

*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

## SCHEDULE 1

*(introduced by section 39(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 37(1)) or engaging while an older child in consensual sexual conduct with another older child (section 37(4)),
  - (c) sexual abuse of trust (section 42) of a person under the age of 16,
  - (d) sexual abuse of trust of a mentally disordered person (section 46) of a person under the age of 16.
  
- 2 An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008 (SINo. 1769 (N.I. 2)) against a person under the age of 16—
  - (a) article 5 (rape),
  - (b) article 6 (assault by penetration),
  - (c) article 7 (sexual assault),
  - (d) article 8 (causing a person to engage in sexual activity without consent),
  - (e) article 23 (abuse of position of trust: sexual activity with a child under 18),
  - (f) article 24 (abuse of position of trust: causing or inciting a child under 18 to engage in sexual activity),
  - (g) article 25 (abuse of position of trust: sexual activity in the presence of a child under 18),
  - (h) article 26 (abuse of position of trust: causing a child under 18 to watch a sexual act),
  - (i) article 32 (sexual activity with an under 18 child family member),
  - (j) article 33 (inciting an under 18 child family member to engage in sexual activity),
  - (k) article 37 (paying for sexual services of a child under 18),
  - (l) article 38 (causing or inciting a child under 18 to become a prostitute or to be involved in pornography),
  - (m) article 39 (controlling the activities of a child under 18 in relation to prostitution or involvement in pornography),
  - (n) article 40 (arranging or facilitating the prostitution or involvement in pornography of a child under 18),
  - (o) article 51 (care workers: sexual activity with a person with a mental disorder),
  - (p) article 52 (care workers: causing or inciting a person with a mental disorder to engage in sexual activity),
  - (q) article 53 (care workers: sexual activity in the presence of a person with a mental disorder),
  - (r) article 54 (care workers: causing a person with a mental disorder to watch a sexual act),

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- (s) article 65 (administering a substance with intention of stupefying etc. for sexual activity),
- (t) article 70 (exposure of genitals),
- (u) article 71 (voyeurism).

3 An offence under any of the following provisions of that order—

- (a) article 12 (rape of a child under 13),
- (b) article 13 (assault of a child under 13 by penetration),
- (c) article 14 (sexual assault of a child under 13),
- (d) article 15 (causing or inciting a child under 13 to engage in sexual activity),
- (e) article 16 (sexual activity with a child under 16),
- (f) article 17 (causing or inciting a child under 16 to engage in sexual activity),
- (g) article 18 (engaging in sexual activity in the presence of a child under 16),
- (h) article 19 (causing a child under 16 to watch a sexual act),
- (i) article 20 (offences under articles 16 to 19 by a person under 18),
- (j) article 21 (arranging or facilitating commission of an offence under articles 16 to 20),
- (k) article 22 (meeting a child under 16 following sexual grooming etc.).

4 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).

5 An offence under any of the following provisions of the Sexual Offences Act 2003 (c. 42) against a person under the age of 16—

- (a) section 1 (rape),
- (b) section 2 (assault by penetration),
- (c) section 3 (sexual assault),
- (d) section 4 (causing a person to engage in sexual activity without consent),
- (e) section 16 (abuse of position of trust: sexual activity with a child under 18),
- (f) section 17 (abuse of position of trust: causing or inciting a child under 18 to engage in sexual activity),
- (g) section 18 (abuse of position of trust: sexual activity in the presence of a child under 18),
- (h) section 19 (abuse of position of trust: causing a child under 18 to watch a sexual act),
- (i) section 25 (sexual activity with a family member under 18),
- (j) section 26 (inciting a family member under 18 to engage in sexual activity),
- (k) section 38 (care workers: sexual activity with a person with a mental disorder),

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- (l) section 39 (care workers: causing or inciting a person with a mental disorder to engage in sexual activity),
  - (m) section 40 (care workers: sexual activity in the presence of a person with a mental disorder),
  - (n) section 41 (care workers: causing a person with a mental disorder to watch a sexual act),
  - (o) section 47 (paying for sexual services of a person under 18),
  - (p) section 48 (causing or inciting a child under 18 to become a prostitute or to be involved in pornography),
  - (q) section 49 (controlling the activities of a child under 18 in relation to prostitution or involvement in pornography),
  - (r) section 50 (arranging or facilitating the prostitution or involvement in pornography of a child under 18),
  - (s) section 61 (administering a substance with intention of stupefying etc. for sexual activity),
  - (t) section 66 (exposure of genitals),
  - (u) section 67 (voyeurism).
- 6 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.).
- 7 Any of the following offences under the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)—
- (a) an offence under section 1 (incest) or 2 (intercourse with a step-child) against a child under the age of 16,
  - (b) an offence under section 3 (intercourse of person in position of trust with a child under 16),
  - (c) 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),
  - (d) an offence under section 9 (permitting a girl under 16 to use premises for intercourse),
  - (e) an offence under section 10 (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16).
- 8 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).

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- 9 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).
- 10 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).
- 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 attempt, conspiracy or incitement to commit an offence in Part 1 of this schedule.
- 14 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, 4, 7 or 10 of that Part.

## PART 2

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

- 15 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.
- 16 Rape under the common law of Northern Ireland of a person under the age of 17.
- 17 Any of the following offences under the Sexual Offences Act 2003, in its application to Northern Ireland—  
 (a) an offence under section 15,  
 (b) an offence under section 16, 17, 18, 19, 47, 48, 49, 50, 66 or 67 against a child under the age of 17.
- 18 An offence under article 18, 19, 20 or 21 of the Criminal Justice (Northern Ireland) Order 2003 (SI No. 1247 (N.I. 13)) against a person under the age of 17.
- 19 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) against a person under the age of 16.
- 20 An offence under section 3, 5, 6 or 13(5)(c) of the Criminal Law (Consolidation) (Scotland) Act 1995.
- 21 An offence under article 123 of the Mental Health (Northern Ireland) Order 1986 (SI No. 595 (N.I. 4)) against a person under the age of 17.
- 22 An offence under article 9 of the Criminal Justice (Northern Ireland) Order 1980 (SI No. 704 (N.I. 6)).

