

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.”,

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(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”.

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