Sexual Offences (Scotland) Bill

3rd 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 third 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**

**Children: requirement to undertake an information and publicity campaign**
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**Positions of trust: power to amend**
135, 143, 151

**Position of trust: looked-after persons**
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**Penalty on indictment for certain offences**
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**Establishment of purpose: sexual gratification, causing humiliation or distress**
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**Consensual acts carried out for sexual gratification**
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**Power to convict for offence other than that charged: notice requirements**
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**Power to convict for offence other than that charged: other provisions**
121, 122, 123, 124, 125, 126, 127, 128, 129, 130

**Sexual exposure: alternative offences**
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**Incitement and offences committed outside the UK**
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Criminal Law (Consolidation) (Scotland) Act 1995: definition of “homosexual act”
152, 152A

Persons under 16 years of age: power to modify notification requirements
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Sexual offences notification requirements
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Notification of defence of consent
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Amendments already debated

Special provision as regards failure to establish age of child
With 109 – 110

Definition of sexual
With 6 – 45, 46, 47, 48, 75

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

Sexual exposure and voyeurism
With 14 – 54

Sexual exposure to children and voyeurism towards children
With 80 - 113, 114, 116, 117

Sexual assault on children: penetration
With 78 – 115

Older children engaging in sexual conduct with each other: oral sex and instructions as to prosecution
With 86 - 118, 119

Defence under section 29(1) of reasonable belief as to age: when not available
With 97 - 131
Amendments in debating order

Children: requirement to undertake an information and publicity campaign

Robert Brown

133 After section 30, insert—

<Information and publicity>

The Scottish Ministers must, prior to the commencement of this Part—

(a) consult in an appropriate manner with children and young people under the age of 18 about their attitudes to this Part,

(b) undertake an information and publicity campaign about this Part.>

Positions of trust: power to amend

Fergus Ewing

135 In section 32, page 16, line 14, leave out from <, or> to <Ministers,> in line 15

Fergus Ewing

143 In section 32, page 17, line 2, at end insert—

<(8) The Scottish Ministers may by order modify this section (other than this subsection) and section 33 so as to add, delete or amend a condition.>

Kenny MacAskill

151 In section 46, page 25, line 4, after <under> insert <or section 32(8), or

( ) an order under>

Position of trust: looked-after persons

Fergus Ewing

136 In section 32, page 16, line 17, leave out <B> and insert <persons under 18>

Fergus Ewing

137 In section 32, page 16, line 20, leave out <B> and insert <persons under 18>

Fergus Ewing

138 In section 32, page 16, line 28, leave out <B> and insert <persons under 18>

Fergus Ewing

139 In section 32, page 16, line 29, leave out from <an> to end of line 30 and insert—

<(a) a school and A looks after persons under 18 in that school, or>
(b) a further or higher education institution and A looks after B in that institution.

Fergus Ewing

140 In section 32, page 17, line 1, leave out <B> and insert <a person>

Fergus Ewing

141 In section 32, page 17, line 1, after <for,> insert <teaches,>

Fergus Ewing

142 In section 32, page 17, line 2, leave out <B> and insert <the person>

Fergus Ewing

144 In section 33, page 17, leave out lines 7 to 10 and insert—

<“further or higher education institution” means a body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6),>

Fergus Ewing

145 In section 33, page 17, line 20, at end insert—

<“school” has the same meaning as in the Education (Scotland) Act 1980 (c.44),>

Penalty on indictment for certain offences

Kenny MacAskill

111 In section 37, page 19, line 16, at end insert—

<( ) Where a person is convicted on indictment of rape, (Sexual assault by penetration), sexual assault, rape of a young child, (Sexual assault on a young child by penetration), or sexual assault on a young child, a penalty of imprisonment without a fine may be imposed, but not a penalty of a fine alone; and the power of the court in section 199(2)(b) of the Criminal Procedure Scotland) Act 1995 (c.20) (to substitute a fine for imprisonment) is not available.>

Fergus Ewing

50 In schedule 1, page 26, line 7, column 4, leave out from <or> to end of line 8 and insert <and a fine>

Fergus Ewing

51 In schedule 1, page 26, line 8, at end insert—

<Sexual assault by penetration>

Fergus Ewing

52 In schedule 1, page 26, line 9, column 4, leave out from <or> to end of line 10 and insert <and a fine>
Fergus Ewing
55 In schedule 1, page 27, line 4, column 4, leave out from <or> to end of line 5 and insert <and a fine>.

Kenny MacAskill
112 In schedule 1, page 27, line 5, at end insert—
<Sexual assault on a young child by penetration> Life imprisonment and a fine.

