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Health and Sport Committee
Comataidh Slàinte is Spòrs

Stage 1 Report on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

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To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.

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Introduction

Membership changes

1. There has been one change to our membership during our consideration of this Bill with Donald Cameron replacing Miles Briggs from 20 August 2020.

Overview of scrutiny and purpose of the Bill

2. The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill was introduced in the Scottish Parliament on 26 November 2019 by the Cabinet Secretary for Health and Sport, Jeane Freeman MSP. The Health and Sport Committee was designated as the lead Committee by the Parliamentary Bureau for Stage 1 scrutiny of the Bill.

3. The Bill places a duty on health boards to provide forensic medical services to victims of sexual offences (and victims of harmful sexual behaviour by children under the age of criminal responsibility (this will be 12 years of age when the provisions in the Age of Criminal Responsibility (Scotland) Act 2019 come into force). The duties contained in the Bill place the responsibility for the delivery and improvement of these services with health boards rather than the police.

4. The Bill further makes forensic medical examination available on a self-referral basis for people over the age of 16. Self-referral is where someone can request a forensic medical examination without having reported an incident to the police. The Bill gives a victim control of whether, and when, they enter into the criminal justice system. An individual will have control over the timing of reporting or not reporting incidents to the police without compromising the availability of forensic evidence from an incident.

5. The policy memorandum notes the main policy objective of the Bill is to improve the experience, in relation to forensic medical services, of people who have been affected by sexual offences [1] . The Bill also provides a statutory framework for health boards to take, retain and transfer samples obtained during a forensic medical to Police Scotland. This will support any future criminal investigation or prosecution, if an individual chooses to report the incident to the police.

6. The Scottish Government published the following documents in relation to the Bill:

   - Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill [2]
   - Policy Memorandum [3]
   - Explanatory Notes [4]
   - Financial Memorandum [5]
   - Statements on Legislative Competence [6]

- Delegated Powers Memorandum [7]

Alongside the Bill the Scottish Government published five impact assessments:

- Child rights and well-being impact assessment [8]
- Data protection impact assessment [9]
- Equality impact assessment [10]
- Fairer Scotland duty assessment [11]
- Islands communities impact assessment [12]

7. The Scottish Parliament Information Centre (SPICe) also published a briefing on the Bill in February 2020 [13] .

8. The Scottish Government consulted on forensic medical services for victims of sexual offences between 15 February and 8 May 2019 [14] . In August 2019, the Scottish Government published an analysis of responses [15] .

9. We issued a call for written views on the Bill on 6 December 2019, which ran until 30 January 2020 and received 38 submissions [16] .

10. We asked five questions:

1. What are the key advantages and disadvantages of placing the examination of victims of sexual offences (and victims of harmful sexual behaviour by children) by health boards on a statutory basis?
2. What are the key benefits of providing forensic examination on a self-referral basis (whereby victims can undergo a forensic medical examination without first having reported the incident to the police)? What problems may arise from this process?
3. Are there any issues with the proposal to restrict self-referral to people over 16 years old?
4. Are there any issues with the health board storing and retaining evidence gathered during self-referred forensic examinations?
5. Do you have any other comments to make on the Bill?

11. We held an informal meeting on 10 March 2020 with victims of sexual assault and rape who have experience of using forensic medical services. This session, facilitated by Rape Crisis Scotland, provided an opportunity for us to hear first-hand accounts of the forensic medical examination process and views on what could be changed to make the experience less traumatic.

12. On 17 March 2020, we held a formal session with the Scottish Government Bill team. This focused on the work of the Taskforce for the improvement of services for adults and children who have experienced rape and sexual assault, and the Bill's

provisions. We then took evidence from organisations working to support victims of sexual offences.

13. Our scrutiny of the Bill and timetable of subsequent formal meetings during March and April 2020 was impeded by the impacts of the COVID-19 pandemic. The Parliament agreed Stage 1 of the Bill be extended and completed by 2 October 2020 [17] .

14. Our scrutiny resumed on 12 May 2020 and we held a series of virtual committee meetings in May and June 2020. Due to limitations of virtual meetings, a reduced number of witnesses were able to attend these sessions. To compensate for this restriction, we wrote to other relevant individuals/organisations following each session to seek their views on the oral evidence, and asked them to provide written evidence. The following table lists those who supported us in this way.

Date of meeting	Witnesses	Additional evidence
12 May 2020	• Dr Anne McLellan, Consultant in Sexual and Reproductive Health, NHS Lanarkshire	• NHS Greater Glasgow and Clyde • Healthcare Improvement Scotland • The Royal College of Nursing
20 May 2020	• Chloe Riddell, Policy Manager, Children 1st	• Clackmannanshire and Stirling Child Protection Committee • NSPCC • Scottish Children's Reporter Administration • Social Work Scotland
9 June 2020	• Filippo Capadli, Detective Superintendent, Police Scotland • Gillian Mawdsley, Secretary to the Criminal Law Committee, Law Society of Scotland	• Crown Office and Procurator Fiscal Service • Information Commissioner's Office • The Faculty of Advocates

15. We thank everyone who provided evidence as part of our consideration of the general principles of this Bill. We would particularly like to thank those who attended the informal group meeting on 10 March 2020, providing insight into their personal experiences of the forensic medical examination process in Scotland. A list of evidence can be found in Annexe B.

Background to the Bill

16. In March 2017, Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) published its report: Strategic Overview of Provision of Forensic Medical Services to Victims of Sexual Crime [18] . The report made 10 recommendations, including a review of the legal basis for the current provision of healthcare and forensic medical services and the establishment of a system of self-referral for examination. The Scottish Government brought forward the Bill to address the recommendations of the HMICS report.

17. At the same time, the Scottish Government announced a Taskforce[i] for the improvement of services for adults and children who have experienced rape and

sexual assault. Chaired by the Chief Medical Officer for Scotland, the purpose of this Taskforce was "to ensure that health boards improve the provision of appropriate healthcare facilities for any victim who requires a forensic examination" [19] . It was intended the Taskforce complements the Bill to address the recommendations in Her Majesty's Inspectorate of Constabulary in Scotland's report.

18. The vision for the Taskforce's high level work plan 2017-2022 was a "Consistent, person-centred, trauma informed health care and forensic medical services and access to recovery, for anyone who has experienced rape or sexual assault in Scotland" [20] .

19. The Taskforce had five subgroups, each with responsibility for delivering different elements of the vision.

    1. Leadership and governance: shared vision and commitment to ensuring consistent, trauma informed service.

    2. Workforce and training: trauma informed care delivered by a sustainable, supported workforce.

    3. Design and delivery of services co-ordination, design and management of services that reflect local needs.

    4. Clinical pathways: improving health and well-being by ensuring a consistent, trauma informed health care response.

    5. Quality improvement: continuous improvements inform service planning, commissioning and monitoring.

Overall views on the Bill

20. The majority of respondents to our call for views were in favour of the Bill. Submissions identified a number of benefits for victims.

21. Health boards were seen as being best placed to carry out forensic medical examinations and the Bill was seen by many as allowing better use of resources and providing public health benefits. For example, forensic medical examinations would be undertaken within a setting where individuals could access additional clinical, social and psychological healthcare services, including but not limited to, STI testing, emergency contraception, mental health and alcohol and drug recovery services. This could better support individuals and also reduce long-term demand on other services. An integrated health and social care response by the health board could also benefit individuals by identifying and making onward referrals to appropriate specialised follow-up services and holistic treatment.

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i The full official title of this Taskforce is: the Taskforce for the improvement of services for adults and children who have experienced rape and sexual assault. In this report, it will be referred to as 'the Taskforce'.

22. Many respondents considered the Bill would lead to a more consistent approach to forensic medical examinations across Scotland, and the majority supported self-referral.

23. However, evidence received also highlighted a number of concerns with the Bill. The majority related to the following areas:

    1. Trauma-informed care.
    2. Self-referral and healthcare needs of victims.
    3. Information, advocacy and support.
    4. The examination service, including sex of the examiner.
    5. The retention service, including timescales for retention.
    6. Children and young people.
    7. Monitoring and evaluation.

24. We consider the key principle of the Bill is the individual's right to decide allied to the power to determine whether or not to report assaults to the police. The above areas required further examination to support that principle and form the basis of our scrutiny at Stage 1.

1. Trauma informed care

25. The main policy objective of the Bill is to improve the experiences of people who have been affected by sexual offences, in relation to forensic medical services. The policy memorandum states:

> The Scottish Government considers that a victim's healthcare needs should come first and that to enable this to happen, responsibility for service delivery must clearly rest with health boards [21] .