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- 23 An offence under section 54 of the Criminal Law Act 1977 (c. 45).
- 24 Any of the following offences under the Sexual Offences (Scotland) Act 1976 (c. 67)—
- (a) an offence under section 2A or 2B against a person under the age of 16,
  - (b) an offence under section 2C, 3, 4, 5 or 10(1).
- 25 An offence under section 21 or 22 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34).
- 26 An offence under section 1 of the Indecency with Children Act 1960 (c. 33).
- 27 An offence under section 2 of the Attempted Rape, etc., Act 1960 (Northern Ireland) (c.3) against a person under the age of 17.
- 28 An offence under section 1, 10, 11, 12, 14, 15 or 16 of the Sexual Offences Act 1956 (c. 69) against a person under the age of 16.
- 29 An offence under section 5, 6 or 28 of that Act.
- 30 An offence under section 1 of the Punishment of Incest Act 1908 (c. 45)—
- (a) in its application to England and Wales, against a girl under the age of 16,
  - (b) in its application to Northern Ireland, against a girl under the age of 17.
- 31 Any of the following offences under the Criminal Law Amendment Act 1885 (48 & 49 Vict.) (c.69)—
- (a) an offence under section 2, 3, 5, 7 or 8—
    - (i) in its application to Scotland or England and Wales, against a girl under the age of 16,
    - (ii) in its application to Northern Ireland, against a girl under the age of 17,
  - (b) an offence under section 4 or 6.
- 32 Any of the following offences under the Offences Against the Person Act 1861 (24 & 25 Vict.) (c.100)—
- (a) an offence under section 52, 53 or 54—
    - (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,
  - (b) an offence under section 61 or 62.
- 33 An attempt, conspiracy or incitement to commit an offence in Part 2 of this schedule.
- 34 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 any of the following offences—
- (a) an offence against a person under the age of 16 under section 3 of the Sexual Offences (Amendment) Act 2000 in its application to Scotland (see paragraph 19),
  - (b) an offence in paragraph 20 or 24,
  - (c) an offence against a girl under the age of 16 under section 2, 3, 5, 7 or 8 of the Criminal Law Amendment Act 1885 in its application to Scotland.

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## SCHEDULE 2

(introduced by section 48)

### PENALTIES

| <i>Offence</i>  | <i>Section introducing offence</i> | <i>Maximum penalty on summary conviction</i>  | <i>Maximum penalty on conviction on indictment</i>                 |
|---|------------------------------------|---|--|
| Rape  | Section 1                          |   | Life imprisonment and a fine                                       |
| Sexual assault by penetration                                 | Section 2                          |   | Life imprisonment and a fine                                       |
| Sexual assault  | Section 3                          | Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) | Life imprisonment or a fine (or both)                              |
| Sexual coercion   | Section 4                          | Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) | Life imprisonment or a fine (or both)                              |
| Coercing a person into being present during a sexual activity | Section 5                          | 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) |
| Coercing a person into looking at a sexual image              | Section 6                          | 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) |
| Communicating indecently                                      | Section 7(1)                       | 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) |
| Causing a person to see or hear an indecent communication     | Section 7(2)                       | 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) |

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| Sexual exposure  | Section 8  | 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)  |
| Voyeurism  | Section 9  | 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)  |
| Administering a substance for sexual purposes                | Section 11 | 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)  |
| Rape of a young child  | Section 18 |   | Life imprisonment and a fine                                       |
| Sexual assault on a young child by penetration               | Section 19 |   | Life imprisonment and a fine                                       |
| Sexual assault on a young child                              | Section 20 | Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) | Life imprisonment or a fine (or both)                              |
| Causing a young child to participate in a sexual activity    | Section 21 | Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) | Life imprisonment or a fine (or both)                              |
| Causing a young child to be present during a sexual activity | Section 22 | 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) |
| Causing a young child to look at a sexual image              | Section 23 | 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) |

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| Communicating indecently with a young child                            | Section 24(1) | 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) |
| Causing a young child to see or hear an indecent communication         | Section 24(2) | 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) |
| Sexual exposure to a young child                                       | Section 25    | 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) |
| Voyeurism towards a young child  | Section 26    | 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) |
| Having intercourse with an older child                                 | Section 28    | 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) |
| Engaging in penetrative sexual activity with or towards an older child | Section 29    | 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) |
| Engaging in sexual activity with or towards an older child             | Section 30    | 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) |
| Causing an older child to participate in a sexual activity             | Section 31    | 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) |



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| Causing an older child to be present during a sexual activity                       | Section 32    | 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)  |
| Causing an older child to look at a sexual image                                    | Section 33    | 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)  |
| Communicating indecently with an older child  | Section 34(1) | 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)  |
| Causing an older child to see or hear an indecent communication                     | Section 34(2) | 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)  |
| Sexual exposure to an older child   | Section 35    | 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)  |
| Voyeurism towards an older child  | Section 36    | 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)  |
| Engaging while an older child in sexual conduct with or towards another older child | Section 37(1) | 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) |
| Engaging while an older child in consensual sexual conduct with another older child | Section 37(4) | 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) |

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| Sexual abuse of trust                                 | Section 42 | 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)  |
| Sexual abuse of trust of a mentally disordered person | Section 46 | 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). |

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### SCHEDULE 3

(introduced by section 50)

#### ALTERNATIVE VERDICTS

| <i>Offence</i>                | <i>Section introducing offence</i> | <i>Alternative offence</i>   |
|-------------------------------|------------------------------------|--|
| Rape                          | Section 1                          | Sexual assault by penetration<br>Sexual assault<br>Having intercourse with an older child<br>Assault at common law<br>[ <sup>F1</sup> Assault with intent to commit rape at common law<br>Assault with intent to commit the offence of rape under section 1 of this Act<br>Assault with intent to commit the offence of rape of a young child<br>Abduction with intent to commit rape at common law<br>Abduction with intent to commit the offence of rape under section 1 of this Act<br>Abduction with intent to commit the offence of rape of a young child<br>An offence under section 1 (incest) of the Criminal Law (Consolidation) (Scotland) Act 1995<br>An offence under section 2 (intercourse with step-child) of that Act] |
| Sexual assault by penetration | Section 2                          | Sexual assault   |

