008 (asp 00)), rape of a young child (under section 14 of that Act)”.
- 30 (3) In section 7(8)(b)(i) (district court: jurisdiction and powers), after the word “rape” there is inserted “(whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2008 (asp 00)), rape of a young child (under section 14 of that Act)”.
- (4) In section 19A (samples etc. from persons convicted of sexual and violent crimes)—
- 35 (a) in subsection (6), in the definition of “relevant sexual offence”—
- (i) in paragraph (a), after the word “rape” there is inserted “at common law”,
- (ii) the word “and” which immediately follows paragraph (h) is repealed, and

- (iii) after paragraph (i) there is inserted “and
- (j) any offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2008 (asp 00)—
- (i) section 1 (rape),
  - 5 (ii) section 2 (sexual assault),
  - (iii) section 3 (sexual coercion),
  - (iv) section 4 (coercing a person into being present during a sexual activity),
  - 10 (v) section 5 (coercing a person into looking at an image of a sexual activity),
  - (vi) section 6(1) (communicating indecently),
  - (vii) section 6(2) (causing a person to see or hear an indecent communication),
  - (viii) section 7 (sexual exposure),
  - 15 (ix) section 14 (rape of a young child),
  - (x) section 15 (sexual assault on a young child),
  - (xi) section 16 (causing a young child to participate in a sexual activity),
  - 20 (xii) section 17 (causing a young child to be present during a sexual activity),
  - (xiii) section 18 (causing a young child to look at an image of a sexual activity),
  - (xiv) section 19(1) (communicating indecently with a young child),
  - 25 (xv) section 19(2) (causing a young child to see or hear an indecent communication),
  - (xvi) section 21 (having intercourse with an older child),
  - (xvii) section 22 (engaging in sexual activity with or towards an older child),
  - 30 (xviii) section 23 (causing an older child to participate in a sexual activity),
  - (xix) section 24 (causing an older child to be present during a sexual activity),
  - (xx) section 25 (causing an older child to look at an image of a sexual activity),
  - 35 (xxi) section 26(1) (communicating indecently with an older child),
  - (xxii) section 26(2) (causing an older child to see or hear an indecent communication),
  - (xxiii) section 27(1) (engaging while an older child in penetrative sexual conduct with or towards another older child),
  - 40 (xxiv) section 27(4) (engaging while an older child in consensual penetrative sexual conduct with another older child),

(xxv)section 31 (sexual abuse of trust) but only if the condition set out in section 32(6) of that Act is fulfilled,

(xxvi)section 35 (sexual abuse of trust of a mentally disordered person);”,

5 (b) in subsection (7), in paragraph (b)(i) after the words “paragraph (i)” there is inserted “or (j)”.

(5) In section 24A (bail conditions: remote monitoring of restrictions on movements), in each of subsections (2)(a), (3) and (5)(a), for the words “or rape” there is substituted “, rape (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2008 (asp 00)) or rape of a young child (under section 14 of that Act)”.

(6) In section 78(2) (notice of special defences), for the words from “coercion” to “consent” there is substituted “or coercion”.

(7) In section 210A(10) (extended sentences for sex and violent offenders), in the definition of “sexual offence”—

15 (a) in paragraph (i), after the word “rape” there is inserted “at common law”, and

(b) after paragraph (xxvi) there is inserted “and

(xxvii)an offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2008 (asp 00)—

(A) section 1 (rape),

20 (B) section 2 (sexual assault),

(C) section 3 (sexual coercion),

(D) section 4 (coercing a person into being present during a sexual activity),

25 (E) section 5 (coercing a person into looking at an image of a sexual activity),

(F) section 6(1) (communicating indecently),

(G) section 6(2) (causing a person to see or hear an indecent communication),

(H) section 7 (sexual exposure),

30 (I) section 8 (administering a substance for sexual purposes),

(J) section 14 (rape of a young child),

(K) section 15 (sexual assault on a young child),

(L) section 16 (causing a young child to participate in a sexual activity),

35 (M) section 17 (causing a young child to be present during a sexual activity)

(N) section 18 (causing a young child to look at an image of a sexual activity),

(O) section 19(1) (communicating indecently with a young child),

40 (P) section 19(2) (causing a young child to see or hear an indecent communication),

- (Q) section 21 (having intercourse with an older child),
- (R) section 22 (engaging in sexual activity with or towards an older child),
- 5 (S) section 23 (causing an older child to participate in a sexual activity),
- (T) section 24 (causing an older child to be present during a sexual activity),
- (U) section 25 (causing an older child to look at an image of a sexual activity),
- 10 (V) section 26(1) (communicating indecently with an older child),
- (W) section 26(2) (causing an older child to see or hear an indecent communication),
- (X) section 27(1) (engaging while an older child in penetrative sexual conduct with or towards another older child),
- 15 (Y) section 27(4) (engaging while an older child in consensual penetrative sexual conduct with another older child),
- (Z) section 31 (sexual abuse of trust),
- (ZA) section 35 (sexual abuse of trust of a mentally disordered person);”.

