



The Scottish Parliament
Pàrlamaid na h-Alba

HEALTH AND SPORT COMMITTEE

AGENDA

29th Meeting, 2020 (Session 5)

Tuesday 10 November 2020

The Committee will meet at 9.00 am in a virtual meeting to be broadcast on www.scottishparliament.tv.

1. **Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill:**
The Committee will take evidence on the Bill at Stage 1 from—

Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing, Isabel Hinds, Governance and Finance Accountant, Directorate of Health Finance, and Julie McKinney, Head of Internal Financial Performance, Directorate of Health Finance, Scottish Government;

and then from—

Stuart McMillan, Member in charge of the Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill, Andrew Mylne, Head of Non-Government Bills Unit, Kenny Htet-Khin, Solicitor, and Seonaid Knox, Researcher for Stuart McMillan MSP, Scottish Parliament.

2. **Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill:**
The Committee will consider the Bill at Stage 2.
3. **Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill (in private):** The Committee will consider the evidence heard earlier in the meeting.
4. **Social Care Inquiry (in private):** The Committee will consider its approach to the inquiry.

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The papers for this meeting are as follows—

Agenda item 1

PRIVATE PAPER HS/S5/20/29/1 (P)

Agenda item 2

Forensic Medical Services (Victims of Sexual Offences)
(Scotland) Bill as introduced HS/S5/20/29/2

Forensic Medical Services (Victims of Sexual Offences)
(Scotland) Bill Marshalled List of Amendments for Stage 2 HS/S5/20/29/3

Forensic Medical Services (Victims of Sexual Offences)
(Scotland) Bill Groupings of Amendments for Stage 2 HS/S5/20/29/4

Agenda item 4

PRIVATE PAPER HS/S5/20/29/5 (P)

PRIVATE PAPER HS/S5/20/29/6 (P)

**Forensic Medical Services (Victims of Sexual Offences)
 (Scotland) Bill**
 [AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 60-EN), a Financial Memorandum (SP Bill 60-FM), a Policy
Memorandum (SP Bill 60-PM) and statements on legislative competence (SP Bill 60-LC).**

Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to confer on health boards functions relating to the provision of forensic medical services to victims of sexual offences; and for connected purposes.

Duty to provide certain forensic medical services

1 Provision of certain forensic medical services

- 5 (1) Every health board must, in respect of its area—
- (a) provide, or secure the provision of, the examination service (see section 2), and
 - (b) provide the retention service (see section 6).
- (2) A health board may secure the provision of the examination service in respect of its area by another person (whether through the making of contractual arrangements with the person or otherwise) only to the extent permitted by the Scottish Ministers.
- 10 (3) Subsection (2) does not apply where the other person is another health board (but see section 11).

The examination service

2 The examination service

- 15 (1) The examination service consists of providing forensic medical examinations to persons falling within subsection (2) (but see section 3).
- (2) A person falls within this subsection if—
- (a) the person is referred by a constable to the health board for a forensic medical examination in connection with an incident in which—
- 20 (i) a sexual offence is alleged to have been committed against the person, or
- (ii) the person is alleged to have been the subject of harmful sexual behaviour by a child under the age of criminal responsibility, or
- (b) the person is aged 16 or over and requests such an examination in connection with an incident reported to the health board by the person as being of the type
- 25 mentioned in paragraph (a).

- (3) A forensic medical examination is a medical examination carried out for purposes including the collection of evidence for use in connection with—
- (a) any investigation of the incident which gave rise to the need for the examination, or
 - (b) any proceedings in relation to the incident.
- (4) In subsection (2)—
- “sexual offence” means an offence which involves—
- (a) an element of physical, sexual contact, or
 - (b) the ejaculation of semen, or the emission of urine or saliva sexually, onto a person,
- “harmful sexual behaviour” means behaviour which—
- (a) causes or risks causing harm (whether physical or not) to another person, and
 - (b) involves—
 - (i) an element of physical, sexual contact, or
 - (ii) the ejaculation of semen, or the emission of urine or saliva sexually, onto a person.

3 Limitation on provision of forensic medical examinations

Nothing in this Act requires—

- (a) a forensic medical examination to be carried out where a professional judgement is made that the examination should not be carried out, or
- (b) a particular action to be carried out as part of a forensic medical examination where a professional judgement is made that the action should not be carried out.

4 Information to be provided before examination

- (1) This section applies where a forensic medical examination is to be carried out by virtue of section 2.
- (2) Before the examination starts—
- (a) the person who is to undergo the examination must, so far as reasonably practicable, be provided with the information mentioned in subsection (3), and
 - (b) the information must, so far as reasonably practicable, be explained to the person.
- (3) The information is—
- (a) information about—
 - (i) the circumstances in which any evidence collected during the examination may be transferred to a constable, and
 - (ii) the purposes for which such evidence may then be used, and

(b) where the forensic medical examination is carried out by virtue of section 2(2)(b), information about—

(i) the person's rights to request the return of certain items under section 7 and to request the destruction of evidence under section 8(1)(a), and

(ii) the destruction of evidence under section 8(1)(b).