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|                 |           | Engaging in penetrative sexual activity with or towards an older child<br>Engaging in sexual activity with or towards an older child<br>Assault at common law<br>[ <sup>F2</sup> Assault with intent to commit rape at common law<br>Assault with intent to commit the offence of rape under section 1 of this Act<br>Assault with intent to commit the offence of rape of a young child<br>Abduction with intent to commit rape at common law<br>Abduction with intent to commit the offence of rape under section 1 of this Act<br>Abduction with intent to commit the offence of rape of a young child] |
| Sexual assault  | Section 3 | Engaging in sexual activity with or towards an older child<br>Assault at common law<br>[ <sup>F2</sup> Assault with intent to commit rape at common law<br>Assault with intent to commit the offence of rape under section 1 of this Act<br>Assault with intent to commit the offence of rape of a young child<br>Abduction with intent to commit rape at common law<br>Abduction with intent to commit the offence of rape under section 1 of this Act<br>Abduction with intent to commit the offence of rape of a young child]   |
| Sexual coercion | Section 4 | Coercing a person into being present during a sexual activity<br>Coercing a person into looking at a sexual image<br>Communicating indecently<br>Causing a person to see or hear an indecent communication<br>Causing an older child to participate in a sexual activity   |

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|   |              | <ul style="list-style-type: none"> <li>Assault at common law</li> <li>[<sup>F2</sup>Assault with intent to commit rape at common law</li> <li>Assault with intent to commit the offence of rape under section 1 of this Act</li> <li>Assault with intent to commit the offence of rape of a young child</li> <li>Abduction with intent to commit rape at common law</li> <li>Abduction with intent to commit the offence of rape under section 1 of this Act</li> <li>Abduction with intent to commit the offence of rape of a young child]</li> </ul> |
| Coercing a person into being present during a sexual activity | Section 5    | <ul style="list-style-type: none"> <li>Sexual coercion</li> <li>Coercing a person into looking at a sexual image</li> <li>Communicating indecently</li> <li>Causing a person to see or hear an indecent communication</li> <li>Sexual exposure</li> <li>Assault at common law</li> </ul>   |
| Coercing a person into looking at a sexual image              | Section 6    | <ul style="list-style-type: none"> <li>Sexual coercion</li> <li>Coercing a person into being present during a sexual activity</li> <li>Communicating indecently</li> <li>Causing a person to see or hear an indecent communication</li> <li>Sexual exposure</li> <li>Assault at common law</li> </ul>  |
| Communicating indecently                                      | Section 7(1) | <ul style="list-style-type: none"> <li>Sexual coercion</li> <li>Coercing a person into being present during a sexual activity</li> <li>Coercing a person into looking at a sexual image</li> <li>Causing a person to see or hear an indecent communication</li> <li>Sexual exposure</li> </ul>   |
| Causing a person to see or hear an indecent communication     | Section 7(2) | <ul style="list-style-type: none"> <li>Sexual coercion</li> <li>Coercing a person into being present during a sexual activity</li> </ul>   |

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|  |            | Coercing a person into looking at a sexual image<br>Communicating indecently<br>Sexual exposure  |
| Sexual exposure                                | Section 8  | Public indecency at common law<br>Breach of the peace at common law  |
| Voyeurism                                      | Section 9  | Breach of the peace at common law  |
| Rape of a young child                          | Section 18 | Sexual assault on a young child by penetration<br>Sexual assault on a young child<br>Having intercourse with an older child<br>Engaging in penetrative sexual activity with or towards an older child<br>Engaging in sexual activity with or towards an older child<br>Engaging while an older child in sexual conduct with or towards another older child<br>Assault at common law<br>[ <sup>F2</sup> Assault with intent to commit rape at common law<br>Assault with intent to commit the offence of rape under section 1 of this Act<br>Assault with intent to commit the offence of rape of a young child<br>Abduction with intent to commit rape at common law<br>Abduction with intent to commit the offence of rape under section 1 of this Act<br>Abduction with intent to commit the offence of rape of a young child] |
| Sexual assault on a young child by penetration | Section 19 | Sexual assault on a young child<br>Engaging in penetrative sexual activity with or towards an older child<br>Engaging in sexual activity with or towards an older child<br>Assault at common law   |

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| Sexual assault on a young child                           | Section 20 | <p>[<sup>F2</sup>Assault with intent to commit rape at common law<br/>         Assault with intent to commit the offence of rape under section 1 of this Act<br/>         Assault with intent to commit the offence of rape of a young child<br/>         Abduction with intent to commit rape at common law<br/>         Abduction with intent to commit the offence of rape under section 1 of this Act<br/>         Abduction with intent to commit the offence of rape of a young child]</p> <p>Engaging in sexual activity with or towards an older child<br/>         Engaging while an older child in sexual conduct with or towards another older child<br/>         Engaging while an older child in consensual sexual conduct with another older child<br/>         Assault at common law<br/>         [<sup>F2</sup>Assault with intent to commit rape at common law<br/>         Assault with intent to commit the offence of rape under section 1 of this Act<br/>         Assault with intent to commit the offence of rape of a young child<br/>         Abduction with intent to commit rape at common law<br/>         Abduction with intent to commit the offence of rape under section 1 of this Act<br/>         Abduction with intent to commit the offence of rape of a young child]</p> |
| Causing a young child to participate in a sexual activity | Section 21 | <p>Causing a young child to be present during a sexual activity<br/>         Causing a young child to look at a sexual image<br/>         Communicating indecently with a young child</p>  |

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*Status:* Point in time view as at 24/04/2017.

