Child Rights and Welfare Impact Assessment (CRWIA)

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

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CRWIA title: Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill **Date of publication: 27 November 2019**	
Executive summary	The Bill seeks to improve forensic medical services for victims of sexual offences, including victims of child sexual abuse. The Bill will help realise the rights of child victims enshrined in the UN Convention on the Rights of the Child (UNCRC), in particular rights under Articles 19 (protection from violence, abuse and neglect) and 39 (recovery from trauma and reintegration).
Background	The policy background to the Bill and further information about the role of the Chief Medical Officer for Scotland's rape and sexual assault Taskforce (CMO Taskforce), is fully described in the Policy Memorandum published on the Scottish Parliament's website. Chapter 5 of the consultation analysis paper describes the consultation responses sent to the Scottish Government on children and young people matters https://www.gov.scot/publications/analysis-responses-equally-safe-consultation-legislation-improve-forensic-medical-services-victims-rape-sexual-assault/pages/6/. The Bill applies to all victims of sexual offences irrespective of age or other distinguishing feature. Forensic medical examination is not relevant to many victims of child sexual abuse because the offending is often not disclosed within the 7 day DNA capture window. Access to healthcare and support for recovery will of course be vital irrespective of when child sexual abuse is disclosed to health boards. Where forensic medical examination is required, it is important that this is provided in a child centred way which puts their needs first. The CMO Taskforce has set up a Children and Young People Expert Group which, together with the Clinical Pathways Sub Group, has consulted on a draft Clinical Pathway for Children and Young People who have disclosed sexual abuse https://consult.gov.scot/cmo/clinical-pathway/. This pathway is relevant for children under 16 years of age (or up to 18 years of age for young people with vulnerabilities and additional support needs) and provides that children and young people will receive a joint paediatric and forensic examination (JPFE). A finalised Children's Clinical Pathway is expected to be published in summer 2020. The Children and Young People Clinical Pathway is premised on self-referral not being accessible to young people under 16 (for reasons explored below) and the Bill has been drafted accordingly.

	Children 1st supported the proposal that there should be statutory duties on health boards but cautioned that focus should not be lost on wider types of medical examination that may be carried out on victims of non-sexual child abuse (physical abuse or neglect). The Bill does not require to legislate any wider than is proposed because wider medical examinations can (and are) carried out under the National Health Service (Scotland) Act 1978 and the 2014 Memorandum of Understanding between health boards and Police Scotland. The Bill supports multi-agency working and is therefore "Barnahus ready" to support the Scottish Government's wider moves towards developing a Scottish version of the Barnahus concept. The Bill has a specific focus on victims of child sexual abuse and does not legislate for wider types of medical examination that may be carried out on victims of non-sexual child abuse (physical abuse or neglect). This does not prevent the specific services under the Bill and wider services being provided in a coherent and coordinated way for child victims. National Guidance for Child Protection in Scotland: Guidance for Health Professionals in Scotland (the Pink Book) provides guidance for healthcare staff working within an adult and child service context. The National Child Protection Leadership Group supported a refresh of this guidance in order to strengthen the contribution of health professionals in protecting children in Scotland. The resulting short life working group recommended the following actions in preference to refreshing current health guidance: • Development and implementation of a NHS Scotland policy for child protection, incorporating an accountability framework for health boards with clearly defined roles for those with designated child protection responsibilities. • Strengthening the National Guidance for Child Protection in Scotland (2014) in terms of role, function and contribution of health staff/designated services to child protection processes. This will underline the multiagency nature of child protection and role of health (and education) alongside social work, the police and third sector partners. • Consideration of how education and learning can be supported to ensure health staff are competent and confident in discharging their individual responsibilities for protecting children. Work is underway on each of these areas. National Guidance for Child Protection in Scotland (2014) refresh

	This revision is required within the Child Protection Improvement Programme (CPIP) in order to ensure national guidance is consistent with the legislative and policy framework and current practice developments. The current edition of the National Guidance for Child Protection in Scotland for practitioners was published in May 2014, updating a comprehensive 2010 rewrite of a 1998 version. The 2010 Guidance introduced the GIRFEC policy and practice model as the context for child protection. The plan is to complete drafting this refresh by the end of March 2020, for consultation and publication in 2020. In view of the complexity of this exercise; the range of stakeholders and systems affected, the National Child Protection Leadership Group is offered regular updates. A strategic Steering Group was formed representing leadership in key agencies and policy areas.
Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base	Any child can be affected by sexual abuse. But they may be more at risk if they have: a history of previous sexual abuse, a disability, a disrupted home life or have experienced other forms of abuse. Both boys and girls can be sexually abused. Research suggests that girls are at a greater risk of being sexually abused by a family member and boys are at a higher risk of being abused by a stranger. In addition much of the research in the UK and in other jurisdictions suggests that around one third of all harmful sexual behaviour towards children and young people is committed by children and young people. Research has shown that teenage girls aged between 15 and 17 years reported the highest rates of sexual abuse: https://learning.nspcc.org.uk/media/1710/statistics-briefing-child-sexual-abuse.pdf; *https://consult.gov.scot/equally-safe/equally-safe-improve-forensic-medical-services/consultation/view_respondent?uuId=416662255*. There were 190 children on a child protection register or subject to a child protection plan in Scotland in 2017-18 due to concerns about sexual abuse, and possibly an additional 16 due to concerns about child sexual exploitation. While not all of these will be at affected by the Bill this gives an idea of how many children may experience abuse: https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/03/childrens-social-work-statistics-2017-2018/documents/childrens-social-work-statistics-scotland-2017-18/childrens-social-work-statistics-scotland-2017-18/govscot%3Adocument/childrens-social-work-statistics-scotland-2017-18.pdf.
Children and young	Given the very sensitive policy area great care requires to be taken with direct engagement with victims so as to avoid re-