(4) Failure to comply with subsection (2) does not by itself render any evidence collected during the examination inadmissible in any proceedings in relation to the incident which gave rise to the need for the examination.

5 Health care needs

(1) A health board must take such steps as are reasonably practicable to ensure that, where a person is referred for or requests a forensic medical examination as mentioned in section 2(2), any health care needs of the person arising from the incident which gave rise to the need for the examination are identified and addressed by the health board.

(2) Accordingly, a health board must provide the examination service in conjunction with such other services provided by the health board under or by virtue of the National Health Service (Scotland) Act 1978 as are relevant to the identification and addressing of such health care needs.

(3) Subsection (1) applies even where the person does not proceed to undergo a forensic medical examination.

(4) For the purposes of this section, the ways in which health care needs can be addressed include the person being referred to other services provided by the health board.

The retention service

6 The retention service

(1) The retention service consists of storing, for the purpose mentioned in subsection (2), evidence which—

(a) was collected during a forensic medical examination carried out by virtue of section 2, and

(b) has not been transferred to a constable under section 9.

(2) The purpose is the preservation of the evidence for use in connection with—

(a) any investigation of the incident which gave rise to the need for the examination, or

(b) any proceedings in relation to the incident.

7 Return of certain items of evidence

(1) This section applies where evidence collected during a forensic medical examination carried out by virtue of section 2(2)(b) and stored by a health board under section 6 comprises or includes an item which—

(a) was worn or otherwise present during the incident which gave rise to the need for the examination, and

(b) belongs to the person who underwent the examination.

- (2) The person mentioned in subsection (1)(b) may request that the item be returned to the person.
- (3) The health board must comply with the request as soon as reasonably practicable.

8 Destruction of evidence

- 5 (1) A health board must ensure that any evidence collected during a forensic medical examination carried out by virtue of section 2(2)(b) and stored by the health board under section 6 is destroyed as soon as reasonably practicable after—
 - (a) the making, by the person who underwent the examination, of a request that the evidence be destroyed, or
 - 10 (b) if no such request is made, the expiry of such period as may be specified by the Scottish Ministers in regulations.
- (2) Regulations under subsection (1)(b) may make—
 - (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving
 - 15 provision.
- (3) Regulations under subsection (1)(b) are subject to the affirmative procedure.

Transfer of evidence

9 Transfer of evidence to police

- (1) This section applies—
 - 20 (a) where a forensic medical examination has been carried out following a person being referred for such an examination as mentioned in section 2(2)(a), or
 - (b) where—
 - (i) a forensic medical examination has been carried out following a person requesting such an examination as mentioned in section 2(2)(b), and
 - 25 (ii) the person has subsequently reported the incident in connection with which the examination took place to a constable.
- (2) A constable may request the transfer to the constable of any evidence collected during the examination which is required for the purposes of—
 - (a) investigation of the incident which gave rise to the need for the examination, or
 - 30 (b) proceedings in relation to the incident.
- (3) The health board must comply with the request as soon as reasonably practicable.

Section 1 functions: conferral of related functions and co-operation

10 Power to confer functions on other bodies

- 35 (1) The Scottish Ministers may by regulations confer on the bodies listed in subsection (2) functions relating to the services mentioned in section 1.
- (2) The bodies are—
 - (a) a special health board,

(b) the Agency,

(c) HIS.

(3) Regulations under subsection (1) may—

(a) modify any enactment (including this Act),

(b) make different provision for different purposes,

(c) make incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) Regulations under subsection (1)—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,

(b) otherwise, are subject to the negative procedure.

11 Co-operation

(1) Health boards must co-operate with one another, and with the bodies listed in subsection (2), in relation to the planning and provision of the services mentioned in section 1, with a view to securing, across Scotland, adequate provision and continuous improvement in the delivery of those services.

(2) The bodies are—

(a) any special health board with functions relating to the provision of those services,

(b) the Agency,

(c) HIS.

(3) Subsections (2) to (4) of section 12J of the 1978 Act apply for the purposes of subsection (1) as they apply for the purposes of subsection (1) of that section, subject to the modification that subsection (3)(a) has effect as if for “or the Agency” there was substituted “, the Agency or HIS”.

General provisions

12 Minor and consequential modifications

The schedule makes minor and consequential modifications of other enactments.

13 Interpretation

In this Act—

“1978 Act” means the National Health Service (Scotland) Act 1978,

“the Agency” means the Common Services Agency for the Scottish Health Service,

“constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“evidence” includes—

(a) notes of, and other records (for example, images) created during or in connection with, a medical examination of a person,

- (b) samples (for example, samples of blood, semen, urine or hair and samples taken by swabbing a person’s genitals or bodily orifices),
- (c) items worn or otherwise present during the incident which gave rise to the need for the examination,

“forensic medical examination” has the meaning given by section 2(3),

“health board” means a board constituted under section 2(1)(a) of the 1978 Act,

“HIS” means Healthcare Improvement Scotland,

“investigation” means—

- (a) a criminal investigation, or
- (b) a police investigation of behaviour by a child under the age of criminal responsibility,

“proceedings” means—

- (a) criminal proceedings, or
- (b) proceedings under the Children’s Hearings (Scotland) Act 2011,

“special health board” means a board constituted under section 2(1)(b) of the 1978 Act.

