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

[As Amended at Stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (which was introduced in the Scottish Parliament on 26 November 2019) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill: An Overview

4. The Bill imposes duties on health boards to provide certain forensic medical services to victims of sexual offences (and harmful sexual behaviour by children under the age of criminal responsibility).

5. Forensic medical examinations of such victims are currently carried out by health boards under a memorandum of understanding agreed between the Police Scotland and health boards.[1] This allows Police

[1] https://www.policecare.scot.nhs.uk/wp-content/uploads/2015/03/Police-Healthcare-Forensic-Medical-Services-MoU-Final-v1.pdf. The memorandum of understanding

Scotland to refer victims to health boards for forensic medical examination. The carrying out of such examinations by health board staff facilitates the simultaneous addressing of any health care needs of the victim arising from the incident in connection with which the examination is required. The Bill places the current arrangements on a statutory footing.

6. As well as providing examinations in these "police-referral" cases, some health boards[2] provide forensic medical examinations on a "self-referral" basis. This means that victims can undergo a forensic medical examination without first having reported the incident to police. Any evidence collected is stored. This allows victims to make a decision about whether to report the incident to police in their own time. The Bill requires all health boards to make forensic medical examination in sexual cases available on a self-referral basis.

7. What makes a physical medical examination a forensic medical examination is the fact that evidence is being collected for use in any subsequent investigation or court proceedings in relation to the incident. This aspect of forensic medical examination distinguishes the functions conferred by the Bill from health boards' other functions. The Bill sets out this part of the purpose of forensic medical examinations clearly, ensuring that health boards have a clear legal basis for their actions in this area (for example, in collecting, retaining and transferring information[3]).

8. The Bill also deals with various other matters to do with health boards' provision of forensic medical examinations and the storing and transfer of evidence collected during such examinations. In addition, it includes provisions allowing related functions to be conferred on, for example, special health boards and ensuring co-operation between health boards in this area, requires reports to be made on the operation of the Bill for 10 years following implementation, and makes various consequential modifications of other enactments.

The Bill: Section by Section

Section 1: Provision of Certain Forensic Medical Services

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covers services other than those dealt with in the Bill (for example, it covers health care services required by persons in the care of the Police Service of Scotland and medical examination and collection of samples from alleged perpetrators in police custody). Services not covered by the Bill will continue to be dealt with under the memorandum of understanding.

[2] NHS Greater Glasgow and Clyde and NHS Tayside.

[3] Which may be "personal data" for the purposes of data protection legislation.

9. Section 1 places formal legal responsibility for the delivery of certain forensic medical services on health boards. Health boards will, in future, be required to provide an "examination service" and a "retention service": the "examination service" relates to the carrying out of forensic medical examinations (on both a "police-referral basis" and a "self-referral" basis – see section 2(2)), while the "retention service" deals with the storage of evidence gathered during examinations (principally those carried out on a self-referral basis). Further details of the two services are provided below.

10. Each health board is to provide the services in respect of the health board's area (although health boards can, under section 11, co-operate with other health boards in doing so – for example, by agreeing that staff from one health board will be available to assist another health board in certain circumstances). The examination service provided by each health board in its area can be accessed by any person who falls within section 2(2), regardless of where the person lives. So, for example, a person who is the victim of a sexual offence while visiting Scotland can access a forensic medical examination in the same way as a victim who lives in Scotland. A health board's retention service is to be available to any person who uses that health board's examination service.

11. Both the examination service and the retention service must be provided directly by health boards (except where two or more health boards are co-operating under section 11). But this does not prevent health boards contracting with third parties, where necessary, to supply any additional staff needed to assist in health boards' provision of these services, for example to provide out of hours cover.

Section 2: The Examination Service

12. The examination service that each health board must provide consists of providing forensic medical examinations in relation to two types of incident. The first is where certain types of sexual offences are alleged to have been committed. The relevant type of offence is defined in broad terms in subsection (4), but includes rape and sexual assault as defined in the Sexual Offences (Scotland) Act 2009 ("the 2009 Act"). A forensic medical examination is not necessary in relation to "non-contact" sexual offending, as an examination would not result in any additional evidence being obtained in such cases. The Bill does not therefore cover such cases.

13. The Bill does not refer to attempts to commit offences of the kind described in subsection (4). This is unnecessary as an attempt to commit

an offence is itself an offence under section 294 of the Criminal Procedure (Scotland) Act 1995 – so an attempted sexual offence, the nature of which is such that a forensic medical examination may result in evidence being collected, will still fall within the description set out in subsection (4).