20 (8) In section 288C(2) (prohibition of personal conduct of defence in cases of certain sexual offences)—

(a) in paragraph (a), after the word “rape” there is inserted “(whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2008 (asp 00))”, and

(b) for paragraph (j) there is substituted—

25 “(j) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 2008 (asp 00)—

- (i) section 2 (sexual assault),
- (ii) section 3 (sexual coercion),
- 30 (iii) section 4 (coercing a person into being present during a sexual activity),
- (iv) section 5 (coercing a person into looking at an image of a sexual activity),
- (v) section 6(1) (communicating indecently),
- 35 (vi) section 6(2) (causing a person to see or hear an indecent communication),
- (vii) section 7 (sexual exposure),
- (viii) section 14 (rape of a young child),
- (ix) section 15 (sexual assault on a young child),
- 40 (x) section 16 (causing a young child to participate in a sexual activity),

- (xi) section 17 (causing a young child to be present during a sexual activity),
- (xii) section 18 (causing a young child to look at an image of a sexual activity),
- 5 (xiii) section 19(1) (communicating indecently with a young child),
- (xiv) section 19(2) (causing a young child to see or hear an indecent communication),
- (xv) section 21 (having intercourse with an older child),
- 10 (xvi) section 22 (engaging in sexual activity with or towards an older child),
- (xvii) section 23 (causing an older child to participate in a sexual activity),
- (xviii) section 24 (causing an older child to be present during a sexual activity),
- 15 (xix) section 25 (causing an older child to look at an image of a sexual activity),
- (xx) section 26(1) (communicating indecently with an older child),
- (xxi) section 26(2) (causing an older child to see or hear an indecent communication),
- 20 (xxii) section 27(1) (engaging while an older child in penetrative sexual conduct with or towards another older child),
- (xxiii) section 27(4) (engaging while an older child in consensual penetrative sexual conduct with another older child),
- 25 (xxiv) section 31 (sexual abuse of trust) but only if the condition set out in section 32(6) of that Act is fulfilled,
- (xxv) section 35 (sexual abuse of trust of a mentally disordered person);”, and

(c) after paragraph (j) (as inserted by paragraph (b) above), there is inserted—

30 “(k) attempting to commit any of the offences set out in paragraphs (a) to (j).”.

(9) In Schedule 1 (offences against children under the age of 17 years to which special provisions apply)—

(a) after paragraph 1 there is inserted—

35 “1A Any offence under section 14 (rape of a young child) or 21 (having intercourse with an older child) of the Sexual Offences (Scotland) Act 2008 (asp 00).

1B Any offence under section 15 (sexual assault on a young child) or 22 (engaging in sexual activity with or towards an older child) of that Act.

40 1C Any offence under section 31 of that Act (sexual abuse of trust) towards a child under the age of 17 years but only if the condition set out in section 32(6) of that Act is fulfilled.”, and

(b) after paragraph 4 there is inserted—

“4A Any offence under section 4 (coercing a person into being present during a sexual activity), 5 (coercing a person into looking at an image of sexual activity), 6 (communicating indecently etc.) or 7 (sexual exposure) of the Sexual Offences (Scotland) Act 2008 (asp 00) towards a child under the age of 17 years.

4B Any offence under any of sections 16 to 19 or 23 to 27 of that Act (certain sexual offences relating to children).”.

*The Criminal Injuries Compensation Act 1995 (c. 53)*

3 In section 11(9) of the Criminal Injuries Compensation Act 1995 (approval by parliament of certain alterations to the Tariff or provisions of the Scheme), at the end there is inserted “, and in relation to anything done in Scotland means rape (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2008 (asp 00)) and rape of a young child (under section 14 of that Act)”.

*The Sexual Offences Act 2003 (c.42)*

4 In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of Part 2 of that Act)—

(a) in paragraph 36, at the end there is added “at common law”,

(b) after paragraph 59C there is inserted—

“59D An offence under section 1 of the Sexual Offences (Scotland) Act 2008 (asp 00) (rape).

59E An offence under section 2 of that Act (sexual assault).

59F An offence under section 3 of that Act (sexual coercion).

59G An offence under section 4 of that Act (coercing a person into being present during a sexual activity).

59H An offence under section 5 of that Act (coercing a person into looking at an image of a sexual activity).

59J An offence under section 6(1) of that Act (communicating indecently).

59K An offence under section 6(2) of that Act (causing a person to see or hear an indecent communication).

59L An offence under section 7 of that Act (sexual exposure).

59M An offence under section 8 of that Act (administering a substance for sexual purposes).

59N An offence under section 14 of that Act (rape of a young child).

59P An offence under section 15 of that Act (sexual assault on a young child).

59Q An offence under section 16 of that Act (causing a young child to participate in a sexual activity).

59R An offence under section 17 of that Act (causing a young child to be present during a sexual activity).

59S An offence under section 18 of that Act (causing a young child to look at an image of a sexual activity).

59T An offence under section 19(1) of that Act (communicating indecently with a young child).

59U An offence under section 19(2) of that Act (causing a young child to see or hear an indecent communication).

5 59V An offence under section 21 of that Act (having intercourse with an older child).