14 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

15 Commencement

- (1) This section and sections 13, 14 and 16 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
 - (a) make transitional, transitory or saving provision,
 - (b) make—
 - (i) different provision for different purposes,
 - (ii) different provision for different areas.

16 Short title

The short title of this Act is the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020.

SCHEDULE
(introduced by section 12)

MINOR AND CONSEQUENTIAL MODIFICATIONS

PART 1

THE 1978 ACT AND ORDERS MADE UNDER IT

The 1978 Act

- 1 (1) The 1978 Act is amended as follows.
- (2) In section 36(1) (accommodation and services), in paragraph (b), after “under this Act”
 10 insert “or under the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020”.
- (3) In section 79 (purchase of land and moveable property)—
- (a) in subsection (1), after “under this Act” where it first occurs, insert “or under the
 2020 Act”,
- (b) in subsection (1A), after “under this Act” insert “or under the 2020 Act”,
- 15 (c) after subsection (4), insert—
- “(5) In this section, the “2020 Act” means the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020.”.

The Functions of Health Boards (Scotland) Order 1991 (S.I. 1991/570)

- 2 (1) The Functions of Health Boards (Scotland) Order 1991 is amended as follows.
- 20 (2) In article 4(c) (duty of Scottish Ministers under section 36 of the 1978 Act to be exercised by health boards), after “under the Act” insert “or under the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020”.

PART 2

OTHER ENACTMENTS

Patient Rights (Scotland) Act 2011

- 25 3 (1) The Patient Rights (Scotland) Act 2011 is amended as follows.
- (2) In section 3 (patient rights)—
- (a) in subsection (2)(c), after “wellbeing” insert “(including, where the health care
 30 being provided includes a service mentioned in section 1 of the 2020 Act, decisions mentioned in subsection (3A))”,
- (b) after subsection (3), insert—
- “(3A) The decisions referred to in subsection (2)(c) are—
- 35 (a) a decision about whether to undergo a forensic medical examination (and whether any such examination should take place without the incident in connection with which the examination would be carried out having been reported to a constable),

(b) a decision about whether to make a request under section 8(1)(a) of the 2020 Act.”.

(3) In section 18 (patient advice and support service), after subsection (6), insert—

“⁽⁷⁾ In this section and section 19, references to the health service include reference to the services provided under section 1 of the 2020 Act.”.

(4) In section 23(1) (interpretation)—

(a) after the definition of “the 1978 Act”, insert—

““the 2020 Act” means the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020;”,

(b) in the definition of “health care”, after “health service” insert “or under section 1 of the 2020 Act”,

(c) in the definition of “health service function”—

(i) the words from “any” to the end become paragraph (a),

(ii) after that paragraph, insert—

“(b) the functions conferred by section 1 of the 2020 Act;”,

(d) after the definition of “health service function”, insert—

““patient” includes (except in sections 8 to 13) a person in relation to whom a Health Board is exercising the functions conferred by section 1 of the 2020 Act;”.

(5) In the schedule (health care principles)—

(a) in paragraph 7—

(i) the existing words become sub-paragraph (1),

(ii) after that sub-paragraph, insert—

“(2) Sub-paragraph (1) does not apply in relation to the exercise of functions conferred by section 1 of the 2020 Act.”,

(b) after paragraph 7, insert—

“7A(1) Regard is had to the importance of providing health care in a way that is trauma-informed.

(2) Sub-paragraph (1) applies only in relation to the exercise of functions conferred by section 1 of the 2020 Act.”,

(c) in paragraph 12, after “wellbeing” insert “(including, where the health care being provided includes a service mentioned in section 1 of the 2020 Act, decisions mentioned in section 3(3A))”,

(d) in paragraph 15, after “wellbeing” insert “or, where the health care being provided includes a service mentioned in section 1 of the 2020 Act, about matters relevant to the provision of that service”.

Victims and Witnesses (Scotland) Act 2014

4 (1) The Victims and Witnesses (Scotland) Act 2014 is amended as follows.

(2) In section 3C (victims' right to receive information), after subsection (7), insert—

“(8) In this section, reference to a competent authority includes reference to a health board carrying out the functions conferred by section 1 of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020.”.

5 (3) In section 3D (referral to providers of victim support services), after subsection (4), insert—

“(4A) In this section, reference to a competent authority includes reference to a health board carrying out the functions conferred by section 1 of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020.”.