Fergus Ewing
56 In schedule 1, page 27, line 6, column 4, leave out from <or> to end of line 7 and insert <and a fine>.

Establishment of purpose: sexual gratification, causing humiliation or distress
Kenny MacAskill
120 Before section 38, insert—
<Establishment of purpose for the purposes of sections 4 to (Voyeurism), 17 to (Voyeurism towards a young child) and 24 to (Voyeurism towards an older child)

(1) For the purposes of sections 4 to (Voyeurism), 17 to (Voyeurism towards a young child) and 24 to (Voyeurism towards an older child), A’s purpose was—
(a) obtaining sexual gratification, or
(b) humiliating, distressing or alarming B,
if in all the circumstances of the case it may reasonably be inferred A was doing the thing for the purpose in question.

(2) In applying subsection (1) to determine A’s purpose, it is irrelevant whether or not B was in fact humiliated, distressed or alarmed by the thing done by A.>

Consensual acts carried out for sexual gratification
Patrick Harvie
172 Before section 38, insert—
<Consensual acts carried out for sexual gratification

(1) It is not the crime of assault for a person who is aged 16 years or over (“A”) to attack another person who is aged 16 years or over (“B”) where—
(a) the attack is carried out for, or primarily for, the purpose of providing sexual gratification to A and B or either of them,
(b) A and B agree as to the purpose of the attack,
(c) B consents to the attack being carried out, and
(d) the attack is unlikely to result in serious injury to B (whether or not it does in fact result in such injury).

(2) For the purposes of subsection (1)(d), an attack is unlikely to result in serious injury in any case if a reasonable person would, in all the circumstances of the case, consider that the attack would be unlikely to result in serious injury.

(3) This section—
(a) applies to attacks which take place before the date on which this section comes into force as well as to those which take place on or after that date, but
(b) does not affect convictions for assault before the date on which this section comes into force.

**Power to convict for offence other than that charged: notice requirements**

**Fergus Ewing**

146 In section 38, page 19, line 30, leave out from <provided> to <fulfilled,>

**Fergus Ewing**

147 In section 38, page 19, line 33, leave out subsections (2) to (4)

**Power to convict for offence other than that charged: other provisions**

**Kenny MacAskill**

121 In section 38, page 19, line 32, at end insert—

< ( ) Where either of conditions 1 or 2 apply in a trial, the court or jury may acquit the accused of the charge but find the accused guilty of the alternative older child offence (the accused then being liable to be punished accordingly).

( ) Condition 1 is that—

(a) A is charged with an offence under sections 14 to 19, and
(b) but for a failure to establish beyond reasonable doubt that B had attained the age of 13 years at the relevant time, a court or jury would, by virtue of subsection (1), find that A committed an offence (“the alternative older child offence”) of—

(i) having intercourse with an older child,
(ii) engaging in sexual activity with or towards an older child,
(iii) causing an older child to participate in a sexual activity,
(iv) causing an older child to be present during a sexual activity,
(v) causing an older child to look at a sexual image,
(vi) communicating indecently with an older child,
(vii) causing an older child to see or hear an indecent communication,
(viii) engaging while an older child in sexual conduct with or towards another older child,

(ix) engaging while an older child in consensual sexual conduct with another older child.

Condition 2 is that—

(a) A is charged with an offence under section 21 or 22, and

(b) but for a failure to establish beyond reasonable doubt that A had not attained the age of 16 years at the relevant time, a court or jury would, by virtue of subsection (1), find that A committed an offence (“the alternative older child offence”) of—

(i) engaging while an older child in sexual conduct with or towards another older child,

(ii) engaging while an older child in consensual sexual conduct with another older child.

In this section, the “relevant time” is when the conduct to which the proceedings relate occurred.>

Kenny MacAskill

122 In schedule 2, page 30, line 25, column 3, at end insert—

<Having intercourse with an older child
Engaging in sexual activity with or towards an older child
Engaging while an older child in sexual conduct with or towards another older child>

Kenny MacAskill

123 In schedule 2, page 30, line 28, column 3, at beginning insert—

<Engaging in sexual activity with or towards an older child
Engaging while an older child in sexual conduct with or towards another older child
Engaging while an older child in consensual sexual conduct with another older child>

Kenny MacAskill

124 In schedule 2, page 31, line 10, column 3, at end insert—

<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 a sexual image
Communicating indecently with an older child
Causing an older child to see or hear an indecent communication>

Kenny MacAskill

125 In schedule 2, page 31, line 18, column 3, at end insert—
<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 a sexual image
Communicating indecently with an older child
Causing an older child to see or hear an indecent communication>

