2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Consent: capacity while asleep or unconscious**
76, 77, 96

**Consent: fear of violence or other harm**
132

**Sexual assault on children: penetration**
78, 82, 115

**Sexual assault on children: emission of urine or saliva**
79, 83

**Sexual exposure to children and voyeurism towards children**
80, 81, 84, 85, 105, 113, 114, 116, 117

**Older children engaging in sexual conduct with each other: oral sex and instructions as to prosecution**
86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 118, 119

**Defence under section 29(1) of reasonable belief as to age: when not available**
97, 98, 99, 100, 106, 107, 108, 131

**Defence under section 29(3) of proximity of age: when not available**
101, 102, 103, 104

**Special provision as regards failure to establish age of child**
109, 110

**Children: requirement to undertake an information and publicity campaign**
133
Penalty on indictment for certain offences
111, 50, 51, 52, 55, 112, 56

Establishment of purpose: sexual gratification, causing humiliation or distress
120

Power to convict for offence other than that charged
121, 122, 123, 124, 125, 126, 127, 128, 129, 130

Persons under 16 years of age: power to modify notification requirements
134

Amendments already debated

Definition of sexual
With 6 – 28, 29, 30, 34, 35, 36, 37, 38, 42, 43, 44, 45, 46, 47, 48, 75

Coercing a person into looking at a sexual image
With 9 – 31, 32, 33, 39, 40, 41, 53, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

Sexual exposure and voyeurism
With 14 – 26, 27, 54
Amendments in debating order

Consent: capacity while asleep or unconscious

Kenny MacAskill
76 In section 10, page 5, leave out lines 33 to 35

Kenny MacAskill
77 After section 10, insert

<Consent: capacity while asleep or unconscious
(1) This section applies in relation to sections 1 to (Voyeurism). 
(2) A person is incapable, while asleep or unconscious, of consenting to any conduct.>

Consent: fear of violence or other harm

Robert Brown
132* In section 10, page 5, line 38, at end insert <or because a fear that violence or other harm may be inflicted upon B or any other person has otherwise been induced in B,>

Sexual assault on children: penetration

Kenny MacAskill
78 After section 14, insert—

<Sexual assault on a young child by penetration
(1) If a person (“A”), with any part of A’s body or anything else, penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus 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 sexual assault on a young child by penetration.
(2) Without prejudice to the generality of subsection (1), the reference in that subsection to penetration with any part of A’s body is to be construed as including a reference to penetration with A’s penis.>

Kenny MacAskill
82 After section 21, insert—
Engaging in penetrative sexual activity with or towards an older child

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

(a) has attained the age of 13 years (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 penetrative sexual activity with or towards an older child.

(2) Without prejudice to the generality of subsection (1), the reference in that paragraph to penetration with any part of A’s body is to be construed as including a reference to penetration with A’s penis.

Kenny MacAskill

115 In schedule 1, page 27, line 33, at end insert—

<Engaging in penetrative sexual activity with or towards an older child

Section (Engaging in penetrative sexual activity with or towards an older child) Imprisonment Imprisonment for a term not exceeding 12 months exceeding 10 years with or towards an older child statutory maximum (or both)>

Sexual assault on children: emission of urine or saliva

Kenny MacAskill

79 In section 15, page 7, line 20, at end insert—

<( ) intentionally or recklessly emits urine or saliva onto B sexually>

Kenny MacAskill

83 In section 22, page 10, line 11, at end insert—

<( ) intentionally or recklessly emits urine or saliva onto B sexually>

Sexual exposure to children and voyeurism towards children

Kenny MacAskill

80 After section 19, insert—

<Sexual exposure to a young child

(1) If a person (“A”) intentionally and for a purpose mentioned in subsection (2) exposes A’s genitals in a sexual manner to a child (“B”) who has not attained the age of 13 years, with the intention that B will see them, then A commits an offence, to be known as the offence of sexual exposure to a young child.>
(2) The purposes are—
    (a) obtaining sexual gratification,
    (b) humiliating, distressing or alarming B.

Kenny MacAskill

81 After section 19, insert—

>Voyeurism towards a young child

Voyeurism towards a young child

(1) If a person (“A”) does any of the things mentioned in subsections (2) to (5) in relation to a child (“B”) who has not attained the age of 13 years, then A commits an offence, to be known as the offence of voyeurism towards a young child.

(2) The first thing is that A, for a purpose mentioned in subsection (6), observes B doing a private act.

(3) The second thing is that A operates equipment with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B doing a private act.

(4) The third thing is that A records B doing a private act with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at an image of B doing the act.

(5) The fourth thing is that A—
    (a) installs equipment, or
    (b) constructs or adapts a structure or part of a structure with the intention of enabling A or another person to do an act referred to in subsection (2), (3) or (4).

