The Bill will be considered in the following order—

Sections 1 to 8  Section 13
Sections 9 to 12  Sections 14 to 37
Schedule 1  Section 38
Schedule 2  Sections 39 to 42
Schedule 3  Sections 43 to 48
Schedules 4 and 5  Section 49
Long Title

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

Section 10

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

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,>

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

After section 10

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.

Section 11

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

SP Bill 11-ML2
After section 14

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.>

Section 15

Kenny MacAskill

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

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

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)

After section 19

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.
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.

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.

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).

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

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.

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).

After section 21

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.

Section 22

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

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)
After section 26

Kenny MacAskill

84  After section 26, insert—

<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
(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).>

Section 27

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

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

Kenny MacAskill
88 In section 27, page 12, line 32, leave out <thing is> and insert <things are>

Kenny MacAskill
89 In section 27, page 12, line 32, leave out <by any means (other than A’s mouth)> and insert <with A’s penis>

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

Kenny MacAskill
91 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>

Kenny MacAskill
92 In section 27, page 12, line 37, leave out <penetrative>

Kenny MacAskill
93 In section 27, page 12, line 38, leave out subsection (5)

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

Kenny MacAskill
95 In section 27, page 13, line 1, leave out subsections (7) and (8)
Section 28

Fergus Ewing

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

Kenny MacAskill

96 In section 28, page 13, line 16, at end insert—

\(<(\ )\ A\ person\ is\ incapable,\ while\ asleep\ or\ unconscious,\ of\ consenting\ to\ any\ conduct.>\)

Section 29

Kenny MacAskill

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

Kenny MacAskill

98 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,>.

Kenny MacAskill

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

Kenny MacAskill

100 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

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,

Kenny MacAskill

105 In section 29, page 14, line 2, leave out <26> and insert <(Voyeurism towards an older child)>

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.>

Before schedule 1

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.
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).

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).

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).

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).

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).

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).

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).

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).

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).

An attempt, conspiracy or incitement to commit an offence in Part 1 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 1, 2, 6 or 9 of that Part.

**PART 2**

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

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).
21 An offence under section 3, 4, 5 or 10(1) of the Sexual Offences (Scotland) Act 1976 (c.67).
22 An offence under section 1 of the Indecency with Children Act 1960 (c.33).
23 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.
24 An offence under section 5, 6 or 28 of that Act.
25 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.
26 An offence under section 6 of that Act.
27 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.
28 An attempt, conspiracy or incitement to commit an offence in Part 2 of this schedule.
29 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.>

Section 30

Kenny MacAskill

109 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 not attained the age of 16 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.

After section 30

Kenny MacAskill
110 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.>

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.

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**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)

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**Section 35**

**Fergus Ewing**

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

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**Section 36**

**Fergus Ewing**

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

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**Section 37**

**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.>

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**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 Section (Sexual assault by penetration) Life imprisonment 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>

Kenny MacAskill

112 In schedule 1, page 27, line 5, at end insert—

<Sexual Section (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>

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>

Kenny MacAskill

113 In schedule 1, page 27, line 25, at end insert—
<table>
<thead>
<tr>
<th>Kenny MacAskill</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>114</strong> In schedule 1, page 27, line 25, at end insert—</td>
</tr>
</tbody>
</table>
| <Sexual Section (Sexual
| exposure exposure to
| to a young a young
| child child) |
| Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)> |
| Kenny MacAskill |
| **115** In schedule 1, page 27, line 33, at end insert— |
| <Voyeurism Section (Voyeurism
towards towards a
child young child) |
| Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)> |

| Kenny MacAskill |
| **116** In schedule 1, page 28, line 19, at end insert— |
| <Engaging in penetrative
sexual activity with or
with or towards an
older child |
| Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)> |

| 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> |

| Kenny MacAskill |
| **117** In schedule 1, page 28, line 19, at end insert— |
| <Sexual Section (Sexual
exposure exposure to
an older child) |
| Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)> |

| Kenny MacAskill |
| **118** In schedule 1, page 28, line 22, column 1, leave out <penetrative> |

| Kenny MacAskill |
| **119** In schedule 1, page 28, line 29, column 1, leave out <penetrative> |
Before section 38

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.>

Section 38

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.

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>

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>

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>

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>

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>

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>

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>

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

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>

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>

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>

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

**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>

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

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

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

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

**Section 46**

**Kenny MacAskill**

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

**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.>
Schedule 4

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>