26. In our informal session with victims of rape and sexual assault on 10 March, we heard that individuals had experienced physical and mental trauma as a result of forensic medical examinations. They highlighted lack of clarity around further treatments and procedures, including HIV post-exposure prophylaxis, lack of co-ordination in continued care and follow-up appointments due to incidents not recorded in healthcare notes, and no clear point of contact for additional services. Individuals found this exacerbated negative mental impacts and at times prompted re-traumatising experiences.

27. Section 5 of the Bill requires health boards to identify and address the healthcare needs of the victim. This would be required even if a forensic medical examination does not take place.

28. Many submissions reflected on the importance of psychological support for victims. NHS Lanarkshire noted:

> The legislation should give victims the right to timely psychological, aftercare/ through care and advocacy services, or services for addictions, mental health issues or self-harm. This access should feature in the legislation for all. This support should be person-centred, and available as and when required for the individual, which may have a subsequent advantage in reducing reliance on other services such as Emergency Departments, mental health, CAMHS etc at a later date. [22]

29. The Scottish Government also acknowledge the importance of a holistic approach to forensic medical examination:

> Forensic medical examination, which, as we know from feedback from victims, can be the most traumatic part for people, is actually a small part of the services that should be provided. There should be wraparound care involving an assessment of people's psychological and emotional wellbeing, their safeguarding needs and what referrals they may need to other services, such as mental health services or Rape Crisis Scotland services. [23]

30. Throughout our scrutiny, we heard of the concept of trauma-informed care. This type of care recognises the impact of trauma on an individual's health, social and emotional wellbeing and aims to deliver services that will minimise the risk of further trauma. As detailed above, evidence from victims of rape and sexual assault reported their experiences, over the last two decades, were not very trauma-informed.

31. The principle of trauma-informed care is included in the Bill and we were told this would be delivered through a co-ordinated multi-agency service to ensure a smooth pathway of care [24] .

32. The Scottish Children's Reporter Administration (SCRA) further observed the Bill does not go beyond therapeutic support at the forensic medical examination [25] . The Cabinet Secretary for Health and Sport explained the Bill's legislative underpinning sits alongside a commitment to a trauma-informed and health-based service [26] .

33. We consider the Bill should explicitly state it delivers the requirement explained by the Cabinet Secretary across the health service and be amended accordingly.

2. Self-referral and healthcare needs of victims

34. Within the Bill, self-referral is where an individual requests a forensic medical examination without the incident being first reported to the police. A person who self-refers could then subsequently decide to involve the police but would not be obliged to do so. The Bill requires health boards to retain samples from such an examination, which could support any future criminal investigation or prosecution.

35. The Bill sets out the different ways individuals can access forensic medical examination services. It places a duty on health boards to provide these examinations when an individual is referred for such an examination by the police. The Bill also allows victims to self-refer [27] . This provision seeks to address recommendation 7 of HMICS report [28] :

> The Scottish Government should work with relevant stakeholders and professional bodies, including NHS Scotland, Police Scotland and the Crown Office and Procurator Fiscal Service to develop self-referral services for the victims of sexual crime. This should clarify the legal position for obtaining and retaining forensic samples in the absence of a report to the police and support formal guidance for NHS Boards and Police Scotland.

36. Self-referral is currently available in two health board areas NHS Greater Glasgow and Clyde, through Archway[ii], and NHS Tayside, through the Sexual Assault Referral Network[iii].

37. Evidence collected was supportive of this part of the Bill. Self-referral allows choice and control for individuals, access to address further medical and healthcare needs, and can reduce or mitigate psychological trauma. It enables this to happen, while allowing for injuries to be documented and samples secured, as an individual considers whether they wish to report an incident to the police.

38. The Crown Office and Procurator Fiscal Service (COPFS) summed up the benefits for victims as:

> ...self-referral gives the person who has been raped or sexually assaulted more time to decide if they wish to report the matter to the police. It helps to empower victims of a sexual offence at a time when they may feel powerless in other ways. It also enables potential evidence to be obtained and preserved at the outset, thereby potentially strengthening any subsequent investigation and prosecution should the person decide to report the incident to the police at a later stage. COPFS would regard this is a positive development. [29]

39. We agree with the COPFS in relation to self-referral. The Bill will give individuals control by giving them time to consider the action they wish to take. However, there are a number of related issues we further explore in this report.

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ii For more information see: http://archway.sandyford.org/what-is-archway

iii For more information see: https://www.wrasac.org.uk/rape-sexual-assault/

Age of self-referral

40. One of the most contentious areas of the Bill relates to the age of self-referral. While the Bill places a duty on health boards to provide forensic medical services to victims of sexual offences irrespective of age, self-referral is only available to those individuals aged 16 or older.

41. The policy memorandum states this is in line with practice at existing self-referral services provided by NHS Greater Glasgow and Clyde and NHS Tayside. It also states "age 16...aligns with the “age of consent” in the Sexual Offences (Scotland) Act 2009 and the age of legal capacity in the Age of Legal Capacity (Scotland) Act 1991. [30] " For those under 16, the current child protection processes apply if a child seeks support following sexual abuse:

> If a child under 16 tells a professional that they have experienced sexual abuse, that professional is duty bound to report what has happened to the relevant authorities in accordance with existing national child protection guidance and clinical practice. [31]

42. Under the Bill, children and young people under the age of 16 are not able to self-refer themselves for a forensic medical examination. While this does not prevent a young person seeking access to healthcare, their attendance for such healthcare will always lead to police involvement.

43. The Scottish Government consulted on a draft Clinical Pathway for Children and Young People who have disclosed sexual abuse [32] . This pathway provides for children and young people under 16 years of age receiving a joint pediatric and forensic examination. We note the finalised pathway was due to be published in the summer.

44. The Scottish Children's Reporter Administration (SCRA) support the age of self-referral as set out in the Bill, "under 16 statutory and non-statutory child protection processes should be used in order to identify and deliver any required support. [33] " They indicated if a child presents to a health board, police and social work are required to:

- discuss the case in an interagency referral discussion, or IRD
- implement a plan to keep the child safe
- follow child protection processes, and
- consider whether a referral for statutory intervention through the Children’s Hearing System is required.

45. Likewise, Children 1st stated self-referral for children and young people under the age of 16 was not applicable as they are automatically considered within child protection procedures.

46. Others considered self-referral should not exclude children and young people under the age of 16. Some, including the Rape and Sexual Abuse Centre, Perth and Kinross, and the Clackmannanshire and Stirling Child Protection Committee

suggest the age limit for self-referral should be lowered to 13. Perth and Kinross produced detail of numbers to support their view:

> Internal statistics tell us that in the last 5 years, 20% of survivors accessing our services were age between 13-15 when the abuse started. A further 27% were under the age of 13. Knowing what we do about prevalence rates and seeing our service face increasing demand for young people's support, we would advocate for the self-referral to extend to 13+. [34]

47. Others, while disagreeing with the restriction to those over 16 did not specify any age limit. Concerns being that restricting self-referral to those over 16 years of age may unintentionally act as a barrier to younger vulnerable victims coming forward, especially where they involve a family member. One commented that "any child under the age of 16 should be allowed to self-report" [35] .

48. We are content to leave the age limit at 16 while recognising concerns exist. However, we expect to see this provision being closely monitored. Later in this report we recommend the need for the collection of statistical information and the provision of an annual report to Parliament. That report should include detail of numbers reporting across age ranges and compare the extent to which improvements are consistently happening.

49. We consider the age limit of self-referral requires to be kept under close review. We suggest the Bill be amended to allow the age to be altered in future using super-affirmative procedure.

3. Information, advocacy and support

50. We heard a lot of detailed evidence relating to information, and support, and associated campaigns to promote awareness of the content of the Bill. Making informed decisions is key to giving an individual control about whether they report an incident to the police and to ensuring their psychological needs are met in a trauma-informed way. Individuals will need help to make those decisions and independent advocacy will play an important role. We consider these to be key principles of the Bill.

Rights to information and control of evidence

51. Gillian Mawdsley of the Law Society of Scotland highlighted the fundamental principle underpinning this aspect of the Bill [36] :

> The bill is very important because it intersects the interests of private law, public law and, obviously, healthcare...It is fundamental the victim or the person from whom samples are being obtained is clear about what is being obtained, why it is being obtained and what it will be used for.