(6) The purposes referred to in subsection (2) are—
    (a) obtaining sexual gratification,
    (b) humiliating, distressing or alarming B.

(7) The purposes referred to in subsections (3) and (4) are—
    (a) obtaining sexual gratification (whether for A or C),
    (b) humiliating, distressing or alarming B.

(8) Section (Interpretation of section (Voyeurism)) applies for the purposes of this section as it applies for the purposes of section (Voyeurism) (the references in that section to section (Voyeurism)(3) and (5) being construed as references to subsections (3) and (5) of this section).

Kenny MacAskill

84 After section 26, insert—

>Sexual exposure to an older child

Sexual exposure to an older child

(1) If a person (“A”), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (2) exposes A’s genitals in a sexual manner to a child (“B”) who—
(a) has attained the age of 13 years, but
(b) has not attained the age of 16 years,

with the intention that B will see them, then A commits an offence, to be known as the
offence of sexual exposure to an older child.

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

Kenny MacAskill

85 After section 26, insert—

<Voyeurism towards an older child>

Voyeurism towards an older child

(1) If a person (“A”), who has attained the age of 16 years, does any of the things mentioned in subsections (2) to (5) in relation to a child (“B”) who—
(a) has 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 voyeurism towards an older child.

(2) The first thing is that A, for a purpose mentioned in subsection (6), observes B doing a private act.

(3) The second thing is that A operates equipment with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B doing a private act.

(4) The third thing is that A records B doing a private act with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at an image of B doing the act.

(5) The fourth thing is that A—
(a) installs equipment, or
(b) constructs or adapts a structure or part of a structure with the intention of enabling A or another person to do an act referred to in subsection (2), (3) or (4).

(6) The purposes referred to in subsection (2) are—
(a) obtaining sexual gratification,
(b) humiliating, distressing or alarming B.

(7) The purposes referred to in subsections (3) and (4) are—
(a) obtaining sexual gratification (whether for A or C),
(b) humiliating, distressing or alarming B.

(8) Section (Interpretation of section (Voyeurism)) applies for the purposes of this section as it applies for the purposes of section (Voyeurism) (the references in that section to section (Voyeurism)(3) and (5) being construed as references to subsections (3) and (5) of this section).>
In section 29, page 14, line 2, leave out <26> and insert <(Voyeurism towards an older child)>

In schedule 1, page 27, line 25, at end insert—

<Sexual exposure to a young child> Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)

In schedule 1, page 27, line 25, at end insert—

<Voyeurism towards a young child> Imprisonment for a term not exceeding 10 years or a fine (or both)

In schedule 1, page 28, line 19, at end insert—

<Sexual exposure to an older child> Imprisonment for a term not exceeding 5 years or a fine (or both)

In schedule 1, page 28, line 19, at end insert—

<Voyeurism towards an older child> Imprisonment for a term not exceeding 5 years or a fine (or both)

Older children engaging in sexual conduct with each other: oral sex and instructions as to prosecution

In section 27, page 12, line 25, leave out <a thing> and insert <any of the things>

In section 27, page 12, line 28, leave out <penetrative>

In section 27, page 12, line 32, leave out <thing is> and insert <things are>
In section 27, page 12, line 32, leave out <by any means (other than A’s mouth)> and insert <with A’s penis>.

In section 27, page 12, line 34, leave out <or anus> and insert <, anus or mouth>.

In section 27, page 12, line 34, at end insert <, (b) intentionally or recklessly touches the vagina, anus or penis of B sexually with A’s mouth>.

In section 27, page 12, line 37, leave out <penetrative>.

In section 27, page 12, line 38, leave out subsection (5).

In section 27, page 12, line 41, after <In> insert <paragraph (b) of>.

In section 27, page 13, line 1, leave out subsections (7) and (8).

In schedule 1, page 28, line 22, column 1, leave out <penetrative>.

In schedule 1, page 28, line 29, column 1, leave out <penetrative>.

Defence under section 29(1) of reasonable belief as to age: when not available

In section 29, page 13, line 30, after <relevant> insert <sexual>.

In section 29, page 13, line 30, at end insert <or (ii) if there is in force in respect of A a risk of sexual harm order,>.

In section 29, page 13, line 32, after <relevant> insert <sexual>.