14. The second type of incident involves alleged harmful sexual behaviour by children under the age of criminal responsibility.[4] Victims of such behaviour may also require a forensic medical examination. Again, "non-contact" behaviour would not necessitate the carrying out of a forensic medical examination and is not included in the definition of harmful sexual behaviour set out in subsection (4).[5] The reference to behaviour which risks causing harm covers attempted harmful sexual behaviour.

15. It does not matter, for the purposes of the provision of a forensic medical examination, whether the incident giving rise to the need for the examination took place in Scotland or elsewhere.[6] So, for example, a person aged 16 or over who lives in Scotland and who is sexually assaulted while abroad or elsewhere in the UK can request an examination on a self-referral basis on their return home.

16. Subsection (2) sets out the two ways in which the examination service is accessed by victims. The first possibility is that a victim is referred to a health board for an examination by Police Scotland, following the incident being reported by the victim or another person – see subsection (2)(a). The second possibility is that a victim "self-refers", that is,

[4] The age of criminal responsibility in Scotland is currently eight. The Age of Criminal Responsibility (Scotland) Act 2019 raises the age to 12, although that Act is not yet in force. A child below the age of criminal responsibility cannot commit an offence, but harmful behaviour can still be dealt with through the children's hearings system and forensic evidence may be relevant to establishing that such behaviour has occurred in some cases (as well as for the purposes of investigating the incident more generally).

[5] Which means that the definition of "harmful sexual behaviour" used in the Bill differs from descriptions of behaviour used for different purposes in the Age of Criminal Responsibility (Scotland) Act 2019.

[6] It also does not matter, where the incident giving rise to the need for an examination took place outside Scotland and the behaviour in question was carried out by a person below the age of criminal responsibility in that place, whether that age of criminal responsibility is higher, lower or the same as in Scotland: behaviour outside Scotland will be regarded as either a sexual offence or harmful sexual behaviour by a child under the age of criminal responsibility according to age of criminal responsibility in Scotland. For example, a person who is sexually assaulted by a person aged 14 in a country where the age of criminal responsibility is 15 will be able to access a forensic medical examination under the Bill on the basis that the behaviour to which they were subject would be a sexual offence in Scotland.

requests the health board to carry out a forensic medical examination without the incident having been reported to the police (see subsection (2)(b)). A victim might access self-referral by phoning and arranging an appointment at the appropriate health board facility.

17. Health board staff do not, under subsection (2)(b), have to make a judgement about whether an offence has been committed (or harmful sexual behaviour has occurred) in order for an examination to be carried out on a self-referral basis – the effect of the Bill is that it is sufficient that the victim alleges that they have been the victim of such an offence (or behaviour).

18. Self-referral is not available to children aged under 16. So even if a child aged under 16 requests a forensic medical examination on a self-referral basis, the health board will not be able to carry out such an examination until Police Scotland request an examination under subsection (2)(a). This does not prevent the young person accessing healthcare support ahead of police involvement.

19. Subsection (3A) confers power on the Scottish Ministers (by regulations subject to the affirmative procedure) to change the age at which self-referral becomes available to any age from 13 to 18. This power may be exercised more than once (so, for example, the age could in principle be changed from 16 to 15, and then further changed to 14 or 13, or from 16 to 17 and then further changed to 18).[7]

20. Subsection (3) describes the "criminal justice" purpose for which forensic medical examinations are carried out, while referencing the fact that the examination also serves other purposes (in practice, addressing the health care needs of victims). "Investigation" and "proceedings" are both defined in section 13. See also section 12A (meaning of references to "evidence") – this section is discussed further below.

21. Subsection (3) also states that forensic medical examinations are physical medical examinations. So, for example, an entirely non-physical assessment of whether a person was incapable of consenting to sexual conduct as mentioned in section 17(2) of the 2009 Act is not a forensic

[7] The power includes power to make transitional, transitory or saving provision – for example, if the age of self-referral was increased at any time, this would allow regulations to provide that persons under the new age who had previously undergone an examination on a self-referral basis continued to be able to request the destruction of evidence collected during the examination under section 8.

medical examination for the purposes of the Bill.[8] This is not to imply that a victim must undergo a full physical examination, since examinations may only proceed to the extent a victim so consents under general law and practice. Therefore for example a victim might consent to a limited examination only.