52. Section 4 of the Bill details information which must be provided to individuals before an examination. This includes rights in relation to examination, retention, and destruction of evidence. The Scottish Government told us that where someone chooses to self-refer, information is provided to the person to explain what self-referral is and what it is not. [37] We were told this information will distinguish the difference between self-referral and a police examination, and the choice going forward remains with an individual.

53. We understand current practice in NHS Greater Glasgow and Clyde is for this information to be given by a forensically trained nurse within the Archway service. In NHS Tayside, this is undertaken by a Rape Crisis support worker, who is the first point of contact for someone who wants to access the self-referral service [38] .

54. During our informal session with victims of sexual assault and rape who have experience of using forensic medical services, we heard this provision of information has not been consistently happening. It was not consistently made clear to victims the need to collect and preserve evidence, the nature and purpose of the examination, or the next steps that would occur.

55. Sandy Brindley accentuated the need for information to be provided for individuals at the time of self-referral, adding also a need for professionals to have the right skills and support to provide this information [39] .

56. We have concerns over confusion for victims over what evidence or samples are taken, retained and stored during self-referral, and what is taken, retained and stored if an individual reports the incident to the police. For example, we are not certain it is clear to those self-referring that any evidence related to the incident, not related to the medical examination such as "closedcircuit television evidence or fingerprints on glasses in a nightclub [40] ", could be lost if the incident was not thereafter timeously reported to the police.

57. If this information is not clearly communicated, individuals cannot make informed choices over whether, or when, to report an incident to the police. We consider work to publicise and inform individuals about the differences between self-referral and choosing to report an incident to the police is required.

58. The Bill at Section 4(2)(b) requires information to be provided and explained. We understand this could, for example, be provided by the health board's trauma-informed workforce, working in partnership with others [41] .

59. Healthcare Improvement Scotland (HIS) recommend further guidance on facilities, storage duration, access, and ownership of data be developed and issued to all NHS boards. This would help ensure there are robust and appropriate governance mechanisms in line with the HIS 2017 standards [42] .

60. The Scottish Government indicated they will ensure there is a consistent, national approach for accessing self-referral services, as well as to the provision of relevant information [43] . It further indicated this protocol would be agreed with Police Scotland, the Crown Office and Procurator Fiscal Service and the Lord Advocate and set out what forensic examples should be obtained following a rape or sexual assault in both police referral and self-referral cases [44] .

61. All health boards, alongside Police Scotland, should follow a consistent approach to the provision of information about self-referral. This must include clear information allowing for individuals to make informed decisions.

Public awareness

62. Providing consistent information at self-referral, however, is only part of the process. Self-referral will only benefit victims if they, or someone they confide in, are aware this is an option [45] .

63. We agree with the RCN that there needs to be a focus on ensuring public awareness of the provisions of the Bill. They have called for Scottish Government and health boards to ensure that information about these services is available locally so that an individual is able to easily find out where to go to access a forensic medical examination [46] .

64. We recognise activity is planned to develop information at the point of referral. We consider this to be insufficient and see the need as the law comes into force for an early and ongoing public awareness campaign, including online and offline resources, and also addressing accessibility considerations. Police Scotland should also have a role in publicising self-referral.

65. Issues surrounding equality of access to information and services were highlighted on several occasions during evidence. These included, among others, considerations for individuals with learning disabilities, individuals with fluctuating capacity and same-sex victims.

66. We acknowledge the EQIA suggests no negative impacts and indicates the Bill has been "drafted in gender neutral language and gives all types of victims the same legal rights to access care" [47] .

67. We believe there needs to be a greater focus in the Bill on requiring the system to support all individuals in making choices, informed by the timeous provision of information. We are clear this must apply equally across the country, taking account of issues such as travel, rurality and low population density into account. We look forward to hearing how this will be achieved during the stage 1 debate.

Advocacy and mental health support

68. Support services are essential to provide impartial advice on all the options available following a sexual assault, including the differentiation between self-referral and reporting an incident to the police previously discussed.

69. Paragraphs 4(2) and (3) of the Bill amend sections 3C and 3D of the Victims and Witnesses (Scotland) Act 2014. The effect being that when health boards provide the forensic medical services under the Bill they are required to provide victims with certain information, for example a copy of the Victims' Code for Scotland and, if requested, refer the victim on to other victim support services [48] .

70. We received considerable evidence related to the role of advocacy and support for victims. The policy memorandum emphasises evidence from established self-referral services across the UK showing individuals are more likely to report an incident to the police following self-referral "once they have had time to talk to someone they trust such as family, friends or advocacy and support services. [49] "

71. Over and above this is the role advocacy, psychological and mental health support and supported decision-making play in recovery for victims of sexual assault and rape.

72. During our informal session with victims of sexual assault and rape, individuals told us of the need for wraparound care for victims highlighting the impact of the incident on their ongoing mental health.

73. Dr McLellan accentuated the importance of advocacy and psychological support from the moment of engagement, through interaction with the health service, once the individual has returned home, and through subsequent interactions with Police Scotland and the Court process should the individual chooses to report [50] . She further highlighted that psychological impacts can often be significantly delayed, meaning ongoing support is crucial:

> Ideally, the advocacy person should be engaged from the start and should see the person through the whole process. [51]

74. We are aware health boards currently undertaking self-referral are, to a certain extent, providing psychological support to victims of sexual assault and rape.

However, this should be a continuing advocacy service with clear arrangements in place to support health boards. It is not realistic to expect healthcare professionals carrying out forensic medical examinations to provide this ongoing support, particularly in relation to support through the criminal justice system.

75. Detective Superintendent Capaldi highlighted the work of Police Scotland in partnership with Rape Crisis Scotland to offer ongoing advocacy to victims of serious sexual crime [52] . We note the policy memorandum makes no reference to ongoing advocacy or the role of Rape Crisis Scotland's National Advocacy Project, which Police Scotland suggest could provide self-referral victims access to experienced advocacy services and allow truly informed decision making and ongoing support [53] .

76. The Cabinet Secretary for Health and Sport acknowledged the importance of advocacy and providing a "trauma-informed service that recognises the importance of the individual's psychological and mental health. [54] " The interim Chief Medical Officer agreed the need for advocacy in all aspects of healthcare, not just forensic medical services [55] .

77. We are clear there is a need for robust mechanisms to ensure the provision of ongoing advocacy support at the point of self-referral, and that this needs to be consistently available across Scotland.

78. We recommend the Bill is amended to contain a statutory right to independent advocacy and look forward to hearing how the provision of independent advocacy can be achieved consistently across Scotland in relation to forensic medical services.

4. The examination service

79. The Bill specifies the examination service that each health board must provide consists of providing forensic medical examinations in two types of incident. The first is where certain types of sexual offences are alleged to have been committed. The second type of incident involves alleged harmful sexual behaviour by children under the age of criminal responsibility[iv]. This applies to anyone referred by Police Scotland, or to people who self-refer.

80. Many submissions commented on the ability of the health boards to meet the provisions in the Bill. Submissions highlighted the availability of appropriate resources, facilities and equipment, staffing of the service and the ability of health boards to provide out of hours services.

81. The Scottish Government informed us £8.5 million has been spent building workforce capacity, improving the physical environment, procuring essential equipment and delivering national projects [56] .

24/7 service

82. Victims of sexual assault and rape, and organisations working to support victims of sexual offences, raised the issue of the availability of out-of-hours services with many individuals experiencing significant delays in the undertaking of their forensic medical examination. This has a psychological impact on individuals who are unable to shower or change following an incident.

83. Sandy Brindley, of Rape Crisis Scotland, indicated a lot of providers state there is "hardly any demand for an out-of-hours service" yet described how this is contradictory to many survivor experiences [57] .

84. Increasing workforce capacity and developing regional networks of professionals available to undertake forensic medical examinations is key to ensuring forensic medical examinations can take place in a timely manner across all health boards. This is particularly relevant for smaller, rural or remote boards which may lack capacity to deliver services 24 hours a day. The RCN note:

> Providing a workforce of suitably trained nurses to undertake the examination role is part of the solution to providing a consistent and evidence based service, as specialist nurses can be part of a 24/7 workforce within the Health Boards [58] .

85. We consider the Bill must, in addressing the fundamental issue from the HMICS report, require a 24 hour, 7 day, forensic medical examination service. This is vital to support, and give control, to individuals when sexual offences are alleged to have been committed.

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iv In Scotland the age of criminal responsibility is eight years old and a child can be prosecuted from 12 years old.