In section 29, page 13, line 32, at end insert <, or>.
(ii) if there is in force in respect of B a risk of sexual harm order>

Kenny MacAskill

106 In section 29, page 14, line 3, leave out from <such> to end of line 5 and insert <an offence listed in schedule (Relevant sexual offences),

( ) “a risk of sexual harm order” means an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or section 123 of the Sexual Offences Act 2003 (c.42)>

Kenny MacAskill

107 In section 29, page 14, line 5, at end insert—

<(5A) The Scottish Ministers may by order modify schedule (Relevant sexual offences) so as to add an offence against a child which involves sexual conduct or delete an offence listed there.>

Kenny MacAskill

108 Before schedule 1, insert—

<SCHEDULE
(introduced by section 29(5)(a))
RELEVANT SEXUAL OFFENCES
PART 1
OFFENCES THAT MAY CURRENTLY BE COMMITTED

1 Any of the following offences under this Act—

(a) an offence under Part 1 against a person under the age of 16,
(b) an offence under Part 4 (but not an offence of engaging while an older child in sexual conduct with or towards another older child (section 27(1)) or engaging while an older child in consensual sexual conduct with another older child (section 27(4)),
(c) sexual abuse of trust (section 31) of a person under the age of 16.

2 An offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) against a person under the age of 16—

(a) section 1 (meeting a person following certain preliminary contact with intention of engaging in unlawful sexual activity),
(b) section 9 (paying a person for sexual services),
(c) section 10 (causing or inciting provision by a person of sexual services or pornography),
(d) section 11 (controlling a person providing sexual services or involved in pornography),
(e) section 12 (arranging or facilitating provision by a person of sexual services or pornography).

3 An offence under—
(a) any of the following provisions of the Sexual Offences Act 2003 (c.42) against a person under the age of 16—
   (i) section 1 (rape),
   (ii) section 2 (assault by penetration),
   (iii) section 3 (sexual assault),
   (iv) section 25 (sexual activity with a family member under 18),
   (v) section 26 (inciting a family member under 18 to engage in sexual activity),
(b) section 47 (paying for sexual services of a person under 18) of that Act—
   (i) in its application to England and Wales, against a person under the age of 16,
   (ii) in its application to Northern Ireland, against a person under the age of 17.

4 An offence under any of the following provisions of that Act—
   (a) section 5 (rape of a child under 13),
   (b) section 6 (assault of a child under 13 by penetration),
   (c) section 7 (sexual assault of a child under 13),
   (d) section 8 (causing or inciting a child under 13 to engage in sexual activity),
   (e) section 9 (sexual activity with a child under 16),
   (f) section 10 (causing or inciting a child under 16 to engage in sexual activity),
   (g) section 11 (engaging in sexual activity in the presence of a child under 16),
   (h) section 12 (causing a child under 16 to watch a sexual act),
   (i) section 13 (sex offences against a child under 16 committed by children or young persons),
   (j) section 14 (arranging or facilitating commission of a sex offence against a child under 16),
   (k) section 15 (meeting a child under 16 following sexual grooming etc.)—
      (i) in its application to England and Wales, against a person under the age of 16,
      (ii) in its application to Northern Ireland, against a person under the age of 17.

5 An offence under any of the following provisions of the Criminal Justice (Northern Ireland) Order 2003 (SI No. 1247 (N.I. 13)) against a person under the age of 17—
   (a) article 18 (rape),
   (b) article 19 (buggery),
   (c) article 20 (assault with intent to commit buggery),
   (d) article 21 (indecent assault on a male).

6 Any of the following offences under the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)—
   (a) an offence under section 8 against a girl under the age of 16 (abduction of a woman or girl for purposes of unlawful sexual intercourse),
(b) an offence under section 10 (person having parental responsibilities causing or
encouraging sexual activity in relation to a girl under 16).

7 An offence under section 160 of the Criminal Justice Act 1988 (c.33) against a person
under the age of 16 (possession of indecent photographs of a person under 18).

8 An offence under article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland)
Order 1988 (SI No. 1847 (N.I. 17)) (possession of indecent photographs of a person
under 16).

9 An offence under the following provisions of the Civic Government (Scotland) Act
1982 (c.45) against a person under the age of 16—
   (a) section 52 (taking and distribution of indecent images of a person under 18),
   (b) section 52A (possession of indecent images of a person under 18).

10 An offence under article 9 of the Criminal Justice (Northern Ireland) Order 1980 (SI No.
704 (N.I. 6) (inciting a girl under 16 to have incestuous sexual intercourse).

11 An offence under section 1 of the Protection of Children Act 1978 (c.37) against a
person under the age of 16 (taking or distribution of indecent images of a person under
18).

12 An offence under article 3 of the Protection of Children (Northern Ireland) Order 1978
(SI 1978 No. 1047 (N.I. 17)) ((taking or distribution of indecent images of a person
under 16).

13 An offence under any of the following sections of the Children and Young Persons Act
(Northern Ireland) 1968 (c.34) (N.I.)—
   (a) section 21 (causing or encouraging seduction or prostitution of girl under 17),
   (b) section 22 (indecent conduct towards person under 17).