*Changes to legislation:* There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)

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|  |            |  |   |
|--|------------|--|---|
|  |            |  | Causing a young child to see or hear an indecent communication                  |
|  |            |  | 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                 |
|  |            |  | Assault at common law   |
|  |            |  | [ <sup>F2</sup> Assault with intent to commit rape at common law                |
|  |            |  | Assault with intent to commit the offence of rape under section 1 of this Act   |
|  |            |  | Assault with intent to commit the offence of rape of a young child              |
|  |            |  | Abduction with intent to commit rape at common law                              |
|  |            |  | Abduction with intent to commit the offence of rape under section 1 of this Act |
|  |            |  | Abduction with intent to commit the offence of rape of a young child]           |
| Causing a young child to be present during a sexual activity | Section 22 |  | Causing a young child to participate in a sexual activity                       |
|  |            |  | Causing a young child to look at a sexual image                                 |
|  |            |  | Communicating indecently with a young child                                     |
|  |            |  | Causing a young child to see or hear an indecent communication                  |
|  |            |  | Sexual exposure to a young child  |
|  |            |  | 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                                    |

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*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

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|   |               |  |
|---|---------------|--|
| Causing a young child to look at a sexual image | Section 23    | <p>Causing an older child to see or hear an indecent communication</p> <p>Sexual exposure to an older child</p> <p>Causing a young child to participate in a sexual activity</p> <p>Causing a young child to be present during a sexual activity</p> <p>Communicating indecently with a young child</p> <p>Causing a young child to see or hear an indecent communication</p> <p>Sexual exposure to a young child</p> <p>Causing an older child to participate in a sexual activity</p> <p>Causing an older child to be present during a sexual activity</p> <p>Causing an older child to look at a sexual image</p> <p>Communicating indecently with an older child</p> <p>Causing an older child to see or hear an indecent communication</p> <p>Sexual exposure to an older child</p> |
| Communicating indecently with a young child     | Section 24(1) | <p>Causing a young child to participate in a sexual activity</p> <p>Causing a young child to be present during a sexual activity</p> <p>Causing a young child to look at a sexual image</p> <p>Causing a young child to see or hear an indecent communication</p> <p>Sexual exposure to a young child</p> <p>Causing an older child to participate in a sexual activity</p> <p>Causing an older child to be present during a sexual activity</p> <p>Causing an older child to look at a sexual image</p> <p>Communicating indecently with an older child</p>   |



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*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

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|  |               |  |
|--|---------------|--|
|  |               | Causing an older child to see or hear an indecent communication<br>Sexual exposure to an older child   |
| Causing a young child to see or hear an indecent communication | Section 24(2) | Causing a young child to participate in a sexual activity<br>Causing a young child to be present during a sexual activity<br>Causing a young child to look at a sexual image<br>Communicating indecently with a young child<br>Sexual exposure to a young child<br>Causing an older child to participate in a sexual activity<br>Causing an older child to be present during a sexual activity<br>Causing an older child to look at a sexual image<br>Communicating indecently with an older child<br>Causing an older child to see or hear an indecent communication<br>Sexual exposure to an older child |
| Sexual exposure to a young child                               | Section 25    | Sexual exposure to an older child<br>Public indecency at common law<br>Breach of the peace at common law   |
| Voyeurism towards a young child                                | Section 26    | Voyeurism towards an older child<br>Breach of the peace at common law  |
| Having intercourse with an older child                         | Section 28    | Engaging in penetrative sexual activity with or towards an older child<br>Engaging in sexual activity with or towards an older child<br>Engaging while an older child in sexual conduct with or towards another older child  |

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*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

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|  |               |   |
|--|---------------|---|
| Engaging in penetrative sexual activity with or towards an older child | Section 29    | Engaging in sexual activity with or towards an older child<br>Engaging while an older child in sexual conduct with or towards another older child   |
| Engaging in sexual activity with or towards an older child             | Section 30    | Engaging while an older child in sexual conduct with or towards another older child<br>Engaging while an older child in consensual sexual conduct with another older child  |
| Causing an older child to participate in a sexual activity             | Section 31    | Causing an older child to be present during a sexual activity<br>Causing an older child to look at a sexual image<br>Communicating indecently with an older child<br>Causing an older child to see or hear an indecent communication  |
| Causing an older child to be present during a sexual activity          | Section 32    | Causing an older child to participate in a sexual activity<br>Causing an older child to look at a sexual image<br>Communicating indecently with an older child<br>Causing an older child to see or hear an indecent communication<br>Sexual exposure to an older child              |
| Causing an older child to look at a sexual image                       | Section 33    | Causing an older child to participate in a sexual activity<br>Causing an older child to be present during a sexual activity<br>Communicating indecently with an older child<br>Causing an older child to see or hear an indecent communication<br>Sexual exposure to an older child |
| Communicating indecently with an older child                           | Section 34(1) | Causing an older child to participate in a sexual activity  |

*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

|   |               |   |
|---|---------------|---|
|   |               | Causing an older child to be present during a sexual activity   |
|   |               | Causing an older child to look at a sexual image                |
|   |               | Causing an older child to see or hear an indecent communication |
|   |               | Sexual exposure to an older child                               |
| Causing an older child to see or hear an indecent communication | Section 34(2) | 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                    |
|   |               | Sexual exposure to an older child                               |
| Sexual exposure to an older child                               | Section 35    | Public indecency at common law                                  |
|   |               | Breach of the peace at common law                               |
| Voyeurism towards an older child                                | Section 36    | Breach of the peace at common law                               |

#### Textual Amendments

- F1** Sch. 3: entries inserted (1.12.2010) by [The Sexual Offences \(Scotland\) Act 2009 \(Supplemental and Consequential Provisions\) Order 2010 \(S.S.I. 2010/421\)](#), art. 2, [Sch. para. 4\(a\)](#)
- F2** Sch. 3: entries inserted (1.12.2010) by [The Sexual Offences \(Scotland\) Act 2009 \(Supplemental and Consequential Provisions\) Order 2010 \(S.S.I. 2010/421\)](#), art. 2, [Sch. para. 4\(b\)](#)

## SCHEDULE 4

*(introduced by section 54)*

### LISTED OFFENCES

#### PART 1

##### INCITEMENT TO COMMIT CERTAIN SEXUAL ACTS OUTSIDE UK

- 1 An offence under Part 1 of this Act against a person under the age of 18.
- 2 An offence under Part 4 of this Act.
- 3 Sexual abuse of trust (section 42 of this Act).

*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

- 4 Sexual abuse of trust of a mentally disordered person (section 46 of this Act) where the mentally disordered person is under the age of 18.
- 5 Indecent assault of a person under the age of 18.