10 (4) In section 9 (requests as to medical examiner in relation to certain medical examinations)—

(a) for subsection (1), substitute—

“(1) This section applies where a forensic medical examination is to be carried out by virtue of section 2 of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020.”,

15

(b) in subsection (2)—

(i) the words “in relation to the complaint” are repealed,

(ii) for the words from “in pursuance of” to “the person”, where it second occurs, substitute “, the person must be given”,

20

(c) in subsection (3)—

(i) the words “the constable must ensure that” are repealed,

(ii) after “is”, where it second occurs, insert “to be”.

Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to confer on health boards functions relating to the provision of forensic medical services to victims of sexual offences; and for connected purposes.

Introduced by: Jeane Freeman
Supported by: Humza Yousaf
On: 26 November 2019
Bill type: Government Bill

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Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 12
Sections 13 to 16

Schedule
Long Title

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

Section 1

Jeane Freeman

- 1 In section 1, page 1, line 6, leave out <, or secure the provision of,>

Jeane Freeman

- 2 In section 1, page 1, line 8, leave out subsections (2) and (3)

Jeane Freeman

- 3 In section 1, page 1, line 12, at end insert—

<() A health board's—

- (a) examination service is to be available to any person falling within section 2(2), regardless of the person's place of residence,
- (b) retention service is to be available in relation to any person to whom the health board provides the examination service.>

Section 2

Margaret Mitchell

- 30 In section 2, page 1, line 23, leave out <16> and insert <13>

Jeane Freeman

- 4 In section 2, page 2, line 1, before second <medical> insert <physical>

Jeane Freeman

- 5 In section 2, page 2, line 5, at end insert—

<(3A) The Scottish Ministers may by regulations substitute a different age for the age for the time being specified in subsection (2)(b).>

- (3B) The age substituted for the age for the time being specified in subsection (2)(b) in regulations under subsection (3A) must be—
 - (a) no lower than 13, and
 - (b) no higher than 18.
- (3C) Regulations under subsection (3A) may make transitional, transitory or saving provision.
- (3D) Regulations under subsection (3A) are subject to the affirmative procedure.>

Jeane Freeman

- 6 In section 2, page 2, line 7, after <offence"> insert—
 - <(a)>

Jeane Freeman

- 7 In section 2, page 2, line 10, at end insert <, and
 - (b) includes an act done outside Scotland which, if done in Scotland, would constitute such an offence,>

Jeane Freeman

- 8 In section 2, page 2, line 11, after second <behaviour> insert <(in Scotland or elsewhere)>

Jeane Freeman

- 9 In section 2, page 2, line 17, at end insert <, the reference to the age of criminal responsibility is a reference to the age of criminal responsibility in Scotland (as specified in section 41 of the Criminal Procedure (Scotland) Act 1995).>

After section 2

Margaret Mitchell

- 31 After section 2, insert—
 - <Support in relation to the examination service
 - (1) The Scottish Ministers must make such arrangements as they consider reasonable to provide support and assistance to a relevant child.
 - (2) Arrangements under subsection (1) must include—
 - (a) assigning to a relevant child an appropriate adult to—
 - (i) coordinate any support and assistance to a relevant child provided as a result of the reported incident which gave rise to the need for the examination,
 - (ii) explain any steps that will be taken as a result of the reported incident, including any child protection procedures that will be followed,

- (iii) explain what support is available to the relevant child in respect of the reported incident and any process that results from the incident being reported,
 - (b) ensuring support is available for the relevant child throughout any process that follows as a result of the reported incident,
 - (c) ensuring support is provided to the relevant child in facilities that provide such other support to the relevant child as is considered appropriate,
 - (d) ensuring that the forensic medical examination takes place in a setting that is appropriate for the relevant child having regard to the age and maturity of the child,
 - (e) ensuring any steps that will be taken as a result of the reported incident which gave rise to the need for the examination are taken in such a way as to require as few interviews as possible.
- (3) An appropriate adult assigned under subsection (2)(a) should—
 - (a) meet with the relevant child as soon as is reasonably practicable after the forensic medical examination is requested,
 - (b) before the forensic medical examination can begin, ensure that the relevant child has been provided with information about any child protections procedures and health procedures that will be followed,
 - (c) continue to coordinate support to the relevant child throughout any processes that follow as a result of the reported incident, including coordinating support to the relevant child in any steps taken to meet the relevant child’s health care needs as a result of the reported incident,
 - (d) have such training and experience as the Scottish Ministers consider to be appropriate.
- (4) The appropriate adult assigned under subsection (2)(a) should continue to be the same individual, as far as reasonably practicable, throughout the course of any processes that follow as a result of the reported incident.
- (5) The Scottish Ministers may by regulations make further provision to give effect to arrangements under this section.
- (6) Regulations under subsection (5) may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes,
 - (c) make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (7) Regulations under subsection (5) are subject to the affirmative procedure.
- (8) In this section “relevant child” means a person under the age of 16 who—
 - (a) is referred by a constable to a health board for a forensic medical examination by virtue of section 2(2)(a) or,
 - (b) requests a forensic medical examination by virtue of section 2(2)(b).>