14 An attempt, conspiracy or incitement to commit an offence in Part 1 of this schedule.

15 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 an offence in
paragraphs 1, 2, 6 or 9 of that Part.

**PART 2**

**OFFENCES REPLACED BY AN OFFENCE IN PART 1 OR THIS PART**

16 The following common law offences against a person under the age of 16 years—
   (a) rape,
   (b) clandestine injury to women,
   (c) sexual assault,
   (d) lewd, indecent or libidinous practice or behaviour,
   (e) sodomy.

17 Rape under the common law of Northern Ireland of a person under the age of 17.

18 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c.44)
against a person under the age of 16.

19 An offence under section 3, 5, 6 or 13(5)(c) of the Criminal Law (Consolidation)
(Scotland) Act 1995.

20 An offence under section 54 of the Criminal Law Act 1977 (c.45).
An offence under section 3, 4, 5 or 10(1) of the Sexual Offences (Scotland) Act 1976 (c.67).

An offence under section 1 of the Indecency with Children Act 1960 (c.33).

An offence under section 1, 12, 14, 15 or 16 of the Sexual Offences Act 1956 (c.69) against a person under the age of 16.

An offence under section 5, 6 or 28 of that Act.

An offence under section 3 or 5 of the Criminal Law Amendment Act 1885 (48 & 49 Vict.) (c.69) against a person under the age of 16.

An offence under section 6 of that Act.

An offence under section 52, 53, 54, 61 or 62 of the Offences Against the Person Act 1861 (24 & 25 Vict.) (c.100) against a person under the age of 16.

An attempt, conspiracy or incitement to commit an offence in Part 2 of this schedule.

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 an offence in paragraphs 18, 19, 21 of that Part.

Kenny MacAskill

131 In section 46, page 25, line 4, after <under> insert <section 29(5A)>

Defence under section 29(3) of proximity of age: when not available

Kenny MacAskill

101 In section 29, page 13, leave out line 37

Kenny MacAskill

102 In section 29, page 13, line 38, leave out <22> and insert <22(2)(a), but not>

Kenny MacAskill

103 In section 29, page 13, line 39, leave out from beginning to <by> and insert <penetration of B’s vagina, anus or mouth with A’s penis,

( ) penetration of B’s vagina or anus with>

Kenny MacAskill

104 In section 29, page 14, leave out line 1 and insert—

<(< ) section 22(2)b or (c), but not in so far as the charge is founded on sexual touching or other physical activity involving—

(i) B’s vagina, anus or penis being touched sexually by A’s mouth,

(ii) A’s vagina, anus or mouth being penetrated by B’s penis,

(iii) A’s vagina, anus or penis being touched sexually by B’s mouth,

( ) section 22(2)d.>
Special provision as regards failure to establish age of child

Kenny MacAskill

Leave out section 30 and insert—

Special provision as regards failure to establish whether child has or has not attained certain ages

(1) Deeming provision 1 applies to a trial where—

(a) A is charged with an offence under any of sections 21 to 26 or 27(1),

(b) there is a failure to establish beyond reasonable doubt that B was a child who had attained the age of 13 years at the relevant time, and

(c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that B had not attained the age of 16 years at the time.

(2) Deeming provision 2 applies to a trial where—

(a) B is charged with an offence under section 27(4),

(b) there is a failure to establish beyond reasonable doubt that A was a child who had attained the age of 13 years at the relevant time, and

(c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that A had not attained the age of 16 years at the time.

(3) Deeming provision 3 applies to a trial where—

(a) A is charged with an offence under section 27(1),

(b) there is a failure to establish beyond reasonable doubt that A was a child who had not attained the age of 16 years at the relevant time, and

(c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that A had attained the age of 13 years at the time.

(4) Deeming provision 4 applies to a trial where—

(a) B is charged with an offence under section 27(4),

(b) there is a failure to establish beyond reasonable doubt that B was a child who had not attained the age of 16 years at the relevant time, and

(c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that B had attained the age of 13 years at the time.

(5) In this section and section (Special provision as regards age: deeming provisions), the “relevant time” is when the conduct to which the proceedings relate occurred.

Kenny MacAskill

After section 30, insert—

Special provision as regards age: deeming provisions

The deeming provisions are—
**Deeming provision 1**  
B is to be deemed for the purposes of the proceedings to be a person who has attained the age of 13 years at the relevant time.

**Deeming provision 2**  
A is to be deemed for the purposes of the proceedings to be a person who has attained the age of 13 years at the relevant time.

**Deeming provision 3**  
A is to be deemed for the purposes of the proceedings to be a child who has not attained the age of 16 years at the relevant time.

**Deeming provision 4**  
B is to be deemed for the purposes of the proceedings to be a person who has not attained the age of 16 years at the relevant time.>