## PART 2

### OFFENCES COMMITTED OUTSIDE UK

- 6 An offence under Part 1 of this Act against a person under the age of 18.
- 7 An offence under Part 4 of this Act.
- 8 Sexual abuse of trust (section 42 of this Act).
- 9 Sexual abuse of trust of a mentally disordered person (section 46 of this Act) where the mentally disordered person is under the age of 18.
- 10 Indecent assault of a person under the age of 18.
- 11 An offence under section 52 of the Civic Government (Scotland) Act 1982 (c. 45) (taking and distribution of indecent images of children).
- 12 An offence under section 52A of that Act (possession of indecent images of children).
- 13 An offence under section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (paying for sexual services of a child).
- 14 An offence under section 10 of that Act (causing or inciting provision by child of sexual services or pornography).
- 15 An offence under section 11 of that Act (controlling a child providing sexual services or involved in pornography).
- 16 An offence under section 12 of that Act (arranging or facilitating provision by child of sexual services or pornography).
- 17 Conspiracy or incitement to commit any offence specified in paragraphs 6 to 16.
- 18 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 any offence mentioned in paragraphs 6 to 9 or 11 to 16.

## SCHEDULE 5

*(introduced by section 61)*

### MINOR AND CONSEQUENTIAL AMENDMENTS

*The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*

- 1 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- (2) In section 4 (proceedings and penalties for offences under sections 1 to 3), in each of subsections (1) and (5), for the words “, 2 or 3” there is substituted “ or 2 ”.
- (3) In the section title of that section, for the words “to 3” there is substituted “ and 2 ”.

*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

- (4) In section 9 (permitting girl under 16 years to use premises for intercourse)—
- (a) in subsection (2)—
    - (i) after the word “charge” there is inserted “ in proceedings ”,
    - (ii) the words from “, being” to “offence,” are omitted,
  - (b) after that subsection, there is inserted—
    - “(2A) But the defence under subsection (2) is not available to the person so charged if—
      - (a) that person has previously been charged by the police with a relevant sexual offence; or
      - (b) there is in force in respect of that person a risk of sexual harm order.”,
  - (c) in subsection (3), for the words from “(2)” to the end there is substituted
    - “(2A) above—
      - (a) “a relevant sexual offence” has the same meaning as in section 39(5)(a) of the Sexual Offences (Scotland) Act 2009 (asp 9); and
      - (b) “a risk of sexual harm order” has the same meaning as in section 39(5)(b) of that Act.”.
- (5) In section 10(3) (application of provisions of section 10 to offence of indecent behaviour towards girl under 16), for “section 6 of this Act” there is substituted “ sections 19 to 26 and 29 to 36 of the Sexual Offences (Scotland) Act 2009 (asp 9) (certain sexual offences relating to children) ”.
- (6) After section 12, there is inserted—

**“12A Sections 11(5) and 12: further provision**

- (1) Premises shall be treated for the purposes of sections 11(5) and 12 of this Act as a brothel if people resort to them for the purposes of homosexual acts in circumstances in which resort to them for heterosexual practices would have led to the premises being treated as a brothel for the purposes of those sections.
  - (2) For the purposes of this section, a homosexual act is an act of engaging in sexual activity by one male person with another male person; and an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.”.
- (7) For the heading above section 13, there is substituted “ *Living on earnings of another from male prostitution* ”.
- (8) For the section title, there is substituted “ *Living on earnings of another from male prostitution* ”.
- (9) In section 13 (homosexual offences), in subsection (9), the words from “or who” to “above” are omitted.

*The Criminal Procedure (Scotland) Act 1995 (c. 46)*

- 2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

*Status: Point in time view as at 24/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

- (2) In section 3(6) (jurisdiction and powers of solemn courts), after the word “rape” there is inserted “ (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2009 (asp 9)), rape of a young child (under section 18 of that Act) ”.
- (3) In section 7(8)(b)(i) (JP court: jurisdiction and powers), after the word “rape” there is inserted “ (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2009 (asp 9)), rape of a young child (under section 18 of that Act) ”.
- (4) In section 19A (samples etc. from persons convicted of sexual and violent crimes)—
- (a) in subsection (6), in the definition of “relevant sexual offence”—
    - (i) in paragraph (a), after the word “rape” there is inserted “ at common law ”,
    - (ii) the word “and” which immediately follows paragraph (h) is repealed, and
    - (iii) after paragraph (i) there is inserted “and
      - (j) any offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—
        - (i) section 1 (rape),
        - (ii) section 2 (sexual assault by penetration),
        - (iii) section 3 (sexual assault),
        - (iv) section 4 (sexual coercion),
        - (v) section 5 (coercing a person into being present during a sexual activity),
        - (vi) section 6 (coercing a person into looking at a sexual image),
        - (vii) section 7(1) (communicating indecently),
        - (viii) section 7(2) (causing a person to see or hear an indecent communication),
        - (ix) section 8 (sexual exposure),
        - (x) section 9 (voyeurism),
        - (xi) section 18 (rape of a young child),
        - (xii) section 19 (sexual assault on a young child by penetration),
        - (xiii) section 20 (sexual assault on a young child),
        - (xiv) section 21 (causing a young child to participate in a sexual activity),
        - (xv) section 22 (causing a young child to be present during a sexual activity),
        - (xvi) section 23 (causing a young child to look at a sexual image),

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- (xvii) section 24(1) (communicating indecently with a young child),
  - (xviii) section 24(2) (causing a young child to see or hear an indecent communication),
  - (xix) section 25 (sexual exposure to a young child),
  - (xx) section 26 (voyeurism towards a young child),
  - (xxi) section 28 (having intercourse with an older child),
  - (xxii) section 29 (engaging in penetrative sexual activity with or towards an older child),
  - (xxiii) section 30 (engaging in sexual activity with or towards an older child),
  - (xxiv) section 31 (causing an older child to participate in a sexual activity),
  - (xxv) section 32 (causing an older child to be present during a sexual activity),
  - (xxvi) section 33 (causing an older child to look at a sexual image),
  - (xxvii) section 34(1) (communicating indecently with an older child),
  - (xxviii) section 34(2) (causing an older child to see or hear an indecent communication),
  - (xxix) section 35 (sexual exposure to an older child),
  - (xxx) section 36 (voyeurism towards an older child),
  - (xxxi) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
  - (xxxii) section 37(4) (engaging while an older child in consensual sexual conduct with another older child),
  - (xxxiii) section 42 (sexual abuse of trust) but only if the condition set out in section 43(6) of that Act is fulfilled,
  - (xxxiv) section 46 (sexual abuse of trust of a mentally disordered person);”
- (b) in subsection (7), in paragraph (b)(i) after the words “paragraph (i)” there is inserted “ or (j) ”.
- (5) In section 24A (bail conditions: remote monitoring of restrictions on movements), in each of subsections (2)(a), (3) and (5)(a), for the words “or rape” there is substituted

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“ , rape (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2009 (asp 9)) or rape of a young child (under section 18 of that Act) ”.