22. The fact that forensic medical examinations are physical medical examinations does not limit the health boards' duty under section 5 of identifying and addressing any health care needs of persons undergoing a forensic medical examination – as explained below, that duty extends to mental health care needs as well as physical health care needs.

Section 3: Limitations on Provision of Forensic Medical Examinations

23. This section ensures that decisions about forensic medical examination are made on the basis of professional judgement. This means that the Bill does not confer on individuals a right to have a forensic medical examination, a particular type of examination, or to have particular items of property taken and retained by health boards in self-referral cases.

24. There are a number of circumstances where a professional judgment might be made that a forensic medical examination, or certain parts of the full examination process, should not be carried out. For example, a forensic medical examination requires to be carried out sufficiently soon after the incident that there will still be evidence to gather.[9] This section ensures that a health board is not obliged to carry out an examination if, in the professional judgement of healthcare professionals, it is not appropriate to proceed with the examination or full examination for any reason. Professional judgement includes both clinical and non-clinical elements, and is supported by guidance from the Faculty of Forensic and Legal Medicine (FFLM) and others. FFLM guidance covers matters including what non-sample evidence to retain in particular self-referral scenarios.

[8] This does not mean that no evidence relevant to the issue of consent can be collected during a forensic medical examination (for example, a urine or blood sample collected during such an examination may indicate that a person was incapable of consenting to sexual conduct because of the effect of alcohol or any other substance, as mentioned in section 13(2)(a) of the 2009 Act).

[9] The precise length of the forensic capture "window" may vary according to circumstances, but it is generally seven days.

Section 4: Information to Be Provided Before Examination

25. The effect of subsections (2) and (3) is that health boards must make victims fully aware of what may happen to the evidence collected during a forensic medical examination. In police-referral cases, a police officer will request the transfer of the evidence under section 9. In self-referral cases, evidence is not transferred to the police until such time as the victim reports the incident to the police. Until that time, the victim can request the return of certain items to them under section 7 or the destruction of stored evidence under section 8(1)(a). The information to be provided to the victim under subsection (2) includes information about these rights. In addition, the victim must be informed that, if the return or destruction of evidence is not requested by the victim, and no police report is made, the stored evidence will, after a period of time, be destroyed under section 8(1)(b).

26. Subsection (4) ensures that failure to comply with subsection (2) does not, by itself, mean that any evidence collected during the examination is inadmissible in subsequent proceedings in relation to the incident which gave rise to the examination. The ability to challenge the admissibility of evidence on any other grounds is preserved.

Section 5: Health Care Needs

27. This section requires health boards to provide their examination service in an integrated way with their health care functions, so that health care needs arising from the incident (for example, prescription of emergency contraception, sexual health tests or referral for psychological support where appropriate) are identified and addressed as quickly as possible after the incident, as well as the necessary forensic evidence capture taking place. Subsection (3) provides that this duty applies even in cases where a victim presents for forensic medical examination but no examination takes place (for example, because a professional judgement is made that such an examination should not be carried out or because a victim does not consent to undergo examination).

Sections 6, 7 And 8: The Retention Service

28. The retention service consists of the storage of evidence collected during a forensic medical examination under a health board's examination service. The nature of the storage will depend on the item being stored. The retention service does not include the analysis of samples or other information – such analysis will only take place following the transfer of the evidence to Police Scotland.

29. The purpose for which evidence is being stored is set out in section 6(2). The purpose is closely aligned with the purposes for which forensic medical examinations may be carried out, as set out in section 2(3).

30. A victim who has undergone a forensic medical examination on a self-referral basis may make a request under section 7 that certain stored items (that is, items which were worn or otherwise present during the incident which gave rise to the examination, such as underwear)) be returned to them. The Bill does not give victims a right to request other types of stored evidence from the health board (for example, samples).

31. Section 7(2A) sets out a limited number of cases in which requests for the return of stored items must be refused by the health board. Where the health board is not satisfied that the requested item belongs to the victim or considers that there are safety reasons why the requested item cannot be returned, the health board must explain the reason for the refusal to return the item to the victim. The health board must also refuse to return a requested item if there is an overlapping police request for the transfer of the item under section 9 (that is, if the police request is made before the request for the item to be returned is made or if the police request is made after that request but before the health board has returned the item to the victim). The health board does not require to inform the victim of the reason for the refusal to return the item in this case (as a police request for the transfer of the item under section 9 can only be made, in a self-referral case, where the victim has reported the incident which gave rise to the examination to police – so the victim will already be in contact with the police in such cases[10]). If none of these reasons for refusing to return the requested item apply, the health board must comply with the request and return the item to the victim.

