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*Changes to legislation: There are currently no known outstanding effects for the Sexual Offences (Scotland) Act 2009, SCHEDULE 5. (See end of Document for details)*

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## 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 ”.
- (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.”

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- (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.
  - (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),

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- (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),
- (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),

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- (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
  - (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)

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- (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),
  - (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),

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- (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),
- (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),

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- (xxxix) 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.
    - 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—

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- “(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;
- (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;



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- (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;
- (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—

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- (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).
- 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.

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- 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
    - (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.

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- 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,
  - (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) ”.

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