After section 5

Margaret Mitchell

32 After section 5, insert—

<Guidance for health boards about child protection measures and confidentiality

- (1) The Scottish Ministers must issue guidance to health boards about the child protection measures and confidentiality requirements to be put in place in relation to supporting and assisting a relevant child within the meaning of section (*support in relation to the examination service*) (8).
- (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.
- (3) Before issuing guidance under this section, the Scottish Ministers must consult health boards.
- (4) Health boards must have regard to guidance issued under this section in exercising their functions under this Act.>

Section 7

Jeane Freeman

10 In section 7, page 3, line 38, leave out from <, and> to end of line 39

Jeane Freeman

11 In section 7, page 4, line 1, leave out <mentioned in subsection (1)(b)> and insert <who underwent the examination>

Jeane Freeman

12 In section 7, page 4, line 3, leave out <The> and insert—

<(2A) Subsection (2B) applies—

- (a) where the health board is not satisfied that the requested item belongs to the person who made the request,
 - (b) where the health board considers that the requested item should not be returned to the person on safety grounds,
 - (c) where a request under section 9(2) for the transfer of the requested item to a constable—
 - (i) was made before the making of the request under subsection (2), or
 - (ii) is made after the making of the request under subsection (2) but before the requested item is returned to the person.
- (2B) The health board must—
- (a) refuse the request, and
 - (b) except in a case mentioned in subsection (2A)(c), explain the reason for the refusal to the person who made the request as soon as reasonably practicable.
- (3) Otherwise, the>

Section 8

Jeane Freeman

- 13 In section 8, page 4, line 7, after <after> insert <whichever of the following occurs first>

Jeane Freeman

- 14 In section 8, page 4, line 8, at beginning insert <the expiry of the period of 30 days beginning with the day of>

Jeane Freeman

- 15 In section 8, page 4, line 10, leave out <if no such request is made,>

Jeane Freeman

- 16 In section 8, page 4, line 11, at end insert—
- <(1A) But the health board must ensure that evidence is not destroyed under subsection (1)—
 - (a) on the basis of a request made under paragraph (a) of that subsection if the request is withdrawn by the person who made it before the expiry of the period mentioned in that paragraph, or
 - (b) if subsection (1B) or (1C) applies.
 - (1B) This subsection applies where—
 - (a) a request was made under section 9(2) before the expiry of the period mentioned in subsection (1)(a) or, as the case may be, (b) for evidence to be transferred to a constable, and
 - (b) at the time the period expires, the request has not been complied with.
 - (1C) This subsection applies where a request is made under section 9(2) for evidence to be transferred to a constable—
 - (a) after the expiry of a period mentioned in subsection (1), and
 - (b) before the evidence is destroyed.
 - (1D) But subsection (1C) does not apply where the request is made at a time when it is not reasonably practicable to stop the destruction of the evidence.>

Section 9

Jeane Freeman

- 17 In section 9, page 4, line 28, after <examination> insert <and stored or otherwise held by a health board>

After section 9

Jeane Freeman

- 18 After section 9, insert—

<Provision of examination and retention services: health care principles

Trauma-informed care

- (1) The Patient Rights (Scotland) Act 2011 is amended as follows (see also paragraph 3 of the schedule).
- (2) In the schedule (health care principles), after paragraph 7, insert—
 - “7A(1) Regard is to be had to the importance of providing health care in a way that seeks to avoid re-traumatisation and is otherwise trauma-informed.
 - (2) Sub-paragraph (1) applies only in relation to the exercise of functions conferred by section 1 of the 2020 Act.”.>

After section 11

Jeane Freeman

- 19** After section 11, insert—

<Reports

Report on operation of Act

- (1) Public Health Scotland must—
 - (a) as soon as reasonably practicable after the end of each reporting period, prepare a report on the operation of this Act during the reporting period, and
 - (b) no later than 2 months after the end of the reporting period to which the report relates—
 - (i) lay the report before the Scottish Parliament, and
 - (ii) publish the report in such ways as Public Health Scotland considers appropriate.
- (2) In this section, “reporting period” means—
 - (a) the period beginning with the day on which section 1 comes into force and ending on 31 March in the following year,
 - (b) each of the subsequent 9 periods of one year ending on 31 March.>

After section 12

Jeane Freeman

- 20** After section 12, insert—

<Meaning of references to “evidence”

- (1) References in this Act (however expressed) to evidence collected during a forensic medical examination include reference to—
 - (a) images created,
 - (b) samples (for example, samples of blood, semen, urine, or hair and samples taken by swabbing a person’s genitals or bodily orifices) collected,
 - (c) any notes or other records (including notes or records about matters other than the physical condition of the person undergoing the examination) created,

- (d) items worn or otherwise present during the incident which gave rise to the need for such an examination and collected, during or in connection with the examination.
- (2) But such references do not include reference to anything collected or created during or in connection with the examination if the thing was collected or created for use other than use as is mentioned in section 2(3) (for example, for use in identifying, recording and addressing the health care needs of the person undergoing the examination).
- (3) Anything created or collected in anticipation of a forensic medical examination being carried out under this Act is to be regarded as having been created or collected in connection with such an examination whether or not the examination is carried out.
- (4) References in this section to images, notes and other records include reference to those things in all forms that the things exist (for example, digital or physical form).>