32. Victims who have self-referred can request the destruction of all forms of stored evidence relating to their forensic medical examination under section 8(1)(a) (if, for example, they subsequently decide not to report the incident to the police). If a victim does decide to report the incident to police, any evidence being stored under the retention service will be transferred to the police following the making of a police request under section 9. If neither of these things happens, the evidence will be destroyed after a specified period of time, which will be set by the Scottish

[10] See also section 3I of the Victims and Witnesses (Scotland) Act 2014, which makes provision about the return to victims of property held by various persons (excluding health boards) for the purposes of a criminal investigation.

Ministers in regulations made under section 8(1)(b).[11] This does not mean that the incident cannot be reported to the police after this time, just that the evidence will no longer be available for use in relation to such a report.

33. A 30 day "cooling-off period" applies following the victim making a request for the destruction of evidence under section 8(1)(a). The victim can withdraw the request during that period, in which case the evidence will continue to be stored under section 6 rather than destroyed at the end of the 30 day period (see section 8(1A)(a)). Further requests for destruction can be made (and withdrawn). The making (and withdrawal) of a request for evidence to be destroyed does not have any impact on the period specified under section 8(1)(b).[12] If a request made under section 8(1)(a) is not withdrawn, the evidence is destroyed at the end of the 30 day period.

34. Section 8(1A)(b) and (1B) to (1D) provide for what is to happen if a police request for evidence be transferred under section 9 is made just before or just after evidence is due to be destroyed under section 8(1) (whether by virtue of the expiry of the 30 day period following the making of a request under section 8(1)(a) or the expiry of the period specified under section 8(1)(b)). If, at the time whichever of those periods is relevant in a particular case expires, the evidence is still in the health board's possession despite a request under section 9(2) having been made before the period expired, the health board must not destroy the evidence under section 8(1) (but must instead comply with the request for transfer under section 9(2), as required by section 9(3)). And, if a request under section 9(2) is made after the expiry of whichever of those periods applies but before the evidence has actually been destroyed, the health board again must not destroy the evidence under section 8(1), but instead comply with the request under section 9(2) (although this does not apply if the destruction of the evidence is already in train and it is not reasonably practicable to stop it).

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[11] Regulations made under section 8(1)(b) will be subject to the affirmative procedure. Again, the power includes power to make ancillary provision of various types. Transitional provision might be required, for example, as to what is to happen to evidence already stored if the period for which evidence is to be held is increased or decreased.

[12] In particular, if a request for destruction is made under section 8(1)(a) fewer than 30 days before the period specified under section 8(1)(b) is due to expire, then the evidence will be destroyed by virtue of section 8(1)(b) at the end of the period specified under that section, rather than the expiry of the 30 day period provided for in section 8(1)(a). It follows that, in such a case, it will not be possible to withdraw a request made under section 8(1)(a) after the expiry of the period specified under section 8(1)(b).

Section 9: Transfer of Samples and Information to Police

35. Subsection (1) sets out the circumstances in which a police officer can request the transfer of evidence gathered during a forensic medical examination carried out under the examination service. Paragraph (a) deals with police-referral cases and paragraph (b) with self-referral cases. In self-referral cases, the incident must have been reported to the police by the victim – so even if the police become aware of an incident, and of the fact that evidence is being stored under the retention service, in some other way, evidence cannot be transferred without the victim taking the step of making a report to the police about the incident.

36. Health boards must comply with requests for transfer of evidence as soon as reasonably practicable. In practice, a police constable is likely to collect the evidence either from the place where the forensic medical examination is carried out or from the place where the evidence is being stored. Samples in sexual offences cases are tested and analysed by the Scottish Police Authority, independently from Police Scotland, in accordance with section 31 of the Police and Fire Reform (Scotland) Act 2012. Police constables transfer information and evidence to the Scottish Police Authority as part of their duties to prevent and detect crime under section 20 of that Act. The Bill does not require to re-legislate for these practices.

Section 9a: Trauma-Informed Care

37. The schedule of the Patient Rights (Scotland) Act 2011 ("the 2011 Act") sets out a number of health care principles. Under section 5(1) of that Act, health boards must uphold those principles in performing their health service functions (in so far as each principle is relevant to the function being performed). The Bill's schedule makes a number of amendments to that Act, including amendments which ensure that those health care principles also apply (as appropriate) in relation to the exercise of functions under the Bill.