(6) In section 210A(10) (extended sentences for sex and violent offenders), in the definition of “sexual offence” —

(a) in paragraph (i), after the word “rape” there is inserted “ at common law ”, and

(b) after paragraph (xxvi) there is inserted “and

(xxvii) an offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—

- (A) section 1 (rape),
- (B) section 2 (sexual assault by penetration),
- (C) section 3 (sexual assault),
- (D) section 4 (sexual coercion),
- (E) section 5 (coercing a person into being present during a sexual activity),
- (F) section 6 (coercing a person into looking at a sexual image),
- (G) section 7(1) (communicating indecently),
- (H) section 7(2) (causing a person to see or hear an indecent communication),
- (I) section 8 (sexual exposure),
- (J) section 9 (voyeurism),
- (K) section 11 (administering a substance for sexual purposes),
- (L) section 18 (rape of a young child),
- (M) section 19 (sexual assault on a young child by penetration),
- (N) section 20 (sexual assault on a young child),
- (O) section 21 (causing a young child to participate in a sexual activity),
- (P) section 22 (causing a young child to be present during a sexual activity)
- (Q) section 23 (causing a young child to look at a sexual image),
- (R) section 24(1) (communicating indecently with a young child),
- (S) section 24(2) (causing a young child to see or hear an indecent communication),
- (T) section 25 (sexual exposure to a young child),
- (U) section 26 (voyeurism towards a young child),
- (V) section 28 (having intercourse with an older child),
- (W) section 29 (engaging in penetrative sexual activity with or towards an older child),



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- (X) section 30 (engaging in sexual activity with or towards an older child),
  - (Y) section 31 (causing an older child to participate in a sexual activity),
  - (Z) section 32 (causing an older child to be present during a sexual activity),
  - (ZA) section 33 (causing an older child to look at a sexual image),
  - (ZB) section 34(1) (communicating indecently with an older child),
  - (ZC) section 34(2) (causing an older child to see or hear an indecent communication),
  - (ZD) section 35 (sexual exposure to an older child),
  - (ZE) section 36 (voyeurism towards an older child),
  - (ZF) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
  - (ZG) section 37(4) (engaging while an older child in consensual sexual conduct with another older child),
  - (ZH) section 42 (sexual abuse of trust),
  - (ZI) section 46 (sexual abuse of trust of a mentally disordered person);”.
- (7) In section 288C(2) (prohibition of personal conduct of defence in cases of certain sexual offences)—
- (a) in paragraph (a), after the word “rape” there is inserted “ (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2009 (asp 9)) ”,
  - (b) for paragraph (j) there is substituted—
    - “(j) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—
    - (i) section 2 (sexual assault by penetration),
    - (ii) section 3 (sexual assault),
    - (iii) section 4 (sexual coercion),
    - (iv) section 5 (coercing a person into being present during a sexual activity),
    - (v) section 6 (coercing a person into looking at a sexual image),
    - (vi) section 7(1) (communicating indecently),
    - (vii) section 7(2) (causing a person to see or hear an indecent communication),
    - (viii) section 8 (sexual exposure),
    - (ix) section 9 (voyeurism),
    - (x) section 18 (rape of a young child),
    - (xi) section 19 (sexual assault on a young child by penetration),

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- (xii) section 20 (sexual assault on a young child),
  - (xiii) section 21 (causing a young child to participate in a sexual activity),
  - (xiv) section 22 (causing a young child to be present during a sexual activity),
  - (xv) section 23 (causing a young child to look at a sexual image),
  - (xvi) section 24(1) (communicating indecently with a young child),
  - (xvii) section 24(2) (causing a young child to see or hear an indecent communication),
  - (xviii) section 25 (sexual exposure to a young child),
  - (xix) section 26 (voyeurism towards a young child),
  - (xx) section 28 (having intercourse with an older child),
  - (xxi) section 29 (engaging in penetrative sexual activity with or towards an older child),
  - (xxii) section 30 (engaging in sexual activity with or towards an older child),
  - (xxiii) section 31 (causing an older child to participate in a sexual activity),
  - (xxiv) section 32 (causing an older child to be present during a sexual activity),
  - (xxv) section 33 (causing an older child to look at a sexual image),
  - (xxvi) section 34(1) (communicating indecently with an older child),
  - (xxvii) section 34(2) (causing an older child to see or hear an indecent communication),
  - (xxviii) section 35 (sexual exposure to an older child),
  - (xxix) section 36 (voyeurism towards an older child),
  - (xxx) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
  - (xxxi) section 37(4) (engaging while an older child in consensual sexual conduct with another older child),
  - (xxxii) section 42 (sexual abuse of trust) but only if the condition set out in section 43(6) of that Act is fulfilled,
  - (xxxiii) section 46 (sexual abuse of trust of a mentally disordered person);”, and
- (c) after paragraph (j) (as inserted by paragraph (b) above), there is inserted—
- “(k) attempting to commit any of the offences set out in paragraphs (a) to (j).”.
- (8) In Schedule 1 (offences against children under the age of 17 years to which special provisions apply)—
- (a) after paragraph 1 there is inserted—

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*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009. (See end of Document for details)*

