

## **New amendments to Bills lodged on 3 December 2020**

### **Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill – Stage 3**

#### **Section 2**

**Margaret Mitchell**

**1** In section 2, page 2, line 14, at end insert—

<(3E) Before the end of each reporting period, the Scottish Ministers must lay before the Parliament a statement explaining—

(a) why they will be laying draft regulations under subsection (3A) before the Parliament, or

(b) why they will not be laying draft regulations under subsection (3A) before the Parliament.

(3F) Whether or not the statement under (3E) indicates that the Scottish Ministers will be laying draft regulations under subsection (3A), the statement under subsection (3E) must indicate—

(a) what consideration has been given by the Scottish Ministers to the support that would be given to persons under 16 should subsection (2)(b) be amended so that such persons can request a forensic medical examination,

(b) what support is being or will be provided to persons under 16 who fall within subsection (2)(a).

(3G) For the purpose of this section, the reporting periods are—

(a) the period of one year beginning with the day of Royal Assent,

(b) each subsequent period of one year.>

#### **Section 4**

**Jeane Freeman**

**2** In section 4, page 3, line 2, leave out from <forensic> to end of line 3 and insert <person is referred for or requests a forensic medical examination as mentioned in section 2(2).>

**Jeane Freeman**

**3** In section 4, page 3, line 4, leave out <the examination starts> and insert <any evidence is collected>

**Jeane Freeman**

**4** In section 4, page 3, line 5, leave out <is to undergo> and insert <has been referred for or, as the case may be, who requested>

**Jeane Freeman**

**5** In section 4, page 3, line 13, leave out <carried out by virtue of> and insert <requested under>

## Section 5

**Jeane Freeman**

- 6 In section 5, page 3, line 25, after <and> insert <, to the extent that it is a function of the health board to provide for the health care of the person,>

## After section 5

**Margaret Mitchell**

- 7 After section 5, insert—

### **<Pilot scheme for enabling persons under 16 to request a forensic medical examination**

- (1) The Scottish Ministers may arrange a pilot scheme under which—
  - (a) a person under 16 can request a forensic medical examination under section 2(2)(b),
  - (b) arrangements are made for a relevant child to receive support of the kind mentioned in subsections (2) and (3) throughout the process of a forensic medical examination.
- (2) A pilot scheme under subsection (1) must include arrangements for—
  - (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) For the purposes of the pilot scheme an appropriate adult assigned under subsection (2)(a) must—
  - (a) meet with the relevant child as soon as 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) For the purposes of the pilot scheme 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 terms of the pilot scheme are to be determined by the Scottish Ministers, but the scheme must—
  - (a) be time limited, and
  - (b) apply to at least one health board area.
- (6) If the Scottish Ministers arrange a pilot scheme under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement describing—
  - (a) the pilot scheme,
  - (b) how the Scottish Ministers intend to evaluate the scheme’s outcomes.
- (7) If, at the end of one year beginning with the day of Royal Assent, the Scottish Ministers have not arranged a pilot scheme under subsection (1), they must lay before the Scottish Parliament a statement explaining why not and stating whether they expect to arrange a pilot scheme.
- (8) The Scottish Ministers may by regulations make any provision that they consider necessary or appropriate for the purpose of arranging a pilot scheme under subsection (1).
- (9) Regulations under subsection (8) may—
  - (a) make different provision for different purposes or areas,
  - (b) modify any enactment.
- (10) Regulations under subsection (8) are subject to the affirmative procedure.
- (11) If the Scottish Ministers arrange a pilot scheme, as soon as practicable after it ends the Scottish Ministers must lay before the Scottish Parliament a report setting out—
  - (a) their findings,
  - (b) what (if anything) they intend to do in light of those findings, including whether they intend to legislate to enable a relevant child to request a forensic medical examination under section 2.
- (12) 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 a pilot scheme under subsection (1).>

## **Section 7**

**Jeane Freeman**

**8** In section 7, page 4, line 8, leave out <comprises or>

## Section 9

**Jeane Freeman**

- 9 In section 9, page 5, line 27, at end insert <, or

( ) where—

- (i) a forensic medical examination has been carried out following a person requesting such an examination as mentioned in section 2(2)(b),
- (ii) the health board which carried out the examination has subsequently established that the person was, at the time of the examination, under the age mentioned in that section at that time, and
- (iii) the matters mentioned in sub-paragraphs (i) and (ii) have been reported to a constable.>