38. Section 9A adds a further health care principle to the schedule of the 2011 Act. The new principle applies only in relation to the exercise of functions under the Bill. The effect of the new principle is that, in exercising functions under the Bill (for example, in carrying out forensic medical examinations under the Bill, and in any subsequent dealings with the victim (for example, if the victim makes a request for evidence to be destroyed under section 8)), the health board must have regard to the importance of providing care in a way that seeks to avoid re-traumatisation and is otherwise trauma-informed.

Section 10: Power to Confer Functions on Other Bodies

39. This section gives the Scottish Ministers power[13] to confer functions relating to the examination service and the retention service on special health boards, the Common Services Agency (typically known as NHS National Services Scotland or NSS) and Healthcare Improvement Scotland (HIS). NHS National Education Scotland (NES), for example, is the special health board with responsibility for providing education and training relating to the health service, including trauma training. This power might be used to ensure that it can also provide education and training to healthcare professionals in relation to the functions conferred by the Bill (which are not, as already noted, exercised entirely for health purposes).

Section 11: Co-Operation

40. Section 11 requires health boards to co-operate with each other, and with special health boards and the Common Services Agency, in planning and providing the examination service and the retention service. The purpose of the co-operation is to secure adequate provision of the examination service and the retention service across Scotland and to secure continuous improvement in the delivery of these services. The precise nature of the co-operation is not specified but could include, for example, co-operation on training, development of information for victims and the sharing of best practice. It could also include working across health board boundaries.

41. Section 12J(1) of the National Health Service (Scotland) Act 1978 ("the 1978 Act") requires health boards to co-operate with one another, and with special health boards and the Common Services Agency in relation to the planning and provision of services under that Act – subsection (1) of section 11 is the equivalent of that duty in relation to the services to be provided under the Bill. Subsections (2) and (3) of section 12J provide further details in relation to such co-operation, providing, for example, that a health board can undertake to provide (or secure the provision of) services as respects the area of another health board and do anything for the purposes of providing such services which it could do as respects its own area. These subsections are applied for the purposes of subsection (1) of section 11 of the Bill. This would allow, for example, a number of health boards to agree that one of them would enter into a contract for the provision of out-of-hours services across all of the boards' areas.

[13] Exercisable by regulations, which are subject to the affirmative procedure if they modify the text of any Act and otherwise to the negative procedure.

42. The Bill provides a platform for wider multi-agency working (for example the development of multi-agency facilities) and no amendments require to be made to policing, local authority or other legislation for this to happen.

Section 11a: Report on Operation of Act

43. This section requires Public Health Scotland[14] to produce (for a limited time following the Bill's enactment) reports on the operation of the Bill. Each report is to relate to a reporting period: the first reporting period runs from the day on which section 1 comes into force until 31 March in the following year[15], the second reporting period runs from 1 April in that following year until 31 March in the year after that, and so on until a total of 10 reports have been produced. Each report is to be prepared as soon as reasonably practicable after the expiry of the relevant reporting period, with the report then being laid before the Scottish Parliament and then published no later than 31 May each year.

Section 12a: Meaning of References to "Evidence"

44. The Bill contains a number of references to evidence (see sections 2(3), 4(3) and (4), 6(1) and (2), 7(1), 8 and 9). Section 12A(1) provides an non-exhaustive list of things that might constitute evidence. But section 12A(2) then provides that things created or collected during or in connection with a forensic medical examination are not evidence (even if created or collected during or in connection with such an examination) if they were created or collected for a purpose other than use in connection with any investigation of the incident which gave rise to the need for the examination or any proceedings in relation to that incident – for example, for use in connection with addressing the health care needs of the victim. This means, for example, that notes taken entirely for health care purposes would not fall to be transferred to police in compliance with a request under section 9(2) for the transfer of evidence. Such health care records would also not fall within the destruction provisions of the Bill, and therefore any request for them to be destroyed would be dealt with under general NHS Scotland information governance arrangements.

[14] A special health board, established on 1 April 2020 (after the Bill's introduction), by the Public Health Scotland Order 2019 (S.S.I. 2019/336)

[15] So, if section 1 comes into force on , say, 1 November 2021, the first reporting period would be 1 November 2021 to 31 March 2022. But if section 1 did not come into force until, say, 1 February 2022, the first reporting period would be 1 February 2022 to 31 March 2023.

