

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

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## 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”.
- ( ) 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,”,



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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**

- 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**

- 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;”.>



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