1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 8
Sections 9 to 12
Schedule 1
Schedule 2
Schedule 3
Schedules 4 and 5
Long Title

Section 13
Sections 14 to 37
Section 38
Sections 39 to 42
Sections 43 to 48
Section 49

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Fergus Ewing
1 In section 1, page 1, line 19, leave out <an artificial> and insert <a surgically constructed>

Fergus Ewing
2 In section 1, page 1, line 23, leave out <an artificial> and insert <a surgically constructed>

Fergus Ewing
3 In section 1, page 1, line 23, leave out second <artificial> and insert <surgically constructed>

After section 1

Fergus Ewing
4 After section 1, insert—

<Sexual assault by penetration

Sexual assault by penetration

(1) If a person (“A”), with any part of A’s body or anything else—

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

(b) without any reasonable belief that B consents,

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

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(3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.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

Section 2

Fergus Ewing

5 In section 2, page 2, line 15, at end insert—

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

Fergus Ewing

6 In section 2, page 2, line 16, leave out subsection (3)

Section 3

Fergus Ewing

7 In section 3, page 2, line 37, leave out subsection (2)

Section 4

Fergus Ewing

8 In section 4, page 3, line 13, leave out subsection (3)

Section 5

Fergus Ewing

9 In section 5, page 3, line 27, leave out from <an> to second <engaging> in line 28 and insert <a sexual image>

Fergus Ewing

10 In section 5, page 3, line 30, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

11 In section 5, page 3, line 33, at end insert—

<(  ) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of—

(a) A engaging in a sexual activity or of a third person or imaginary person so engaging.
(b) A’s genitals or the genitals of a third person or imaginary person.

Fergus Ewing
12 In section 5, page 3, line 34, leave out subsection (3)

Section 6

Fergus Ewing
13 In section 6, page 4, line 26, leave out subsection (5)

Section 7

Fergus Ewing
14 In section 7, page 4, line 29, after <("A")> insert—
   <(   ) without another person ("B") consenting, and
   (   ) without any reasonable belief that B consents,>

Fergus Ewing
15 In section 7, page 4, line 29, after <intentionally> insert <and for a purpose mentioned in subsection (1A),>

Fergus Ewing
16 In section 7, page 4, line 29, leave out <another person ("B")> and insert <B>

Fergus Ewing
17 In section 7, page 4, line 30, leave out from <and> to end of line 32

Fergus Ewing
18 In section 7, page 4, line 33, at end insert—
   <(1A) The purposes are—
   (a) obtaining sexual gratification,
   (b) humiliating, distressing or alarming B.>

Fergus Ewing
19 In section 7, page 4, line 34, leave out subsection (2)

Fergus Ewing
20 In section 7, page 4, line 37, leave out subsections (3) and (4)
After section 7

Fergus Ewing

21 After section 7, insert—

<Voyeurism>

(1) A person (“A”) commits an offence, to be known as the offence of voyeurism, if A does any of the things mentioned in subsections (2) to (5).

(2) The first thing is that A—
   (a) without another person (“B”) consenting, and
   (b) without any reasonable belief that B consents,
   for a purpose mentioned in subsection (6) observes B doing a private act.

(3) The second thing is that A—
   (a) without another person (“B”) consenting, and
   (b) without any reasonable belief that B consents,
   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—
   (a) without another person (“B”) consenting, and
   (b) without any reasonable belief that B consents,
   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.

Fergus Ewing

22 After section 7, insert—

<Interpretation of section (Voyeurism)>

(1) For the purposes of section (Voyeurism), a person is doing a private act if the person is in a place which in the circumstances would reasonably be expected to provide privacy, and—
(a) the person’s genitals, buttocks or breasts are exposed or covered only with underwear,
(b) the person is using a lavatory, or
(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) For the purposes of section (Voyeurism)(3), operating equipment includes enabling or securing its activation by another person without that person’s knowledge.

(3) In section (Voyeurism)(5), “structure” includes a tent, vehicle or vessel or other temporary or movable structure.