Female practitioners

> Paragraph 4(4) of the schedule amends section 9 of the 2014 Act[v]. 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. [59]

86. Sandy Brindley, of Rape Crisis Scotland, told us during our session with organisations working to support victims of sexual offences:

> The feedback that we have from survivors is that the most important issue is access to a female doctor. The lack of access to a female doctor is what causes the most trauma. [60]

87. This was clear throughout our informal session with victims, in written evidence, and further addressed during our formal evidence session with NHS Lanarkshire. There is a strong preference from female victims for female practitioners to carry out intimate examinations following rape. The Scottish Government told us "the number of female examiners in Scotland has increased by 30% since 2017 (to 61%) [61] .

88. Since the introduction of the NHS Education Scotland (NES) training[vi], we understand 118 doctors have been trained, 70 percent of whom are female. The training has also been adapted to provide joint inputs for nurses involved in providing healthcare to victims of sexual crime. So far, 68 nurses have been trained, 97% of whom are female [62] .

89. Evidence received from For Women Scotland highlights possible issues with the term 'gender' used in this Bill, and the 2014 Act [63] noting that biological sex and gender can be different[vii]. This distinction may be relevant in relation to this Bill, where an individual is able to request the forensic medical examiner is a specified gender. We agree the intention of the Bill is to give the individual a choice of sex of the examiner.

90. We consider the definition of gender could be ambiguous in the Bill, which has the potential to cause distress to individuals undergoing forensic medical examination. We recommend the Bill be amended to guarantee an individual's right to choose the sex of the examiner.

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v The Victims and Witnesses (Scotland) Act 2014

vi NES has been commissioned by the taskforce to redesign the *Essentials in Sexual Offences Management and Court Skills* course to make it more accessible.

vii The term sex is often taken to refer to biological and physiological characteristics that an individual is born with. Gender can also refer to roles, expectations, and activities within society. An individual has a choice over which gender they identify with and are recognised by in society.

Consistency across Scotland

91. We were keen to understand how provisions in the Bill ensure current service variation across Scotland is minimised and standard forensic medical examination services are available in all urban and rural communities. Dr Anne McLellan, Consultant in Sexual and Reproductive Health at NHS Lanarkshire, highlighted a risk that health boards could implement the legislation in different ways, leading to variation in service provision across Scotland [64] . Dr McLellan suggested the need for clinical networks and agreements across health board areas coupled with an ongoing quality assurance process.

92. Robust guidance, training, and monitoring along with evaluation of services will be essential to ensure variation in service provision is minimised.

Facilities and networks

93. Dr McLellan told us there was a need for professional networks across Scotland to facilitate increased availability of female practitioners, training networks and delivery of 24/7 forensic medical examination services [65] . The Scottish Government told us clinical networks have formed between forensic medical examiners throughout the country to provide consistency [66] .

94. We note the Scottish Government has put in place a package of resources developed to ensure a consistent national approach to the pathways of care for victims of rape or sexual assault, as well as to the recording, collation and reporting of performance data [67] .

95. In relation to premises, work has been undertaken to move the examination site out of police stations into healthcare facilities. We were told most health boards are moving to improve premises and have undertaken work on "establishing capital projects that will enable them to have suitable premises [68] ".

Professional judgement

96. The Bill does not give an individual a right to a forensic medical examination. Throughout evidence we heard about the importance of professional judgement on the provision of services and the duty of healthcare professionals to raise concerns. Examinations are carried out based on the professional judgement of healthcare professionals. The explanatory notes [69] state professional judgement can include both clinical and non-clinical elements supported by guidance from the Faculty of Forensic and Legal Medicine [70] .

97. We examined this in relation to timescales of evidence collection, children, those with additional support needs or a mental health illness, and those who may lack capacity, for example, where someone has a brain injury, dementia or suffered a stroke. Dr McLellan articulated various reasons why forensic examination may not be appropriate, including examples of an individual presenting nine days post

assault, an individual presenting as acutely psychotic and those of limited or fluctuating capacity [71] .

Equity of access

98. The Fairer Scotland Duty assessment on the Bill notes women in lower socioeconomic groups are more likely to be the victim of sexual offending and thus more likely to benefit from the Bill [72] .

99. We are interested in how health boards will take inequalities into account to ensure equity in access to services. This is particularly relevant for marginalised groups where individuals may have difficulties or experienced barriers in accessing healthcare services in the past. This may also include, but is not limited to, those from black and minority ethnic communities, those who have language barriers or those who identify as LGBTQI[viii].

100. Dr Anne McLellan outlined how NHS Lanarkshire uses data collection, alongside advice from voluntary organisations and health promotion teams, to target resources in areas of deprivation. She also highlighted existing work aimed at identifying blood-borne viruses through actions with faith groups and local communities and highlighted the use of online resources where language barriers exist [73] . NHS Greater Glasgow and Clyde also highlighted measures to engage with black and minority ethnic communities, and male and transgender individuals who otherwise struggle to receive equitable access [74] .

101. We ask the Scottish Government to require all health boards to capture, analyse and publish data addressing equity of access.

viii LGBTQI is an umbrella term for lesbian, gay, bisexual, transgender and queer people.

5. The retention service

102. The Bill places a duty on each territorial health board to provide a retention service for the storage of evidence collected during forensic medical examinations. The explanatory notes state this service does not include the analysis of samples or other information [75] . Any such analysis will only take place following the transfer of the evidence, at such time as any cases are reported to Police Scotland.

103. An individual who has self-referred can request the destruction of all forms of stored evidence, or samples, relating to their forensic medical examination. They can also request for any clothing or belongings retained by the health board to be returned to them.

104. Where evidence is not transferred to the police, or destroyed at the request of the victim, it would be automatically destroyed by the health board at the end of a retention period. This retention period is expected to be specified in regulations. Once destroyed, evidence collected as part of the forensic medical examination will no longer exist and thus will not be available for use in the Police Scotland investigation.

105. A number of issues arose around the retention of evidence. These covered recording and storage, retention of samples, data protection, along with governance arrangements.

Recording and storage

106. Dr McLellan expressed concerns over the types of items health boards may be required to store, and the resource and cost implications of doing so [76] . Clackmannanshire and Stirling Child Protection Committee and Stirling Council also highlighted limitations of storage space within health care settings [77] .

107. The explanatory notes state the nature of storage depends on the item being stored [78] . Police Scotland indicated evidence obtained by health boards should be restricted to the taking of forensic samples and not the securing and retention of any other articles, which may or may not have any evidential value [79] . Gillian Mawdsley of the Law Society of Scotland remarked "on a number of occasions, productions have been retained that were not physically required in the future" [80] .

108. The Crown Office and Procurator Fiscal Service [81] said health boards should only be collecting and retaining the relevant samples collected from the forensic examination. No additional evidence, with the exception of underwear worn at the time of the offence or immediately afterwards, should be required to be stored by a health board under self-referral processes. Any such evidence would fall under a police investigation, should the case be reported to Police Scotland.

> It is unreasonable to expect medical professionals to make decisions on the relevance or otherwise of physical evidence in potential criminal proceedings at some point in the future.

109. Detective Superintendent Capaldi commented on the viability of evidence stating the optimum timeframe for gathering forensic evidence is within seven days. Forensic recovery from other items such as clothing or cups, could be obtained after a longer period [82] .

110. We have concerns that healthcare professionals may be required to make decisions on what should or should not be stored. This should be a matter for Police Scotland as and when an individual chooses to report the incident.

111. We expect the Scottish Government to set out what is required to be stored by heath boards in regulations. We consider this should only cover samples collected from the forensic examination and any underwear worn at the time of the offence or immediately afterwards.

Continuity of evidence

112. A number of submissions raised concerns about the admissibility of evidence collected during self-referred examinations. The Faculty of Advocates highlighted potential issues about the integrity and security of samples collected in a forensic medical examination in cases of self-referral when a constable is not present [83] . The Law Society of Scotland highlighted the importance of a robust audit trail to ensure the collection and storage of evidence complies with the rules of criminal evidence [84] .

113. Detective Superintendent Capaldi advocated the need for "sufficiently robust processes" to be established at the outset to ensure there is no risk of a challenge due to improper storage/retention or issues with the continuity of evidence in any criminal, or civil, proceedings [85] .

114. The Crown Office and Procurator Fiscal Service recommend the Bill is supported by appropriate training, and implementation of standards for medical professionals conducting self-referral forensic medical examinations. This would ensure evidence gathered during self-referral forensic medical examinations is of the same quality as that gathered during forensic medical examinations in police referral cases [86] .