59W An offence under section 22 of that Act (engaging in sexual activity with or towards an older child).

10 59X An offence under section 23 of that Act (causing an older child to participate in a sexual activity).

59Y An offence under section 24 of that Act (causing an older child to be present during a sexual activity).

59Z An offence under section 25 of that Act (causing an older child to look at an image of a sexual activity).

15 59ZA An offence under section 26(1) of that Act (communicating indecently with an older child).

59ZB An offence under section 26(2) of that Act (causing an older child to see or hear an indecent communication).

20 59ZC An offence under section 27(1) of that Act (engaging while an older child in penetrative sexual conduct with or towards another older child).

59ZD An offence under section 27(4) of that Act (engaging while an older child in consensual penetrative sexual conduct with another older child).

59ZE An offence under section 31 of that Act (sexual abuse of trust) where (either or both)—

25 (a) the offender is 20 or over,

(b) the condition set out in section 32(6) of that Act is fulfilled.

59ZF An offence under section 35 of that Act (sexual abuse of trust of a mentally disordered person).”, and

(c) in paragraph 60, for the words “59C” there is substituted “59ZE”.

30 *The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)*

5 In section 326(4)(c) of the Mental Health (Care and Treatment) (Scotland) Act 2003, for “310 or 313(5)” there is substituted “or 310”.

*The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)*

35 6 In section 1(5) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, for the words from “Subsections” to “(c.39)” substitute “Subsection (7) of section 43 of the Sexual Offences (Scotland) Act 2008 (asp 00)”.

*The Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)*

7 In schedule 1 to the Protection of Vulnerable Groups (Scotland) Act 2007 (relevant offences for purposes of Part 1 of that Act), at the end of paragraph 1 there is added—

- “(w) an offence under section 14 (rape of a young child) of the Sexual Offences (Scotland) Act 2008 (asp 00),
- (x) an offence under section 15 (sexual assault on a young child) of that Act,
- 5 (y) an offence under section 16 (causing a young child to participate in a sexual activity) of that Act,
- (z) an offence under section 17 (causing a young child to be present during a sexual activity) of that Act,
- (za) an offence under section 18 (causing a young child to look at an image of a sexual activity) of that Act,
- 10 (zb) an offence under section 19(1) (communicating indecently with a young child) of that Act,
- (zc) an offence under section 19(2) (causing a young child to see or hear an indecent communication) of that Act,
- (zd) an offence under section 21 (having intercourse with an older child) of that Act,
- 15 (ze) an offence under section 22 (engaging in sexual activity with or towards an older child) of that Act,
- (zf) an offence under section 23 (causing an older child to participate in a sexual activity) of that Act,
- 20 (zg) an offence under section 24 (causing an older child to be present during a sexual activity) of that Act,
- (zh) an offence under section 25 (causing an older child to look at an image of a sexual activity) of that Act,
- (zi) an offence under section 26(1) of that Act (communicating indecently with an older child) of that Act,
- 25 (zj) an offence under section 26(2) (causing an older child to see or hear an indecent communication) of that Act,
- (zk) an offence under section 27(1) (engaging while an older child in penetrative sexual conduct with or towards another older child) of that Act,
- 30 (zl) an offence under section 27(4) (engaging while an older child in consensual penetrative sexual conduct with another older child) of that Act,
- (zm) an offence under section 31 (sexual abuse of trust) of that Act.”.

SCHEDULE 5  
*(introduced by section 48)*

REPEALS

	<i>Enactment</i>	<i>Extent of repeal</i>
5	Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)	Sections 3, 5 and 6.  Section 7(2) and (3).  Section 13(1), (2), (5) to (8A) and (11)(a).  Sections 14, 16A and 16B.
10	Criminal Procedure (Scotland) Act 1995 (c.46)	Section 78(2A) and (2B).  Section 149A.  In section 210A(10), in the definition of “sexual offence”, paragraphs (vii), (xx) and (xxi).
15	Crime and Punishment (Scotland) Act 1997 (c.48)	In Schedule 1, paragraph 18(3).
	Criminal Justice (Terrorism and Conspiracy) Act 1998 (c.40)	In Schedule 1, paragraph 8.
20	Sexual Offences (Amendment) Act 2000 (c.44)	The whole Act.
	Regulation of Care (Scotland) Act 2001 (asp 8)	In schedule 3, paragraph 25.
	Convention Rights (Compliance) (Scotland) Act 2001 (asp 7)	In section 10, paragraph (b) and the word “and” immediately before that paragraph.
25	Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9)	Section 6(1)(b) and (2).
	Sexual Offences Act 2003 (c.42)	Section 142(5).  In Schedule 6, paragraph 33.
30	Criminal Justice (Scotland) Act 2003 (asp 7)	Section 19(2)(c).
	Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)	Sections 311 to 313 and 319.

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	<i>Enactment</i>	<i>Extent of repeal</i>
	Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)	In the schedule, paragraph 1.
5	Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)	In schedule 1, paragraph 1(p).

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# **Sexual Offences (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to make new provision about sexual offences, and for connected purposes.

Introduced by: Kenny MacAskill  
On: 17 June 2008  
Bill type: Executive Bill

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