## After section 9A

**Jeane Freeman**

- 10 After section 9A, insert—

### *<Examination of under-age persons*

#### **Examination of under-age person under section 2(2)(b)**

- (1) Subsection (2) applies where—
  - (a) a forensic medical examination has been carried out by virtue of section 2(2)(b), and
  - (b) the health board subsequently establishes that the person was, at the time of the examination, under the age mentioned in that section at that time.
- (2) The fact that the person was under that age at that time does not affect the validity of—
  - (a) the carrying out of the examination,
  - (b) anything done by the health board prior to the person's true age being established in relation to any evidence collected during the examination,
  - (c) the continuing storage of any such evidence under section 6.
- (3) Following the person's true age being established, sections 7 and 8 do not apply in relation to any evidence collected during the examination.
- (4) Accordingly, where, at the time the person's true age is established—
  - (a) a request for the return of an item stored by the health board under section 6 has been made by the person under section 7 but not yet complied with, the health board must refuse the request,
  - (b) a request for destruction of evidence stored by the health board under section 6 has been made by the person under section 8(1)(a) but the evidence not yet destroyed, the health board must ensure that the evidence is not destroyed on the basis of that request (unless it is not reasonably practicable to stop the destruction of the evidence).>

**Jeane Freeman**

- 11 After section 9A, insert—

### *<Victim support information and referrals*

## **Victim support information and referrals**

- (1) Subsection (2) applies where—
  - (a) a person requests a forensic medical examination as mentioned in paragraph (b) of section 2(2), and
  - (b) the incident in connection with which the examination is requested is of the type mentioned in paragraph (a)(i) of that section.
- (2) The health board to which the request is made must inform the person that—
  - (a) the person may request from the health board—
    - (i) a copy of the Victims' Code for Scotland, and
    - (ii) information relating to the rights of victims,
  - (b) the person may request the health board to refer the person to providers of victim support services, and
  - (c) the person may contact providers of victim support services directly without being referred as mentioned in paragraph (b).
- (3) The health board must, as soon as reasonably practicable after a person mentioned in subsection (1) or section 8A(1) of the 2014 Act makes a request for—
  - (a) a copy of the Victims' Code for Scotland—
    - (i) provide the person with a copy of the Code, or
    - (ii) advise the person where a copy of the Code may be obtained,
  - (b) information relating to the rights of victims—
    - (i) provide the person with such information held by, or accessible to, the health board as the health board considers relevant to the request, and
    - (ii) provide the person with contact details for any other body which the health board considers may hold or be able to access information relevant to the request.
- (4) Where a person mentioned in subsection (1) or section 8A(1) of the 2014 Act requests a referral of the type mentioned in subsection (2)(b), the health board must, subject to the views of the person—
  - (a) disclose the person's details to such providers of victim support services as the authority considers appropriate to the person's needs, or
  - (b) provide the person with the name, address and telephone number of such providers of victim support services.
- (5) Subsections (6) to (8) apply where—
  - (a) a person requests a copy of the Victims' Code for Scotland from a health board under this section, and
  - (b) the person does not understand or speak English.
- (6) The person may request that the copy provided be a translation in a language that the person understands.
- (7) The health board may transmit that request to the Scottish Ministers.
- (8) The Scottish Ministers must—
  - (a) translate the Code into the language required, and

- (b) provide a copy of the translated Code to the health board.
- (9) In this section—
- “2014 Act” means the Victims and Witnesses (Scotland) Act 2014,
- “Victims’ Code for Scotland” means the document prepared and published under section 3B of the 2014 Act,
- “victim support services” has the meaning given by section 3D(5) of the 2014 Act.”.>

## **Section 12A**

### **Jeane Freeman**

- 12** In section 12A, page 7, line 30, leave out <created or collected> and insert <collected or created>

### **Jeane Freeman**

- 13** In section 12A, page 7, line 31, leave out <created or collected> and insert <collected or created during or>

### **Jeane Freeman**

- 14** In section 12A, page 7, line 32, leave out <whether or not the examination is carried out> and insert <even where the person who was referred for or, as the case may be, requested the examination does not proceed to undergo such an examination>

## **Section 13**

### **Jeane Freeman**

- 15** In section 13, page 8, line 14, at end insert—
- <(2) References in this Act to the need for a forensic medical examination include, where the person referred for or, as the case may be, requesting the examination does not proceed to undergo such an examination, reference to the need for the referral or, as the case may be, request for such an examination.
- (3) Subsection (4) applies where, by virtue of section 12A(3), something is to be regarded as having been collected or created during or in connection with a forensic medical examination despite the person who was referred for or requested the examination not proceeding to undergo such an examination.
- (4) Sections 6, 7, 8 and 9 are to be read as if a forensic medical examination has been carried out, and references to the person undergoing the examination are to be construed accordingly.>

