**Sexual Offences (Scotland) Bill**

### 3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

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

**After section 30**

**Kenny MacAskill**

**110** After section 30, insert—

<**Special provision as regards age: deeming provisions**

The deeming provisions are—

<table>
<thead>
<tr>
<th>Deeming provision 1</th>
<th>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.</th>
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<tbody>
<tr>
<td>Deeming provision 2</td>
<td>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.</td>
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<tr>
<td>Deeming provision 3</td>
<td>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.</td>
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<tr>
<td>Deeming provision 4</td>
<td>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.</td>
</tr>
</tbody>
</table>

**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.>
Section 31

Fergus Ewing

45 In section 31, page 16, line 10, leave out subsection (2)

Section 32

Fergus Ewing

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

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

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.>
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).>

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

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.>

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—
<Sexual Section (Sexual exposure exposure to a young child) 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)>

Kenny MacAskill

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

<Voyeurism Section (Voyeurism towards a young child) 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)>

Kenny MacAskill

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

<Engaging in penetrative sexual activity 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

116 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) Imprisonment for a term not exceeding 5 years or a fine (or both)>

Kenny MacAskill

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

<Voyeurism Section (Voyeurism towards an older child) 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)>

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.>

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.

Section 38

Fergus Ewing

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

Fergus Ewing

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

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

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>

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>
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>

In schedule 2, page 31, line 36, column 3, leave out <an image of a sexual activity> and insert <a sexual image>

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>

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>

In schedule 2, page 32, line 6, at end insert—

<Engaging in sexual activity with or towards an older child
Section 22 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>

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 42

Fergus Ewing

149 In section 42, page 22, line 25, leave out <act mentioned in subsection (1)> and insert <relevant conduct>

Section 43

Fergus Ewing

150 In section 43, page 22, line 40, leave out <conduct> and insert <an act>

Section 46

Kenny MacAskill

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

Kenny MacAskill

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

( ) an order under>

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

Kenny MacAskill

152 In schedule 4, page 35, line 26, at end insert—

< ( ) In section 13 (homosexual offences)—
  (a) in subsection (4), for “sodomy or an act of gross indecency or shameless indecency” substitute “an act of engaging in sexual activity”,
  (b) after subsection (4) insert—

(4A) For the purposes of subsection (4), an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.”.

Robert Brown

152A As an amendment to amendment 152, line 8, at end insert—

< ( ) in subsection (9), after the word “who” where it occurs for the second time there is inserted “, for the purpose of male prostitution,”,
  ( ) in the section title of that section, for the words “Homosexual offences” there is substituted “Offences relating to male prostitution”.

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>
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).*>

Kenny MacAskill

157 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).*

Kenny MacAskill

158 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.>

Kenny MacAskill

159 In schedule 4, page 41, line 6, at end insert—

<59VA An offence under section *(Engaging in penetrative sexual activity with or towards an older child)* of that Act *(engaging in penetrative sexual activity with or 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.>
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.>

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.>

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—
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.