115. The Faculty of Advocates referred us to the Forensic Science Regulator’s Codes of Practice and Conduct in relation to Sexual Assault Examinations [87] . The Scottish Government clarified the scope of the above code of practice does not apply in Scotland. All current forensic medical examinations in Scotland comply with Faculty of Forensic and Legal Medicine guidance about the capture of forensic evidence following a rape or sexual assault [88] .

Retention of samples

116. A timescale for the retention of samples collected during a forensic medical examination is not set in the Bill. The explanatory notes state this would be covered in regulations[ix].

117. Many respondents called for consideration to be given to the length of the retention period. However, there was no consensus on what the timescale should be. This is consistent with the outcome reported from the Scottish Government consultation [89] .

118. Various timescales have been proposed. The Faculty of Forensic & Legal Medicine (FFLM) recommends the period should be two years. However, it is necessary to avoid setting a period that ends on the anniversary of the incident which could be traumatising for individuals [90] .

119. Those individuals who have experience of using forensic medical services told us the timeframe for retention of samples should be much longer than two years. Victim Support Scotland suggests victims be notified in good time when their evidence is due to be destroyed, and further suggests there be a process to overrule the destruction of evidence. Sandy Brindley, of Rape Crisis Scotland, agreed advocating for individuals to be aware of timescales to allow them to make decisions about possible future referrals to Police Scotland [91] .

120. The Information Commissioner's Office raised the issue of data protection legislation, noting "the fifth data protection principle requires that personal identifiable information must only be retained for as long as is necessary for the specified purposes for processing". Timescales for retention need to balance the rights of the individual against those of the state, which would also include the right to restrict processing [92] .

121. The Cabinet Secretary for Health and Sport acknowledged further work needs to be undertaken before a period for retention is defined and this would involve consultation with victim groups. She noted "At this point, however, the consensus is around a period of two years and two months". However, once the retention timescales are set, the Cabinet Secretary also indicated a willingness to review provisions after a defined time period [93] .

122. We recognise this is a complex issue and while there is no consensus on an optimum timescale, there is consensus retention periods should be informed by service-users and reviewed regularly. We are satisfied the timescales for retention should be set in regulations, subject to the affirmative procedure. This process allows for greater flexibility to make revisions to the period.

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ix Affirmative instruments are normally laid before the Parliament in draft form and require the approval of the Parliament in order to come into force or (more rarely) to remain in force. For more information see the Scottish Parliament website.

Data

> ...the definition of evidence under section 13 of the Bill does not include data. The Data Impact Assessment does not differentiate between the samples and data to be obtained. [94]

123. We are concerned the Bill does not sufficiently distinguish between different types of evidence. Under data protection different concepts apply to different types of evidence:

- Samples collected from forensic medical examination contains genetic data.
- Additional evidence relates to physical evidence from the time of the incident, such as clothing, bedding or glasses.
- Personal data is information that relates to an identifiable living person.

Data itself has no meaning on its own, but evidence can ascribe that meaning and change how data is viewed. We have concerns that when different pieces of evidence and data are collected together, they could lead to the identification of a particular person, this evidence could then constitute personal data.

124. The Law Society highlighted that these differentiations are important to maintain the credibility and continuity of evidence. They are concerned that ambiguity in the Bill in the way data is processed, stored and transferred could compromise a criminal trial, if the incident is subsequently reported to the police. There needs to be clarity on what data and evidence is taken by health boards, alongside a robust audit trail to ensure evidence gathered and kept complies with the rules of criminal evidence [95] .

125. A number of organisations held similar concerns. The South Lanarkshire Gender-Based Violence Partnership wanted the Bill to cover what personal data would be stored, ownership of samples throughout the self-referral and transfer processes, and consent requirements [96] . Edinburgh Rape Crisis Centre also wanted more clarity on storage of samples, General Data Protection Regulation (GDPR) issues, confidentiality and anonymity [97] .

126. The Information Commissioners Office has advised health boards to identify appropriate safeguards and measures to mitigate these. They also call for consideration of risks around the processing of personal data gathered during a forensic medical examination through completion of a data protection impact assessment (DPIA) [98] .

127. A DPIA was undertaken prior to introduction of the Bill and published alongside the Bill [99] . This assessment outlines that personal data collected during a forensic medical examination may include special category (sensitive) data, it also states it was not envisaged biometric or genetic data would be collected by health boards. However, it is clear forensic samples containing genetic data will be taken and stored as part of the forensic medical examination.

128. The DPIA further notes health boards will not be processing or analysing samples. This would only be undertaken once data has been transferred to the police.

129. The Information Commissioners Office clarified the position around personal data and any retained evidence, such as clothing, glasses etc. While these items, in their own right, do not constitute personal data, when taken in combination with other factors, they may be capable of identifying an individual and could, as a result, constitute personal data. This would only be the case if held by an organisation that can make the connection. This does not prevent the organisation from holding evidence, but requires recognition that items may constitute personal data and must be handled accordingly [100] .

130. A further issue around personal data is the collecting and storing of personal data without consent of an individual, in reference to alleged perpetrators. The DPIA acknowledges samples collected and held by health boards could include the DNA of alleged perpetrators and people close to the victim. The Scottish Government considers that a potential third party should not have an absolute “right to be informed” about the holding of their DNA, if an alleged offence has been committed. [101] We are content with the consideration of this particular aspect within the DPIA.

131. Having considered the evidence set out above, the Bill, and associated DPIA, should make clear the differentiation between personal data, samples taken, and the data obtained from those samples. Given the concerns we have heard we consider there is a need for a revised DPIA addressing each of the issues and this should be lodged before stage 2 commences. We would anticipate any appropriate amendments being lodged to take account of the revised findings.

Data and technology

132. Throughout our wider scrutiny work we have continually identified the need for significant improvements in the collection of data and the use of supporting technology.

133. Recommendation 8 of the HMICS report sets out the Scottish Government should work with NHS Scotland to ensure the existing healthcare ICT system (ADASTRA) is being used consistently for collating information on the volume and nature of forensic medical examinations across Scotland [102] . The policy memorandum states the taskforce has invested funding in specialist expertise to prepare a business case for a national clinical IT system to be available by the end of the last financial year (2019/20) [103] .

134. The Scottish Government told us it will introduce a package of resources by the end of the calendar year. This is to include "new national forms to ensure that information and data from forensic medical examinations are collated consistently across Scotland. [104] "

135. However, we are somewhat surprised to learn that in 2020 the best that can be suggested for the collection of data relies on a paper-based system. We do not understand why such a proposal can be deemed appropriate, given the seriousness of the concerns which have led to the need for this legislation.

136. We ask the Scottish Government for detail how a paper-based system will ensure Scotland-wide information will be collated quickly, and consistently reported allowing lessons to be learned, and crucially, service issues promptly identified and rectified. We wonder how Public Health Scotland can analyse paper-based national data without supporting IT infrastructure and how any information can be accessed from such a system? While it is essential to ensure there is no delay in implementation, we urge the Scottish Government to put in place a national clinical IT system as soon as possible.

Anonymous DNA Database

137. We heard a number of arguments for and against the development and establishment of an anonymous DNA database in relation to samples taken during a forensic medical examination. For some, it was thought such a database could be helpful for any other subsequent prosecution of repeat offenders even if a victim did not report an incident to the police.

138. Police Scotland told us it does not support such a proposal. They provided information on a legacy project between Strathclyde Police and Archway, Glasgow. This agreed a protocol for self-referral cases in an effort to increase the number of sexual crimes formally reported to Police. The project included providing consent for intelligence to be shared anonymously with Strathclyde Police and an option to provide consent for an Anonymous Forensic Testing Process (AFTP) to be undertaken on evidential samples obtained in an effort to encourage formal reporting. A review of this in 2017 concluded:

> ...whilst self-referral delivered benefits to victims by enabling access to appropriate services, the AFTP aspect presented significant challenges, risk and ethical dilemmas, in terms of examination of forensic samples and extraction of DNA for profiling without police engagement. [105]

139. The Information Commissioner's Office [106] and the Law Society of Scotland [107] both agreed they did not support any proposals for an anonymous DNA database, citing privacy concerns and retention issues related to biometric data.

140. Given the lack of consensus and the ethical and practical considerations related to this we agree this should not form part of the Bill.

Data protection and children

141. Children 1st raised issues around data protection in relation to children and young people, specifically where parents have sought to conduct a Subject Access Request covering any information held about their children. They cite an example where a parent sought access to the full medical records of a forensic examination, which had been undertaken to report on potential harm caused by that parent. These records of the examination required to be disclosed in full as there was no

longer an ongoing Police inquiry or active criminal proceedings either of which would have been enough to preclude disclosure [108] .