Kenny MacAskill

126 In schedule 2, page 31, line 25, column 3, at end insert—

<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 a sexual image
Communicating indecently with an older child
Causing an older child to see or hear an indecent communication>

Kenny MacAskill

127 In schedule 2, page 31, line 31, column 3, at end insert—

<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 a sexual image
Communicating indecently with an older child
Causing an older child to see or hear an indecent communication>

Kenny MacAskill

128 In schedule 2, page 31, line 37, column 3, at end insert—

<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 a sexual image
Communicating indecently with an older child
Causing an older child to see or hear an indecent communication>

Kenny MacAskill

129 In schedule 2, page 32, line 4, column 3, at end insert—

<Engaging while an older child in sexual conduct with or towards another older child>

Kenny MacAskill

130 In schedule 2, page 32, line 6, at end insert—
Sexual exposure: alternative offences

Kenny MacAskill

148 In schedule 2, page 30, line 24, at end insert—

<Sexual Exposure Section 7 Public indecency at common law
Breach of the peace at common law>
Persons under 16 years of age: power to modify notification requirements

Robert Brown

134 In schedule 4, page 40, line 15, leave out from beginning to <2003> and insert—

<( ) The Sexual Offences Act 2003 is amended as follows.
( ) After section 80 (persons becoming subject to notification requirements) there is inserted—

“80A Power to modify this Part and Schedule 3

(1) The Scottish Ministers may by order amend this Part or paragraphs 36 to 60 of Schedule 3 for the purpose of modifying the application of this Part in relation to persons who are aged under 16 at the time of committing an offence specified in one of those paragraphs.

(2) Before making an order under subsection (1) the Scottish Ministers must consult such persons as they consider appropriate.”.

( ) In section 138(2) (orders and regulations) after the word “21,” there is inserted “80A,.”.
( ) In Schedule 3>

Sexual offences notification requirements

Kenny MacAskill

153 In schedule 4, page 40, line 20, at end insert—

<59DA An offence under section (Sexual assault by penetration) of that Act (Sexual assault by penetration).>

Kenny MacAskill

154 In schedule 4, page 40, line 30, at end insert <if—

(a) the offender is or has been sentenced in respect of the offence to a term of imprisonment, or

(b) the offender was 18 or over and the victim was under 18.>

Kenny MacAskill

155 In schedule 4, page 40, line 30, at end insert—

<59LA An offence under section (Voyeurism) of that Act (voyeurism).>

Kenny MacAskill

156 In schedule 4, page 40, line 33, at end insert—

<59NA An offence under section (Sexual assault on a young child by penetration) of that Act (sexual assault on a young child by penetration).>
In schedule 4, page 41, line 4, at end insert—

59UA An offence under section (Sexual exposure to a young child) of that Act (sexual exposure to a young child).

59UB An offence under section (Voyeurism towards a young child) of that Act (voyeurism towards a young child).>

In schedule 4, page 41, line 6, at end insert <if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.>

In schedule 4, page 41, line 8, at end insert <if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.>

In schedule 4, page 41, line 10, at end insert <if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.>

In schedule 4, page 41, line 12, at end insert <if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.>

In schedule 4, page 41, line 14, at end insert <if the offender—

(a) was 18 or over, or
(b) is or has been sentenced in respect of the offence to a term of imprisonment.

Kenny MacAskill

164 In schedule 4, page 41, line 16, at end insert <if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.

Kenny MacAskill

165 In schedule 4, page 41, line 18, at end insert <if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.

Kenny MacAskill

166 In schedule 4, page 41, line 18, at end insert—

<59ZBA An offence under section (Sexual exposure to an older child) of that Act (sexual exposure to an older child) if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.

59ZBB An offence under section (Voyeurism towards an older child) of that Act (voyeurism towards an older child) if the offender—

(a) was 18 or over, or

(b) is or has been sentenced in respect of the offence to a term of imprisonment.

Kenny MacAskill

167 In schedule 4, page 41, line 20, at end insert <if the offender is sentenced in respect of the offence to a term of imprisonment.

Kenny MacAskill

168 In schedule 4, page 41, line 22, at end insert <if the offender is sentenced in respect of the offence to a term of imprisonment.

Kenny MacAskill

171 In schedule 5, page 43, line 28, column 2, at end insert—

<In Schedule 3, paragraph 42.>
Notification of defence of consent

Kenny MacAskill

169 In schedule 5, page 43, line 10, column 2, leave out <Section 78(2A) and (2B)>

Kenny MacAskill

170 In schedule 5, page 43, leave out line 12