- “1A Any offence under section 18 (rape of a young child) or 28 (having intercourse with an older child) of the Sexual Offences (Scotland) Act 2009 (asp 9).
  - 1B Any offence under section 19 (sexual assault on a young child by penetration) or 29 (engaging in penetrative sexual activity with or towards an older child) of that Act.
  - 1C Any offence under section 20 (sexual assault on a young child) or 30 (engaging in sexual activity with or towards an older child) of that Act.
  - 1D Any offence under section 42 of that Act (sexual abuse of trust) towards a child under the age of 17 years but only if the condition set out in section 43(6) of that Act is fulfilled.”, and
- (b) after paragraph 4 there is inserted—
- “4A Any offence under section 5 (coercing a person into being present during a sexual activity), 6 (coercing a person into looking at a sexual image), 7 (communicating indecently etc.), 8 (sexual exposure) or 9 (voyeurism) of the Sexual Offences (Scotland) Act 2009 (asp 9) towards a child under the age of 17 years.
  - 4B Any offence under any of sections 21 to 26 or 31 to 37 of that Act (certain sexual offences relating to children).”.

*The Criminal Injuries Compensation Act 1995 (c. 53)*

- 3 In section 11(9) of the Criminal Injuries Compensation Act 1995 (approval by parliament of certain alterations to the Tariff or provisions of the Scheme), at the end there is inserted “ , and in relation to anything done in Scotland means rape (whether at common law or under section 1(1) of the Sexual Offences (Scotland) Act 2009 (asp 9)) and rape of a young child (under section 18 of that Act) ”.

*The Protection of Children (Scotland) Act 2003 (asp 5)*

- 4 (1) Schedule 1 to the Protection of Children (Scotland) Act 2003 is amended as follows.
- (2) At the end of paragraph 1 there is inserted—
- “(n) an offence under section 18 (rape of a young child) of the Sexual Offences (Scotland) Act 2009 (asp 9);
  - (o) an offence under section 19 (sexual assault on a young child by penetration) of that Act;
  - (p) an offence under section 20 (sexual assault on a young child) of that Act;
  - (q) an offence under section 21 (causing a young child to participate in a sexual activity) of that Act;
  - (r) an offence under section 22 (causing a young child to be present during a sexual activity) of that Act;
  - (s) an offence under section 23 (causing a young child to look at a sexual image) of that Act;
  - (t) an offence under section 24(1) (communicating indecently with a young child) of that Act;

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- (u) an offence under section 24(2) (causing a young child to see or hear an indecent communication) of that Act;
  - (v) an offence under section 25 (sexual exposure to a young child) of that Act;
  - (w) an offence under section 26 (voyeurism towards a young child) of that Act;
  - (x) an offence under section 28 (having intercourse with an older child) of that Act;
  - (y) an offence under section 29 (engaging in penetrative sexual activity with or towards an older child) of that Act;
  - (z) an offence under section 30 (engaging in sexual activity with or towards an older child) of that Act;
  - (za) an offence under section 31 (causing an older child to participate in a sexual activity) of that Act;
  - (zb) an offence under section 32 (causing an older child to be present during a sexual activity) of that Act;
  - (zc) an offence under section 33 (causing an older child to look at a sexual image) of that Act;
  - (zd) an offence under section 34(1) (communicating indecently with an older child) of that Act;
  - (ze) an offence under section 34(2) (causing an older child to see or hear an indecent communication) of that Act;
  - (zf) an offence under section 35 (sexual exposure to an older child) of that Act;
  - (zg) an offence under section 36 (voyeurism towards an older child) of that Act;
  - (zh) an offence under section 42 (sexual abuse of trust) of that Act.”.
- (3) After paragraph 2(d) there is inserted—
- “(da) commits an offence under section 1 (rape) of the Sexual Offences (Scotland) Act 2009 (asp 9) in relation to a child;
  - (db) commits an offence under section 2 (sexual assault by penetration) of that Act in relation to a child;
  - (dc) commits an offence under section 3 (sexual assault) of that Act in relation to a child;
  - (dd) commits an offence under section 4 (sexual coercion) of that Act in relation to a child;
  - (de) commits an offence under section 5 (coercing a person into being present during a sexual activity) of that Act in relation to a child;
  - (df) commits an offence under section 6 (coercing a person into looking at a sexual image) of that Act in relation to a child;
  - (dg) commits an offence under section 7(1) (communicating indecently) of that Act in relation to a child;
  - (dh) commits an offence under section 7(2) (causing a person to see or hear an indecent communication) of that Act in relation to a child;
  - (di) commits an offence under section 8 (sexual exposure) of that Act in relation to a child;
  - (dj) commits an offence under section 9 (voyeurism) of that Act in relation to a child;

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- (dk) commits an offence under section 46 (sexual abuse of trust of a mentally disordered person) of that Act in relation to a child;”.

*The Sexual Offences Act 2003 (c. 42)*

5 In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of Part 2 of that Act)—

- (a) in paragraph 36, at the end there is added “ at common law ”,  
(b) after paragraph 41, there is inserted—

“41A Public indecency if—

- (a) a person (other than the offender) involved in the offence was under 18, and  
(b) the court determines that there was a significant sexual aspect to the offender's behaviour in committing the offence.”,

- (c) after paragraph 59C there is inserted—

“59D An offence under section 1 of the Sexual Offences (Scotland) Act 2009 (asp 9) (rape).

59E An offence under section 2 of that Act (sexual assault by penetration).

59F An offence under section 3 of that Act (sexual assault).

59G An offence under section 4 of that Act (sexual coercion).

59H An offence under section 5 of that Act (coercing a person into being present during a sexual activity).

59I An offence under section 6 of that Act (coercing a person into looking at a sexual image).

59J An offence under section 7(1) of that Act (communicating indecently).

59K An offence under section 7(2) of that Act (causing a person to see or hear an indecent communication).

59L An offence under section 8 of that Act (sexual exposure) if—

- (a) the offender, in respect of the offence, is or has been—  
(i) sentenced to a term of imprisonment, or  
(ii) admitted to a hospital, or  
(b) the offender was 18 or over and the victim was under 18.

59M An offence under section 9 of that Act (voyeurism).

59N An offence under section 11 of that Act (administering a substance for sexual purposes).