142. We also heard from the SCRA of a need for separate data protection considerations relating to children and young people to address the different consequences of the child protection response for those under 16 and the requirement to inform the police [109] .

143. We agree with the Scottish Government's decision not to make specific reference to children within the Bill. However, we are concerned and agree sensitive medical data protection considerations in relation to children need to be included in the data protection measures and guidance.

144. We ask the Scottish Government to review the children's rights in relation to ownership of data to ensure a child's best interests are at the heart of sharing personal, private and sensitive information with alleged perpetrators.

6. Children and young people

145. The statutory duties of the Bill on health boards to provide forensic medical services, and to take, retain and transfer samples, applies to all victims of sexual offences irrespective of age. The policy memorandum outlines the process in relation to children and young people:

> If a child under 16 tells a professional that they have experienced sexual abuse, that professional is duty bound to report what has happened to the relevant authorities in accordance with existing national child protection guidance and clinical practice. Children or young people under the age of 16 will not therefore be able to access self-referral, including referring themselves for a forensic medical examination. This would not of course preclude a young person seeking access to healthcare ahead of the police report. [110]

Inclusion in the Bill

146. Many submissions from organisations focused on forensic medical services for children and young people. Children 1st highlighted the principle, as enshrined in Getting It Right For Every Child (GIRFEC)[x], that the best interests of the child must be the priority in all decisions and actions affecting children. However, they also expressed concern there are no special provisions for children and young people in the Bill in that it does not differentiate between a child and an adult and applies to examinations carried out on victims of sexual offences irrespective of age [111] .

147. Chloe Riddell of Children 1st expanded, articulating the differing circumstances and considerations concerning children and young people in relation to rape and sexual abuse. She noted children and young people have distinct needs particularly when they experience abuse, including, but not limited to, complexities around child protection processes, looked-after children, timeliness of forensic medical examinations and that many children may not disclose within the time-frame necessary to obtain viable samples. These are not addressed in the Bill [112] .

148. We heard a wealth of evidence on the advantages of a Barnahus approach. This approach, used across Europe, is a multi-agency and child-focused response for victims and witnesses of violence. It is an intensive, multi-agency and ongoing support in a child-friendly setting and a single forensic interview, which prevents children and young people from having to attend court [113] .

149. Many respondents thought that forensic medical services for children and young people should sit within a wider whole-system approach such as that in a Barnahus process, to address children and young people's needs in a holistic way.

150. The evidence indicates a general consensus the Bill supports a Barnahus approach and work within the wider context of the Barnahus. The Cabinet Secretary for Health and Sport set out the approach to both the Bill and the Barnahus approach [114] :

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x For more information see: https://www.gov.scot/policies/girfec/

> I believe that the approach in the bill, when set alongside the wider work of the task force and the overall approach that I have described, which involves an interagency multidisciplinary therapeutic model that is focused on both the physical and psychological needs of the individual, as well as the collection of appropriate and recognised forensic evidence, will contribute to the overarching barnahus principle. That is why I have said that I believe that the bill is barnahus ready. In and of itself, the bill will not deliver in total what we seek in pursuing a barnahus model, but it will contribute to that work, and it certainly does not contradict that overall ambition.

151. We support the intention of the Bill to contribute to a Barnahus approach and note children and young people will have forensic medical examinations within health boards under this legislation, and be further supported through existing national child protection guidance and clinical practice. We further note work underway by the taskforce to develop a clinical pathway for Children and Young People to sit alongside the Bill [115] . As such, we do not consider the Bill requires to be amended to include specific reference to children and young people. However, we note the UN Rights of the Child (UNCRC) defines a child as someone under the age of 18 and the provisions in this Bill apply to people under the age of 16.

Examination of children and young people alleged to have perpetrated sexual assault and abuse

152. The HMICS report [116] found many children suspected of perpetrating sexual offences were subject to forensic examination in police custody. It recommended:

> Police Scotland should work with NHS Scotland to ensure suspected perpetrators of sexual abuse who are under 16 years old are not forensically examined within police custody facilities.

153. Currently, forensic medical examinations of victims are carried out by health boards under a memorandum of understanding (MOU) agreed between Police Scotland and health boards, allowing Police Scotland to refer victims to health boards for forensic medical examination [117] . This MOU also covers services other than those in the Bill, including "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" [118] . This would include children and young people accused of perpetrating sexual offences.

154. The Bill does not place a statutory duty on health boards to examine children and young people alleged to have perpetrated sexual assault and abuse. A number of submissions wanted this to happen although there was not a complete consensus.

155. Chloe Riddell, of Children 1st, suggested the overarching principle should be the recovery needs of all children who have or are alleged to have perpetrated a crime, as well as those who have experienced a crime [119] . The NSPCC seek a statutory requirement for the provision of therapeutic interventions to address a child or young person's harmful sexual behaviour [120] .

156. The Scottish Government noted this aspect is being led by the National Police Care Network (NPoCN) and therefore not included in the Bill [121] .

157. We note this is a complex area and acknowledge the Bill as being centred on victims of sexual offences. We also recognise alleged perpetrators can themselves often be victims of abuse, requiring sensitive and trauma informed-handling.

158. We ask the Scottish Government how it will take into account the needs of alleged perpetrators, including those who are former victims of abuse, and how they will receive trauma-informed care?

7. Monitoring and evaluation

159. We were advised Healthcare Improvement Scotland (HIS) produced and published standards relating to the provision of Healthcare and Forensic Medical Services for People who have experienced Rape, Sexual Assault or Child Sexual Abuse in December 2017 [122] . The standards cover leadership and governance, person-centred and trauma-informed care, facilities for forensic examinations, educational, training and clinical requirements, and consistent documentation and data collection. However, we were surprised to learn that no proposals for monitoring these standards appeared for 2.5 years.

160. On 30 March 2020, the Chief Medical Officer (CMO) wrote to health boards [123] about monitoring, including

- the final Healthcare Improvement Scotland (HIS) Quality Indicators;
- a standardised national healthcare assessment and forensic form;
- national datasets to monitor Health Board performance against the Indicators;
- the first national clinical pathway for adults;
- a summary clinical pathway for wider health professionals, and
- national guidance and documentation to support implementation.

The CMO noted it was intended these resources would enable a consistent national approach to the recording, collation and reporting of data in relation to healthcare and forensic medical services for victims of sexual crime.

161. However, in light of the COVID-19 pandemic there has been further delay in implementation of the standards [124] .

162. The Law Society of Scotland notes the Bill includes no provisions for the monitoring and evaluation of health boards. They suggest a need for a statutory requirement to report periodically to the Scottish Parliament [125] . The Royal College of Nursing equally express concerns over monitoring and evaluation of services stating “It is vital that the correct governance arrangements, high standards and robust inspection regimes are in place to ensure that any evidence collected during forensic medical examinations under the self-referral model support any future court proceedings” [126] .

163. Dr McLellan spoke of regional networks to facilitate sharing of learning and experiences, alongside service level agreements to support smaller health boards.

164. We note section 11 of the Bill 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 explanatory notes state this is to "secure continuous improvement in the delivery of these services", which could include training, development of information for victims and the sharing of best practice. This co-operation would also allow health boards to agree

contracts for the provision of out-of-hours services across all of the boards' areas [127] .

165. However, we note in this regard "while each statutory body is autonomous, the provision lacks any mandatory aspects." [128] .

166. The interim Chief Medical Officer emphasised the need for co-operation between clinical and community stakeholders to develop regional approaches to care, achieve greater access, and improve the quality and consistency of service. He indicated this would be underpinned by national clinical pathways currently in development and the national quality standards. He further noted there are "a variety of approaches to ensure that there is consistency in the quality of services across the country" [129] .

167. We agree it is essential the changes being brought about by the Bill are monitored closely. To achieve that we consider the Bill should require an annual report to be produced by NHSScotland setting out what actions are in place to ensure the forensic medical examinations processes are being monitored and evaluated, what systems are in place to drive forward identified improvements, and how the service will ensure the provisions of the Bill are consistently applied across the country. The report should also indicate the ways in which mechanisms are in place and being used providing for the sharing of experiences and learning across NHS Boards.

Finance and Constitution Committee, and Delegated Powers and Law Reform Committee Consideration

168. The Finance and Constitution Committee issued a call for views on the estimated financial implications of the Bill, receiving 4 responses by their closing date of 30 January 2020 [130] . Issues raised as part of this focused on lack of additional funding in some areas and arrangements for the post 2021 period.