45. In light of section 2(3) stating that a forensic medical examination is a physical medical examination, paragraph (c) of section 12A(1) in particular clarifies that notes or other records can be evidence even where they relate to matters other than the victim's physical condition. So, for example, notes about a victim's psychological state during the carrying out of a forensic medical examination can be evidence – but only if, as provided in section 12A(2), the notes are created for the purpose of use in any investigation or proceedings relating to the incident which led to the examination. Similar notes created solely for use in addressing the victim's mental health care needs would not be evidence.

46. In practice, certain things (for example, urine samples) may be collected before the physical medical examination which constitutes the forensic medical examination proper starts – such non-intimate samples are sometimes known as "early evidence". In some cases, the physical medical examination might then not proceed (for example, because a professional judgment is made that the examination should not be carried out). Section 12A(3) provides for things created or collected (for example, urine samples or preliminary notes) in anticipation of a forensic medical examination being carried out to be regarded as having been created or collected during or in connection with such an examination, regardless of whether the examination actually takes place. This ensures that things created or collected at this preliminary stage are still caught by the references in section 12A(1) and (2) to things being created or collected "during or in connection with" a forensic medical examination (and therefore that such things will or will not be evidence, according to the purpose for which they were created or collected).

47. Section 12A(4) provides that references to images, notes and other records include reference to those things in all forms that they exist, including digital form. Images and notes created during or in connection with a forensic medical examination (for use in connection with any investigation of the incident which gave rise to the need for the examination or any proceedings in relation to that incident) and stored by the health board in digital form – whether standard photographs or special magnified images taken with a colposcope device – are therefore caught by references in the Bill to evidence. So, for example, the duty to destroy evidence under section 8 extends to the destruction of such images and notes.

Schedule: Minor and Consequential Modifications

48. The amendments to the 1978 Act and the Functions of Health Boards (Scotland) Order 1991 made by paragraphs 1 and 2 of the schedule ensure that health boards are able to exercise their existing functions in relation to the provision of facilities and medical and nursing staff for the purposes of the Bill (as well as the purposes of the 1978 Act). Similarly, health boards will be able to purchase land and other property for the purposes of the Bill. The various Ministerial powers conferred by sections 76 to 78A of the 1978 Act (holding of inquiries, and various default and emergency powers) are also modified so that they are exercisable in relation to the functions conferred by the Bill.

49. Paragraph 2A amends the National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000. Those Regulations establish a scheme for (broadly speaking) the meeting of liabilities arising out of negligence in the carrying out of health board functions and financial losses arising during the carrying of such functions. The Bill ensures that references in the regulations to functions of health boards include reference to the functions conferred by the Bill (by modifying the "relevant function" in regulation 1(2) – that term is then used in, for example, regulation 4(2)). So, for example, the scheme applies in relation to any liability arising from a personal injury suffered by a person due to negligence in the carrying out of a forensic medical examination.

50. The amendments to the Patient Rights (Scotland) Act 2011 ensure that relevant provisions of the Act apply to all elements of a health board's interaction with a victim in relation to whom the functions conferred by section 1 are being exercised – that is, to health care aspects and to forensic medical services aspects (these services not being, strictly speaking, "health" functions, as indicated by the purposes described in section 2(3) and 6(2)). So, for example, the health care principles set out in the schedule of the 2011 Act apply in relation to a health board's provision of the examination service, meaning that, amongst other things, a health board carrying out a forensic medical examination must uphold the principle of care being provided in a caring and compassionate manner.

51. Paragraphs 4(2) and (3) amend sections 3C and 3D of the Victims and Witnesses (Scotland) Act 2014, ("the 2014 Act") so that health boards, when providing the services mentioned in section 1 of the Bill, are required to provide victims with certain information, for example a copy of the Victims' Code for Scotland (published by the Scottish Ministers under

section 3B of that Act) (or information on where to obtain a copy) and, if requested, refer the victim on to other victim support services.

52. Paragraph 4(4) of the schedule amends section 9 of the 2014 Act. This section provides that victims of sexual offences must be given an opportunity to request that the person who is to carry out a forensic medical examination be of a specified gender. The person due to carry out the examination must be informed of the nature of any such request. The amendments made by the Bill will keep section 9 aligned with the wider changes made by the Bill, for example, by removing the references to police constables, given that the Bill requires examinations to also be available on a self-referral basis.

This document relates to the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill as amended at Stage 2 (SP Bill 60A)

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[As Amended at Stage 2]

Revised Explanatory Notes

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