Schedule

Jeane Freeman

- 21** In the schedule, page 8, line 9, leave out from <Forensic> to end of line 10 and insert <2020 Act”.>

Jeane Freeman

- 22** In the schedule, page 8, line 10, at end insert—
- <() In section 76(1) (inquiries), after “this Act” insert “or under the 2020 Act”.
 - () In section 77(1) (default powers), after “this Act” insert “or by or under the 2020 Act”.
 - () In section 78 (emergency powers)—
 - (a) after “this Act” where it first occurs, insert “or under the 2020 Act”,
 - (b) after “this Act” where it second occurs, insert “, or by or under the 2020 Act,”.
 - () In section 78A (powers in case of service failures)—
 - (a) in subsection (1)(a), after “this Act” insert “, or under or by virtue of the 2020 Act,”,
 - (b) in subsection (2), after “this Act” insert “or, as the case may be, under or by virtue of the 2020 Act”.>

Jeane Freeman

- 23** In the schedule, page 8, leave out lines 15 to 17

Jeane Freeman

- 24** In the schedule, page 8, line 17, at end insert—
- <() In section 108(1) (interpretation), before the definition of “the Agency” insert—
 - ““the 2020 Act” means the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020;”.>

Jeane Freeman

25 In the schedule, page 8, line 19, at end insert—

<() In article 1(2) (interpretation), after the definition of “the Act” insert—

““the 2020 Act” means the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020;”.

() In article 3 (duty of health boards to exercise functions)—

(a) in paragraph (1), for the words “those persons for whose health care each Health Board is responsible” substitute “the persons mentioned in paragraph (1A)”, and

(b) after paragraph (1) insert—

“(1A) The persons referred to in paragraph (1) are—

(a) in so far as a function specified in article 4 relates to functions conferred on the Health Board by the 2020 Act, those persons in relation to whom the functions conferred by that Act are exercisable by each Health Board;

(b) otherwise, those persons for whose health care each Health Board is responsible.”.>

Jeane Freeman

26 In the schedule, page 8, line 21, leave out from <Forensic> to end of line 22 and insert <2020 Act”.>

Jeane Freeman

27 In the schedule, page 8, line 22, at end insert—

<*The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000*

(1) The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000 (S.S.I. 2000/54) are amended as follows.

(2) In regulation 1(2) (interpretation), in the definition of “relevant function”, after subparagraph (i) of paragraph (a) insert—

“(ia) a function conferred by the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020;”.>

Jeane Freeman

28 In the schedule, page 9, leave out lines 26 to 30

Section 13

Jeane Freeman

29 In section 13, page 5, line 35, leave out from beginning to end of line 4 on page 6

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Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Persons by and to whom services are provided

1, 2, 3, 25, 26

Self-referral age, and support for under 16s undergoing forensic medical examination

30, 5, 31, 32

Key definitions: forensic medical examination and evidence

4, 20, 29

Incidents outside Scotland

6, 7, 8, 9

Return, destruction and transfer of evidence

10, 11, 12, 13, 14, 15, 16, 17

Trauma-informed care

18, 28

Report on operation of Act

19

Minor and consequential modifications

21, 22, 23, 24, 27

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Amendments in debating order

Persons by and to whom services are provided

Jeane Freeman

- 1 In section 1, page 1, line 6, leave out <, or secure the provision of,>

Jeane Freeman

- 2 In section 1, page 1, line 8, leave out subsections (2) and (3)

Jeane Freeman

- 3 In section 1, page 1, line 12, at end insert—

<() A health board’s—

- (a) examination service is to be available to any person falling within section 2(2), regardless of the person’s place of residence,
- (b) retention service is to be available in relation to any person to whom the health board provides the examination service.>

Jeane Freeman

- 25 In the schedule, page 8, line 19, at end insert—

<() In article 1(2) (interpretation), after the definition of “the Act” insert—

““the 2020 Act” means the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020;”.

() In article 3 (duty of health boards to exercise functions)—

- (a) in paragraph (1), for the words “those persons for whose health care each Health Board is responsible” substitute “the persons mentioned in paragraph (1A)”, and
- (b) after paragraph (1) insert—
“(1A) The persons referred to in paragraph (1) are—

- (a) in so far as a function specified in article 4 relates to functions conferred on the Health Board by the 2020 Act, those persons in relation to whom the functions conferred by that Act are exercisable by each Health Board;
- (b) otherwise, those persons for whose health care each Health Board is responsible.”.>

Jeane Freeman

- 26 In the schedule, page 8, line 21, leave out from <Forensic> to end of line 22 and insert <2020 Act”.>

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Self-referral age, and support for under 16s undergoing forensic medical examination

Margaret Mitchell

- 30** In section 2, page 1, line 23, leave out <16> and insert <13>

Jeane Freeman

- 5** In section 2, page 2, line 5, at end insert—

<(3A) The Scottish Ministers may by regulations substitute a different age for the age for the time being specified in subsection (2)(b).