Section 8

Fergus Ewing
23 In section 8, page 5, line 8, leave out <A> and insert <any person>

Fergus Ewing
24 In section 8, page 5, leave out lines 12 and 13

Section 13

Fergus Ewing
25 In section 13, page 6, line 27, leave out <6> and insert <(Voyeurism)>

Section 10

Fergus Ewing
26 In section 10, page 6, line 9, leave out <6> and insert <(Voyeurism)>

Section 11

Fergus Ewing
27 In section 11, page 6, line 11, leave out <6> and insert <(Voyeurism)>

Section 15

Fergus Ewing
28 In section 15, page 7, line 21, leave out subsection (3)

Section 16

Fergus Ewing
29 In section 16, page 7, line 34, leave out subsection (2)
Section 17

Fergus Ewing
30 In section 17, page 8, line 13, leave out subsection (3)

Section 18

Fergus Ewing
31 In section 18, page 8, line 24, leave out from <an> to <engaging> in line 26 and insert <a sexual image>

Fergus Ewing
32 In section 18, page 8, line 27, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing
33 In section 18, page 8, line 30, at end insert—
       <( ) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of—
       (a) A engaging in a sexual activity or of a third person or imaginary person so engaging,
       (b) A’s genitals or the genitals of a third person or imaginary person.>

Fergus Ewing
34 In section 18, page 8, line 31, leave out subsection (3)

Section 19

Fergus Ewing
35 In section 19, page 9, line 20, leave out subsection (5)

Section 22

Fergus Ewing
36 In section 22, page 10, line 12, leave out subsection (3)

Section 23

Fergus Ewing
37 In section 23, page 10, line 29, leave out subsection (2)
Section 24

Fergus Ewing
38 In section 24, page 11, line 8, leave out subsection (3)

Section 25

Fergus Ewing
39 In section 25, page 11, line 23, leave out from <an> to second <engaging> in line 24 and insert <a sexual image>

Fergus Ewing
40 In section 25, page 11, line 26, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing
41 In section 25, page 11, line 29, at end insert—
<( ) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of—
(a) A engaging in a sexual activity or of a third person or imaginary person so engaging,
(b) A’s genitals or the genitals of a third person or imaginary person.>

Fergus Ewing
42 In section 25, page 11, line 30, leave out subsection (3)

Section 26

Fergus Ewing
43 In section 26, page 12, line 22, leave out subsection (5)

Section 28

Fergus Ewing
44 In section 28, page 13, line 9, leave out subsection (2)

Section 31

Fergus Ewing
45 In section 31, page 16, line 10, leave out subsection (2)
Section 34

Fergus Ewing

46 In section 34, page 17, line 35, leave out subsection (4)

Section 35

Fergus Ewing

47 In section 35, page 18, line 16, leave out subsection (3)

Section 36

Fergus Ewing

48 In section 36, page 19, line 8, leave out subsection (3)

Section 37

Fergus Ewing

49 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 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.>

Schedule 1

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 (Sexual assault by penetration) and a fine>

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

53 In schedule 1, page 26, line 22, column 1, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

54 In schedule 1, page 26, line 36, at end insert—

<Voyeurism Section (Voyeurism) 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)>

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>

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>

Fergus Ewing

57 In schedule 1, page 27, line 19, column 1, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

58 In schedule 1, page 28, line 9, column 1, leave out <an image of a sexual activity> and insert <a sexual image>

Before section 38

Fergus Ewing

59 Before section 38, insert—

<Establishment of purpose for the purposes of sections 4 to (Voyeurism), 17 to 19 and 24 to 26>

(1) For the purposes of sections 4 to (Voyeurism), 17 to 19 and 24 to 26, 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.>
Schedule 2

Fergus Ewing

60 In schedule 2, page 29, line 13, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

61 In schedule 2, page 29, line 20, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

62 In schedule 2, page 30, line 6, column 1, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

63 In schedule 2, page 30, line 15, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

64 In schedule 2, page 30, line 22, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

65 In schedule 2, page 31, line 6, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

66 In schedule 2, page 31, line 14, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

67 In schedule 2, page 31, line 20, column 1, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

68 In schedule 2, page 31, line 29, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing

69 In schedule 2, page 31, line 36, column 3, leave out <an image of a sexual activity> and insert <a sexual image>
Fergus Ewing
70 In schedule 2, page 32, line 9, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing
71 In schedule 2, page 32, line 16, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing
72 In schedule 2, page 32, line 23, column 1, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing
73 In schedule 2, page 32, line 31, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Fergus Ewing
74 In schedule 2, page 33, line 8, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

Section 47

Fergus Ewing
75 In section 47, page 25, line 10, at end insert—

<(  ) For the purposes of this Act—
(a) penetration, touching, or any other activity,
(b) a communication,
(c) a manner of exposure, or
(d) a relationship,
is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.>
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