59O An offence under section 18 of that Act (rape of a young child).

59P An offence under section 19 of that Act (sexual assault on a young child by penetration).

59Q An offence under section 20 of that Act (sexual assault on a young child).

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- 59R An offence under section 21 of that Act (causing a young child to participate in a sexual activity).
- 59S An offence under section 22 of that Act (causing a young child to be present during a sexual activity).
- 59T An offence under section 23 of that Act (causing a young child to look at a sexual image).
- 59U An offence under section 24(1) of that Act (communicating indecently with a young child).
- 59V An offence under section 24(2) of that Act (causing a young child to see or hear an indecent communication).
- 59W An offence under section 25 of that Act (sexual exposure to a young child).
- 59X An offence under section 26 of that Act (voyeurism towards a young child).
- 59Y An offence under section 28 of that Act (having intercourse with an older child) if the offender—
- (a) was 18 or over, or
  - (b) in respect of the offence, is or has been—
    - (i) sentenced to a term of imprisonment, or
    - (ii) admitted to a hospital.
- 59Z An offence under section 29 of that Act (engaging in penetrative sexual activity with or towards an older child) if the offender—
- (a) was 18 or over, or
  - (b) in respect of the offence, is or has been—
    - (i) sentenced to a term of imprisonment, or
    - (ii) admitted to a hospital.
- 59ZA An offence under section 30 of that Act (engaging in sexual activity with or towards an older child) if the offender—
- (a) was 18 or over, or
  - (b) in respect of the offence, is or has been—
    - (i) sentenced to a term of imprisonment, or
    - (ii) admitted to a hospital.
- 59ZB An offence under section 31 of that Act (causing an older child to participate in a sexual activity) if the offender—
- (a) was 18 or over, or
  - (b) in respect of the offence, is or has been—
    - (i) sentenced to a term of imprisonment, or
    - (ii) admitted to a hospital.
- 59ZC An offence under section 32 of that Act (causing an older child to be present during a sexual activity) if the offender—
- (a) was 18 or over, or
  - (b) in respect of the offence, is or has been—
    - (i) sentenced to a term of imprisonment, or

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(ii) admitted to a hospital.

59ZD An offence under section 33 of that Act (causing an older child to look at a sexual image) if the offender—

- (a) was 18 or over, or
- (b) in respect of the offence, is or has been—
  - (i) sentenced to a term of imprisonment, or
  - (ii) admitted to a hospital.

59ZE An offence under section 34(1) of that Act (communicating indecently with an older child) if the offender—

- (a) was 18 or over, or
- (b) in respect of the offence, is or has been—
  - (i) sentenced to a term of imprisonment, or
  - (ii) admitted to a hospital.

59ZF An offence under section 34(2) of that Act (causing an older child to see or hear an indecent communication) if the offender—

- (a) was 18 or over, or
- (b) in respect of the offence, is or has been—
  - (i) sentenced to a term of imprisonment, or
  - (ii) admitted to a hospital.

59ZG An offence under section 35 of that Act (sexual exposure to an older child) if the offender—

- (a) was 18 or over, or
- (b) in respect of the offence, is or has been—
  - (i) sentenced to a term of imprisonment, or
  - (ii) admitted to a hospital.

59ZH An offence under section 36 of that Act (voyeurism towards an older child) if the offender—

- (a) was 18 or over, or
- (b) in respect of the offence, is or has been—
  - (i) sentenced to a term of imprisonment, or
  - (ii) admitted to a hospital.

59ZI An offence under section 37(1) of that Act (engaging while an older child in sexual conduct with or towards another older child) if, in respect of the offence, the offender is or has been—

- (a) sentenced to a term of imprisonment, or
- (b) admitted to a hospital.

59ZJ An offence under section 37(4) of that Act (engaging while an older child in consensual sexual conduct with another older child) if, in respect of the offence, the offender is or has been—

- (a) sentenced to a term of imprisonment, or
- (b) admitted to a hospital.

59ZK An offence under section 42 of that Act (sexual abuse of trust) where (either or both)—

- (a) the offender is 20 or over,

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(b) the condition set out in section 43(6) of that Act is fulfilled.

59ZL An offence under section 46 of that Act (sexual abuse of trust of a mentally disordered person).”, and

(d) in paragraph 60, for the words “59C” there is substituted “ 59ZL ”.

*The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)*

6 In section 326(4)(c) of the Mental Health (Care and Treatment) (Scotland) Act 2003, for “310 or 313(5)” there is substituted “ or 310 ”.

*The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)*

7 In section 1(5) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, for the words from “Subsections” to “(c.39)” substitute “ Subsection (7) of section 55 of the Sexual Offences (Scotland) Act 2009 (asp 9) ”.

SCHEDULE 6

*(introduced by section 61)*

REPEALS

| <i>Enactment</i>  | <i>Extent of repeal</i>   |
|---|---|
| Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)        | Sections 3, 5 and 6.<br>Section 7(2) and (3).<br>Section 13(1) to (8A), (10) and (11).<br>Sections 14, 16A and 16B. |
| Criminal Procedure (Scotland) Act 1995 (c. 46)                  | In section 210A(10), in the definition of “sexual offence”, paragraph (vii).  |
| Crime and Punishment (Scotland) Act 1997 (c. 48)                | In Schedule 1, paragraph 18(3).   |
| Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40)    | In Schedule 1, paragraph 8.   |
| Sexual Offences (Amendment) Act 2000 (c. 44)                    | The whole Act.  |
| Regulation of Care (Scotland) Act 2001 (asp 8)                  | In schedule 3, paragraph 25.  |
| Convention Rights (Compliance) (Scotland) Act 2001 (asp 7)      | In section 10, paragraph (b) and the word “and” immediately before that paragraph.                                  |
| Sexual Offences Act 2003 (c. 42)                                | Section 142(5).<br>In Schedule 3, paragraph 42.<br>In Schedule 6, paragraph 33.                                     |
| Criminal Justice (Scotland) Act 2003 (asp 7)                    | Section 19(2)(c).   |
| Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) | Sections 311 to 313 and 319.  |



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Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)      In the schedule, paragraph 1.

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