(3B) The age substituted for the age for the time being specified in subsection (2)(b) in regulations under subsection (3A) must be—

- (a) no lower than 13, and
- (b) no higher than 18.

(3C) Regulations under subsection (3A) may make transitional, transitory or saving provision.

(3D) Regulations under subsection (3A) are subject to the affirmative procedure.>

Margaret Mitchell

- 31** After section 2, insert—

<Support in relation to the examination service

(1) The Scottish Ministers must make such arrangements as they consider reasonable to provide support and assistance to a relevant child.

(2) Arrangements under subsection (1) must include—

(a) assigning to a relevant child an appropriate adult to—

- (i) coordinate any support and assistance to a relevant child provided as a result of the reported incident which gave rise to the need for the examination,
- (ii) explain any steps that will be taken as a result of the reported incident, including any child protection procedures that will be followed,
- (iii) explain what support is available to the relevant child in respect of the reported incident and any process that results from the incident being reported,

(b) ensuring support is available for the relevant child throughout any process that follows as a result of the reported incident,

(c) ensuring support is provided to the relevant child in facilities that provide such other support to the relevant child as is considered appropriate,

(d) ensuring that the forensic medical examination takes place in a setting that is appropriate for the relevant child having regard to the age and maturity of the child,

(e) ensuring any steps that will be taken as a result of the reported incident which gave rise to the need for the examination are taken in such a way as to require as few interviews as possible.

(3) An appropriate adult assigned under subsection (2)(a) should—

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- (a) meet with the relevant child as soon as is reasonably practicable after the forensic medical examination is requested,
 - (b) before the forensic medical examination can begin, ensure that the relevant child has been provided with information about any child protection procedures and health procedures that will be followed,
 - (c) continue to coordinate support to the relevant child throughout any processes that follow as a result of the reported incident, including coordinating support to the relevant child in any steps taken to meet the relevant child's health care needs as a result of the reported incident,
 - (d) have such training and experience as the Scottish Ministers consider to be appropriate.
- (4) The appropriate adult assigned under subsection (2)(a) should continue to be the same individual, as far as reasonably practicable, throughout the course of any processes that follow as a result of the reported incident.
- (5) The Scottish Ministers may by regulations make further provision to give effect to arrangements under this section.
- (6) Regulations under subsection (5) may—
- (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes,
 - (c) make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (7) Regulations under subsection (5) are subject to the affirmative procedure.
- (8) In this section “relevant child” means a person under the age of 16 who—
- (a) is referred by a constable to a health board for a forensic medical examination by virtue of section 2(2)(a) or,
 - (b) requests a forensic medical examination by virtue of section 2(2)(b).>

Margaret Mitchell

32 After section 5, insert—

<Guidance for health boards about child protection measures and confidentiality

- (1) The Scottish Ministers must issue guidance to health boards about the child protection measures and confidentiality requirements to be put in place in relation to supporting and assisting a relevant child within the meaning of section (*support in relation to the examination service*) (8).
- (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.
- (3) Before issuing guidance under this section, the Scottish Ministers must consult health boards.
- (4) Health boards must have regard to guidance issued under this section in exercising their functions under this Act.>

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Key definitions: forensic medical examination and evidence

Jeane Freeman

- 4 In section 2, page 2, line 1, before second <medical> insert <physical>

Jeane Freeman

- 20 After section 12, insert—

<Meaning of references to “evidence”

- (1) References in this Act (however expressed) to evidence collected during a forensic medical examination include reference to—
 - (a) images created,
 - (b) samples (for example, samples of blood, semen, urine, or hair and samples taken by swabbing a person’s genitals or bodily orifices) collected,
 - (c) any notes or other records (including notes or records about matters other than the physical condition of the person undergoing the examination) created,
 - (d) items worn or otherwise present during the incident which gave rise to the need for such an examination and collected,during or in connection with the examination.
- (2) But such references do not include reference to anything collected or created during or in connection with the examination if the thing was collected or created for use other than use as is mentioned in section 2(3) (for example, for use in identifying, recording and addressing the health care needs of the person undergoing the examination).
- (3) Anything created or collected in anticipation of a forensic medical examination being carried out under this Act is to be regarded as having been created or collected in connection with such an examination whether or not the examination is carried out.
- (4) References in this section to images, notes and other records include reference to those things in all forms that the things exist (for example, digital or physical form).>

Jeane Freeman

- 29 In section 13, page 5, line 35, leave out from beginning to end of line 4 on page 6

Incidents outside Scotland

Jeane Freeman

- 6 In section 2, page 2, line 7, after <offence”> insert—
<(a)>

Jeane Freeman

- 7 In section 2, page 2, line 10, at end insert <, and
(b) includes an act done outside Scotland which, if done in Scotland, would constitute such an offence,>

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Jeane Freeman

- 8 In section 2, page 2, line 11, after second <behaviour> insert <(in Scotland or elsewhere)>