## **Section 15**

### **Jeane Freeman**

- 16** In section 15, page 8, line 27, after <sections> insert <12A,>

## **Schedule**

### **Jeane Freeman**

- 17** In the schedule, page 10, line 7, at end insert—
- <( ) In section 2 (health boards: regulations and directions)—

- (a) in subsection (5), after “this Act” insert “or by or under the 2020 Act”,
- (b) in subsection (6), after “functions” insert “(other than functions conferred on them by or under the 2020 Act)”.
- ( ) In section 2B(1) (duty to encourage public involvement) after “responsible” insert “and services which it has the function of providing to individuals under the 2020 Act”.
- ( ) In section 10H (standards and outcomes)—
  - (a) in subsection (1)(a), after “health service” insert “or under the 2020 Act”,
  - (b) in subsection (4), after “health service” insert “or under the 2020 Act”.
- ( ) In section 17A(1) (NHS contracts) after “enactment” insert “(including the 2020 Act)”.>

**Jeane Freeman**

**18** In the schedule, page 10, line 31, at end insert—

- <( ) In article 2 (persons for whose health care each Health Board is responsible)—
  - (a) in paragraph (1), after sub-paragraph (b) (and before “and” following that sub-paragraph and preceding sub-paragraph (c)) insert—
    - “(ba) in so far as the health care consists of providing services (other than the services mentioned in sub-paragraph (b)(i)) in conjunction with provision of the service mentioned in section 1(1)(a) of the 2020 Act, of persons (not falling within sub-paragraph (a)(i) or (ii)) to whom the Health Board is providing that service, regardless of the person’s place of ordinary residence;”,
  - (b) after paragraph (3), insert—
    - “(3A) For the purposes of paragraph (1)(ba), services are provided in conjunction with provision of the service mentioned in section 1(1)(a) of the 2020 Act if they are provided—
      - (a) to a person at the same time as that service is provided to the person, or
      - (b) to a person to whom that service has been provided on the person returning, at the request or on the recommendation of the health board, for follow-up care to care provided as mentioned in sub-paragraph (a).”.>

**Jeane Freeman**

**19** In the schedule, page 11, line 23, leave out <mentioned in section 1 of> and insert <provided under>

**Jeane Freeman**

**20** In the schedule, page 11, line 35, leave out <section 1 of>

**Jeane Freeman**

**21** In the schedule, page 12, line 1, leave out <section 1 of>

**Jeane Freeman**

**22** In the schedule, page 12, line 6, leave out <section 1 of>

**Jeane Freeman**

- 23 In the schedule, page 12, line 9, leave out <section 1 of>

**Jeane Freeman**

- 24 In the schedule, page 12, line 16, leave out <section 1 of>

**Jeane Freeman**

- 25 In the schedule, page 12, line 18, leave out <mentioned in section 1 of> and insert <provided under>

**Jeane Freeman**

- 26 In the schedule, page 12, line 21, leave out <mentioned in section 1 of> and insert <provided under>

**Jeane Freeman**

- 27 In the schedule, page 12, leave out lines 25 to 33 and insert—

<( ) Before section 9 insert—

**“8A Certain medical examinations: additional information to be provided**

- (1) Subsection (2) applies where a person is, or is to be, referred to a health board for a forensic medical examination as mentioned in section 2(2)(a)(i) of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2020.
- (2) The chief constable of the Police Service of Scotland must ensure that, in addition to a constable informing the person of the matters mentioned in sections 3C(1) and 3D(1), a constable informs the person that—
  - (a) the person may request from the health board—
    - (i) a copy of the Victims’ Code for Scotland, and
    - (ii) information relating to the rights of victims,
  - (b) the person may request the health board to refer the person to providers of victim support services, and
  - (c) the person may contact providers of victim support services directly without being referred as mentioned in paragraph (b).
- (3) In this section—

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

“victim support services” has the meaning given by section 3D(5).”.>

**Johann Lamont**

- 28 In the schedule, page 13, line 4, at end insert—

<( ) for the word “gender” substitute “sex”,>

**Jeane Freeman**

- 29 In the schedule, page 13, line 7, at end insert—

<( ) In section 29A(1) (exercise of functions where victim is a child), after “6” insert “, 8A”.>

