

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- (ii) the word “and” which immediately follows paragraph (h) is repealed, and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),
- (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 “, 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

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- (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),
 - (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),

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- (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),
 - (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),

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- (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—
 - “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.

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- 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).”.