Jeane Freeman

- 9 In section 2, page 2, line 17, at end insert <,
the reference to the age of criminal responsibility is a reference to the age of criminal responsibility in Scotland (as specified in section 41 of the Criminal Procedure (Scotland) Act 1995).>

Return, destruction and transfer of evidence

Jeane Freeman

- 10 In section 7, page 3, line 38, leave out from <, and> to end of line 39

Jeane Freeman

- 11 In section 7, page 4, line 1, leave out <mentioned in subsection (1)(b)> and insert <who underwent the examination>

Jeane Freeman

- 12 In section 7, page 4, line 3, leave out <The> and insert—
<(2A) Subsection (2B) applies—
(a) where the health board is not satisfied that the requested item belongs to the person who made the request,
(b) where the health board considers that the requested item should not be returned to the person on safety grounds,
(c) where a request under section 9(2) for the transfer of the requested item to a constable—
(i) was made before the making of the request under subsection (2), or
(ii) is made after the making of the request under subsection (2) but before the requested item is returned to the person.
(2B) The health board must—
(a) refuse the request, and
(b) except in a case mentioned in subsection (2A)(c), explain the reason for the refusal to the person who made the request as soon as reasonably practicable.
(3) Otherwise, the>

Jeane Freeman

- 13 In section 8, page 4, line 7, after <after> insert <whichever of the following occurs first>

Jeane Freeman

- 14 In section 8, page 4, line 8, at beginning insert <the expiry of the period of 30 days beginning with the day of>

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Jeane Freeman

- 15 In section 8, page 4, line 10, leave out <if no such request is made,>

Jeane Freeman

- 16 In section 8, page 4, line 11, at end insert—

<(1A) But the health board must ensure that evidence is not destroyed under subsection (1)—

(a) on the basis of a request made under paragraph (a) of that subsection if the request is withdrawn by the person who made it before the expiry of the period mentioned in that paragraph, or

(b) if subsection (1B) or (1C) applies.

(1B) This subsection applies where—

(a) a request was made under section 9(2) before the expiry of the period mentioned in subsection (1)(a) or, as the case may be, (b) for evidence to be transferred to a constable, and

(b) at the time the period expires, the request has not been complied with.

(1C) This subsection applies where a request is made under section 9(2) for evidence to be transferred to a constable—

(a) after the expiry of a period mentioned in subsection (1), and

(b) before the evidence is destroyed.

(1D) But subsection (1C) does not apply where the request is made at a time when it is not reasonably practicable to stop the destruction of the evidence.>

Jeane Freeman

- 17 In section 9, page 4, line 28, after <examination> insert <and stored or otherwise held by a health board>

Trauma-informed care

Jeane Freeman

- 18 After section 9, insert—

<Provision of examination and retention services: health care principles

Trauma-informed care

(1) The Patient Rights (Scotland) Act 2011 is amended as follows (see also paragraph 3 of the schedule).

(2) In the schedule (health care principles), after paragraph 7, insert—

“7A(1) Regard is to be had to the importance of providing health care in a way that seeks to avoid re-traumatisation and is otherwise trauma-informed.

(2) Sub-paragraph (1) applies only in relation to the exercise of functions conferred by section 1 of the 2020 Act.”>

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Jeane Freeman

- 28 In the schedule, page 9, leave out lines 26 to 30

Report on operation of Act

Jeane Freeman

- 19 After section 11, insert—

<Reports

Report on operation of Act

- (1) Public Health Scotland must—
 - (a) as soon as reasonably practicable after the end of each reporting period, prepare a report on the operation of this Act during the reporting period, and
 - (b) no later than 2 months after the end of the reporting period to which the report relates—
 - (i) lay the report before the Scottish Parliament, and
 - (ii) publish the report in such ways as Public Health Scotland considers appropriate.
- (2) In this section, “reporting period” means—
 - (a) the period beginning with the day on which section 1 comes into force and ending on 31 March in the following year,
 - (b) each of the subsequent 9 periods of one year ending on 31 March.>

Minor and consequential modifications

Jeane Freeman

- 21 In the schedule, page 8, line 9, leave out from <Forensic> to end of line 10 and insert <2020 Act”.>

Jeane Freeman

- 22 In the schedule, page 8, line 10, at end insert—

- <() In section 76(1) (inquiries), after “this Act” insert “or under the 2020 Act”.
- () In section 77(1) (default powers), after “this Act” insert “or by or under the 2020 Act”.
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 - (a) after “this Act” where it first occurs, insert “or under the 2020 Act”,
 - (b) after “this Act” where it second occurs, insert “, or by or under the 2020 Act,”.
- () In section 78A (powers in case of service failures)—
 - (a) in subsection (1)(a), after “this Act” insert “, or under or by virtue of the 2020 Act,”.

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- (b) in subsection (2), after “this Act” insert “or, as the case may be, under or by virtue of the 2020 Act”.>

Jeane Freeman

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Jeane Freeman

- 24 In the schedule, page 8, line 17, at end insert—

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“(ia) a function conferred by the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020;”.>

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