
Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, Paragraph 2. (See end of Document for details)

SCHEDULE 5 MINOR AND CONSEQUENTIAL AMENDMENTS

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

- 2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (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 - (ii) the word “and” which immediately follows paragraph (h) is repealed, and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),

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- (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),
- (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,

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- (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 “ , 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),

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- (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),
- (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),

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- (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),
- (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

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- (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—
- “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).”.

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