169. We took evidence on concerns around financial implications of the Bill and are content the projected increase in demand detailed in the financial memorandum [131] appear to be reasonable. We do not consider any reassessment of estimates is required. Any future financial pressures, should demand for self-referral surpass the incremental 10 per cent increase predicted, can be dealt with in annual budgetary arrangements.

170. The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill at its meeting on 28 January 2020. That Committee published its report on the Bill on 31 January 2020 and we have nothing further to add to their report [132] .

Overall conclusions

The Committee supports the general principles of this Bill.

We welcome the legislation and regard it as a necessary and important step forward in improving forensic medical examinations, and as important, improving the experiences of victims of sexual crime across Scotland. We consider the Bill, with the amendments we have suggested will facilitate achievement of the wider aims to address recommendations in Her Majesty's Inspectorate of Constabulary in Scotland's report.

Annexe A - Minutes of meeting

29th Meeting, 2019 (Session 5) Tuesday 03 December 2019

5. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed:

- To hold a call for views;
- Its approach to information gathering and briefings in preparation for consideration of the Bill; and
- The themes for each session it will hold on the Bill and its approach to witness selection.

7th Meeting, 2020 (Session 5) Tuesday 17 March 2020

1. The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Greig Walker, Bill Team Leader;
- Tansy Main, Unit Head, Chief Medical Officer Rape and Sexual Assault Taskforce;
- Dr Edward Doyle, Senior Medical Adviser Paediatrics; and
- Katy Richards, Solicitor, Legal Directorate, Scottish Government.

and then from—

- Sandy Brindley, Chief Executive, Rape Crisis Scotland;
- Anne Robertson Brown, Vice Chair, Angus Violence Against Women Partnership;
- Gwen Harrison, Manager, Rape and Sexual Abuse Service Highland;
- Jen Stewart, Centre Manager, Rape and Sexual Abuse Centre Perth and Kinross.

8th Meeting, 2020 (Session 5) Tuesday 24 March 2020

5. The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: The Committee considered its approach to future scrutiny of the Bill.

11th Meeting, 2020 (Session 5) Tuesday 12 May 2020

1. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Dr Anne McLellan, Consultant in Sexual and Reproductive Health, NHS Lanarkshire.

2. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

12th Meeting, 2020 (Session 5) Wednesday 20 May 2020

1. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Chloe Riddell, Policy Manager, Children 1st.

2. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

16th Meeting, 2020 (Session 5) Tuesday 09 June 2020

1. Forensic Medical Services (Victims of sexual offences) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Gillian Mawdsley, Secretary to the Criminal Law Committee, The Law Society of Scotland;

and then from—

- Filippo Capaldi, Detective Superintendent, Police Scotland.

2. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

18th Meeting, 2020 (Session 5) Tuesday 23 June 2020

5. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Jeane Freeman, Cabinet Secretary for Health and Sport;
- Dr Gregor Smith, Interim Chief Medical Officer;
- Greig Walker, Bill Team Leader; and
- Tansy Main, Unit Head, Chief Medical Officer Rape and Sexual Assault Taskforce, Scottish Government.

6. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

21st Meeting, 2020 (Session 5) Tuesday 1 September 2020

7. Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (in private): The Committee considered and agreed a draft Stage 1 report

Annexe B - Evidence

Written evidence to call for views

- deafscotland
- Clackmannanshire and Stirling Child Protection Committee
- Angus Women's Aid
- People First (Scotland)
- Gender Based Violence Partnership
- Community Pharmacy Scotland
- Response 617683675
- Response 442847776
- NHS Education for Scotland
- Stirling Council
- Angus Violence Against Women Partnership and Angus Child Protection Committee
- Police Scotland
- Joint Submission from : NHS Greater Glasgow and Clyde and Glasgow Health and Social Care Partnership
- Response 718731872
- The Royal College of Psychiatrists in Scotland
- Victim Support Scotland
- General Medical Council
- Fife Council & Partners
- NHS Lanarkshire
- RASASH
- The Scottish Children's Reporter Administration (SCRA)
- Royal College of Nursing Scotland
- Children 1st
- Edinburgh Rape Crisis Centre
- RASAC P&K

- Healthcare Improvement Scotland
- NSPCC
- Royal College of Paediatrics and Child Health
- Rape Crisis Scotland
- Information Commissioner's Office (ICO)
- Glasgow and Clyde Rape Crisis (GCRC)
- Scottish Ambulance Service
- Law Society of Scotland
- The Crown Office and Procurator Fiscal Service (COPFS)
- The National Police Care Network
- NHS Dumfries and Galloway
- Faculty of Advocates
- Social Work Scotland

Additional written evidence

The Cabinet Secretary for Health and Sport wrote to the Convener on 5 May 2020 to provide further information to the Committee following the evidence session on 17 March 2020.

- Letter from Jeane Freeman MSP, Cabinet Secretary for Health and Sport to Lewis Macdonald MSP, Convener of the Health and Sport Committee - 5 May 2020

The above letter was sent with the following accompanying documents:

- Chief Medical Officer for Scotland letter to Chief Executives - 30 March 2020
- National Police Care Network Guidance: Forensic Medical Examination during COVID-19 - 20 April 2020
- Interim Chief Medical Officer letter to Health Board Chief Executives - 20 April 2020

The Convener issued letters seeking further information following the evidence session on 12 May 2020 and received the following responses :

- Letter from Safia Qureshi, Director of Evidence, Healthcare Improvement Scotland - 18 May 2020
- Letter from Royal College of Nursing - 22 May 2020
- Letter from Dr Anne McLellan, Consultant in Sexual and Reproductive Health, NHS Lanarkshire - 22 May 2020

- Letter from Dr Deb Wardle, Clinical Lead Sexual Assault Services West of Scotland and Debbie Ambridge, West of Scotland Sexual Assault Service Manager - 4 June 2020

The Convener issued letters seeking further information following the evidence session on 20 May 2020 and received the following responses:

- Letter from Anne Salter, Clackmannanshire and Stirling Child Protection Committee - 26 May 2020
- Letter from Chloe Riddell, Policy Manager, Children 1st - 3 June 2020
- Letter from Alistair Hogg, Head of Practice and Policy, Scottish Children's Reporter Administration - 3 June 2020
- Letter from NSPCC - 9 June 2020
- Letter from Social Work Scotland - 11 June 2020

The Scottish Government wrote to the Clerk on 3 June providing further information regarding the work of the CMO Taskforce.

- Letter from Tansy Main, Unit Head - CMO Rape and Sexual Assault Taskforce and FMS Bill - 3 June 2020

The Convener issued letters seeking further information following the evidence session on 9 June and received the following responses :

- Letter from Filippo Capaldi, Detective Superintendent, Police Scotland - 18 June 2020
- Letter from Anne Marie Hicks, Head of Victims and Witnesses Policy, Crown Office and Procurator Fiscal Service - 19 June 2020
- Letter from Dr Kenneth Macdonald, Head of ICO Regions, Information Commissioner's Office - 19 June 2020
- Letter from The Faculty of Advocates - 22 June 2020
- Additional document received from The Faculty of Advocates - 22 June 2020
- Letter from Gillian Mawdsley, Secretary to the Criminal Law Committee, Law Society Scotland - 23 June 2020

The Scottish Government wrote to the Clerk on 18 June 2020 regarding the work of the CMO Taskforce:

- Letter from Tansy Main, Unit Head – CMO Rape and Sexual Assault Taskforce and FMS Bill

For Women Scotland wrote to the Committee following the session on 23 June.

- Letter from For Women Scotland - 29 June 2020

The Scottish Government wrote to the Clerk on 13 July 2020 providing further information regarding existing self-referral services in Scotland.

- Letter from Tansy Main, Unit Head - Existing self-referral services in Scotland

Official reports of meetings

Tuesday 17 March 2020 - evidence from the Scottish Government and then from stakeholders

Tuesday 12 May 2020 - evidence from stakeholders

Wednesday 20 May 2020 - evidence from stakeholders

Tuesday 9 June 2020 - evidence from stakeholders

Tuesday 23 June 2020 - evidence from stakeholders and then from the Scottish Government

1 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

2 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill*

3 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

4 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

5 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Financial Memorandum*

6 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Statements on Legislative Competence*

7 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Delegated Powers Memorandum*

8 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: child rights and welfare impact assessment* . 2019.

9 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: data protection impact assessment.* 2019.

10 The Scottish Government, F*orensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: equality impact assessment . 2019.*

11 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Fairer Scotland Duty assessment. 2019*

12 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: island communities impact assessment. 2019*

13 The Scottish Parliament Information Centre (SPICe), *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill Briefing*

14 The Scottish Government, *Equally Safe: A consultation on legislation to improve forensic medical services for victims of rape and sexual assault. 2019.*

15 The Scottish Government, *Equally Safe consultation: analysis of responses. 2019.*

16 The Scottish Parliament, *Health and Sport Committee Forensic Medical Services Call for Views* , 2019

17 Official Report of the Meeting of the Parliament - 27 May 2020.

18 HMICS, *Strategic Overview of Provision of Forensic Medical Services to Victims of Sexual Crime.* 2017.

19 The Scottish Parliament. *Official Report: 30 March 2017*

20 The Scottish Government, *Taskforce High Level Work Plan*

21 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

22 Written Submission - NHS Lanarkshire

23 Official Report of the Health and Sport Committee - 17 March 2020, COL 15

24 Official Report of the Health and Sport Committee - 23 June 2020

25 Written submission - Scottish Children's Reporter Administration

26 Official Report of the Health and Sport Committee - 23 June 2020, COL 9

27 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

28 HMICS, *Strategic Overview of Provision of Forensic Medical Services to Victims of Sexual Crime.* 2017.

29 Letter from the Crown Office and Procurator Fiscal Service to the Health and Sport Committee - 19 June 2020

30 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

31 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

32 The Scottish Government consultation: Clinical Pathway for Children and Young People who have disclosed sexual abuse

33 Letter from Scottish Children's Reporter Administration to the Health and Sport Committee - 3 June 2020

34 Written submission from The Rape and Sexual Abuse Centre, Perth & Kinross

35 Anonymous submission to the Health and Sport Committee

36 Official Report of the Health and Sport Committee - 9 June 2020, COL 1

37 Official Report of the Health and Sport Committee - 23 June 2020, COL 17

38 Letter from the Scottish Government to the Health and Sport Committee - 13 July 2020

39 Official Report of the Health and Sport Committee - 17 March 2020, COl 45

40 Official Report of the Health and Sport Committee - 23 June 2020, COL 18

41 Official Report of the Health and Sport Committee - 17 March 2020, COL 20

42 Written submission - Healthcare Improvement Scotland

43 Letter from the Scottish Government to the Health and Sport Committee - 13 July 2020

44 Official Report of the Health and Sport Committee - 23 June 2020, COL 18

45 Written Submission - Royal College of Nursing

46 Written Submission - Royal College of Nursing

47 The Scottish Government, F*orensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: equality impact assessment . 2019.*

48 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

49 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

50 Official Report of the Health and Sport Committee - 12 May 2020, COl 16

51 Official Report of the Health and Sport Committee - 12 May 2020, COL 17

52 Official Report of the Health and Sport Committee - 9 June 2020, COl 18

53 Written submission - Police Scotland

54 Official Report of the Health and Sport Committee - 23 June 2020, COL 21

55 Official Report of the Health and Sport Committee - 23 June 2020, COl 21

56 Official Report of the Health and Sport Committee - 17 March 2020, COL 23

57 Official Report of the Health and Sport Committee - 17 March 2020, COL 51

58 Letter from the Royal College of Nursing - 14 May 2020

59 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

60 Official Report of the Health and Sport Committee - 17 March 2020, COL 29

61 Letter from the Scottish Government to the Health and Sport Committee - 3 June 2020

62 Letter from the Scottish Government to the Health and Sport Committee - 3 June 2020

63 Letter from For Women Scotland - 29 June 2020

64 Official Report of the Health and Sport Committee - 12 May 2020, COL 5

65 Official Report of the Health and Sport Committee - 12 May 2020, COL 2

66 Official Report of the Health and Sport Committee - 23 June 2020, COL 23

67 Letter from the Scottish Government to the Health and Sport Committee - 3 June 2020

68 Official Report of the Health and Sport Committee - 12 May 2020, COL 2

69 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

70 Faculty of Forensic & Legal Medicine, *Recommendations for the collection of forensic specimens from complainants and suspects* - July 2020

71 Official Report of the Health and Sport Committee - 12 May 2020, COL 8

72 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Fairer Scotland Duty assessment. 2019*

73 Official Report of the Health and Sport Committee - 12 May 2020, COL 15

74 Letter from NHS Greater Glasgow and Clyde to the Health and Sport Committee - 3 June 2020

75 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

76 Official Report of the Health and Sport Committee - 12 May 2020, COL 3

77 Written submission - Clackmannanshire and Stirling Child Protection Committee

78 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

79 Written submission - Police Scotland

80 Official Report of the Health and Sport Committee - 9 June 2020, COL 3

81 Letter from the Crown Office and Procurator Fiscal Service to the Health and Sport Committee - 19 June 2020

82 Official Report of the Health and Sport Committee - 9 June 2020, COL 16

83 Written submission - The Faculty of Advocates

84 Written submission - The Law Society of Scotland

85 Official Report of the Health and Sport Committee - 9 June 2020, COL 17

86 Written submission - The Crown Office and Procurator Fiscal Service

87 Forensic Science Regulator, Codes of Practice and Conduct in relation to Sexual Assault Examinations (2020)

88 Letter from the Scottish Government to the Health and Sport Committee - 13 July 2020

89 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

90 Official Report of the Health and Sport Committee - 17 March 2020, COL 17

91 Official Report of the Health and Sport Committee - 17 March 2020, COL 46

92 Letter from the Information Commissioner's Office to the Health and Sport Committee - 19 June 2020

93 Official Report of the Health and Sport Committee - 23 June 2020, COL 15

94 Written Submission - Law Society of Scotland

95 Written Submission - Law Society of Scotland

96 Written Submission - South Lanarkshire Gender Based Violence Partnership

97 Written Submission - Edinburgh Rape Crisis Centre

98 Written submission - Information Commissioner's Office

99 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: data protection impact assessment*. 2019.

100 Letter from the Information Commissioner's Office to the Health and Sport Committee - 19 June 2020

101 The Scottish Government, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: data protection impact assessment*. 2019.

102 HMICS, *Strategic Overview of Provision of Forensic Medical Services to Victims of Sexual Crime.* 2017.

103 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

104 Official Report of the Health and Sport Committee - 23 June 2020, COL 25

105 Letter from Police Scotland to the Health and Sport Committee - 18 June 2020

106 Letter from the Information Commissioner's Office to the Health and Sport Committee - 19 June 2020

107 Letter from the Law Society of Scotland to the Health and Sport Committee - 18 June 2020

108 Written Submission - Children 1st

109 Letter from Scottish Children's Reporter Administration to the Health and Sport Committee - 3 June 2020

110 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Policy Memorandum*

111 Written Submission - Children 1st

112 Official Report of the Health and Sport Committee - 20 May 2020, COLS 11 & 12

113 Letter from Healthcare Improvement Scotland to the Health and Sport Committee - 18 May 2020

114 Official Report of the Health and Sport Committee - 23 June 2020, COL 13

115 Letter from the Scottish Government to the Health and Sport Committee - 3 June 2020

116 HMICS, *Strategic Overview of Provision of Forensic Medical Services to Victims of Sexual Crime.* 2017.

117 National Memodrandum of Understanding (MOU) between the Police Service of Scotland and all Geographic NHS boards in Scotland

118 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

119 Official Report of the Health and Sport Committee - 20 May 2020, COL 12

120 Letter from the NSPCC to the Health and Sport Committee - 8 June 2020

121 Letter from the Scottish Government to the Health and Sport Committee - 13 July 2020

122 Healthcare Improvement Scotland, Healthcare and Forensic Medical Services for People who Have Experienced Rape, Sexual Assault or Child Sexual Abuse - Standards: December 2017

123 Letter from the Chief Medical Officer for Scotland to NHS board Chief Executives - 30 March 2020

124 Letter from the Chief Medical Officer for Scotland to NHS board Chief Executives - 30 March 2020

125 Written Submission - Law Society of Scotland

126 Written Submission - Royal College of Nursing

127 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Explanatory Notes*

128 Written Submission - Law Society of Scotland

129 Official Report of the Health and Sport Committee - 23 June 2020, COL 23

130 The Scottish Parliament, Finance and Constitution Committee, Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill call for views

131 The Scottish Parliament, *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Financial Memorandum*

132 The Scottish Parliament, Delegated Powers and Law Reform Committee Report, Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Stage 1.