people's views and experiences	traumatisation. In the case of engagement with adult survivors, this was facilitated by Rape Crisis Scotland who convened a Forensics Focus Group on 20 June 2019. The sensitivities are of course even more acute in the case of child victims. Another relevant factor is that victims of child sexual abuse will often not undergo forensic medical examination, so the cohort of people that could potentially share their experiences is small. Given these sensitivities, no direct engagement has been had or will be had with child victims, in the context of the Bill. Indirect engagement has been had through the participation of bodies such as NSPCC Scotland, the Scottish Children's Reporter Administration, LGBT Youth Scotland, Children 1st and the Office of the Children and Young People's Commissioner Scotland in the Scottish Government's consultation process.
Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing	The Bill will make a significant contribution to the implementation of a number of UNCRC Articles, in particular Article 39 (recovery from trauma and reintegration). In the case of article 3 (best interests of the child) the Bill has been drafted so as to allow professional judgement on a case by case basis. Even where a child victim is able to access healthcare within the 7 day DNA capture window, it may not be in the child's best interests for a full examination, or any examination, to be carried out. This assessment of the child's best interests may in some cases supersede the benefit to criminal justice processes in forensic evidence being captured. In the case of article 12 (respect for the views of the child), the Bill preserves mature children's rights to make medical consent decisions in their own right, provided a qualified medical professional is of the view the person who is under 16 is capable of understanding the nature and consequences of any medical treatment in accordance with section 2(4) of the Age of Legal Capacity (Scotland) Act 1991. Whilst the Bill will not allow under 16s to access self-referral, this is in line with current clinical practice in Scotland. The Bill requires victims to be properly informed of their position ahead of a forensic medical examination taking place. This enables a practice of the child being helped to understand their legal position and to make a police referral decision themselves, wherever possible. For children between 16 and 18 they will be able to access self-referral unless there is a vulnerability factor that would preclude an adult accessing self-referral.

	Article 12 - alternative approaches to age 16 cut off Alternative approaches to the age cut off of 16 for self-referral were considered, to address the argument that a fixed age cut off does not respect the emerging autonomy and good judgement of mature under 16s. The consultation paper was drafted in an open way so as to allow a full range of views to be expressed. The option of leaving matters entirely to professional judgement was considered by the Expert Group but rejected on the basis that consultation responses consistently referenced child protection guidance including reporting duties for child sexual abuse. The option of prescribing a lower or higher age cut off was rejected, since this option did not find favour with the Expert Group or with consultees. The Scottish Government considers that the best approach is to align the Bill with the general age of legal capacity (16) and the "age of consent" in the Sexual Offences (Scotland) Act 2009. This is the basis on which the national child protection guidance is being revised and the draft Children and Young People Clinical Pathway is being finalised. In the case of article 19 (protection from violence, abuse and neglect), the Bill directly contributes to systems of identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment. In the context of prioritising child victim's healthcare and recovery, it is expected that positive criminal justice outcomes can be secured for the prosecution of child sexual abuse (including in cases where no forensic evidence is captured). In the case of article 24 (health and health services), UNCRC General comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health([1]) includes at point III.A., "*The health-care system should not only provide health-care support but also report the information to relevant authorities for cases of rights violations and injustice*." This is consistent with the Bill providing that self-referral is only available to over 16s, since child sexual abuse must be disclosed to the police.
Monitoring and review	The implementation of the Bill will be supported by the final Children and Young People Clinical Pathway and the ongoing work of the Expert Group. The Policy Memorandum sets out further details of the Quality Assurance arrangements intended for the Bill generally.

([1]) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vHCIs1B9k1r3x0aA7FYrehlNUfw4dHmlOxmFtmhaiMOkH80ywS3uq6Q3bqZ3A3yQ0%2b4u6214CSatnrBlZT8nZmj

Bill - Section	Aims of measure	Likely to impact on . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
1 – provision of certain forensic medical services	Overview of the Bill	Gives child and other victims a legal right to forensic medical services.	Supports rights under articles 19, 24 and 33.	Works in tandem with wider child wellbeing duties.
2 – the examination service	Provides that self-referral is not available to under 16s.	Gives child and other victims a legal right to the examination service.	Supports rights under articles 19, 24 and 33.	Works in tandem with wider child wellbeing duties.
2 – the examination service	Provides that self-referral is not available to under 16s. Ensures that victims of harmful sexual behaviour by children under the new age of criminal responsibility (12) is covered.	Gives child and other victims a legal right to the examination service.	Supports rights under articles 19, 24 and 33.	Works in tandem with wider child wellbeing duties.

Bill - Section	Aims of measure	Likely to impact on . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
3 – limitation on provision of forensic medical examinations	Protects professional judgement and thus clinicians' assessment of a child's best interests.	Protects children where it is not in their best interests to undergo forensic medical examination.	Supports rights under article 3.	Works in tandem with wider child wellbeing duties.
4 - information to be provided before examination	Ensures child victims are informed of their position, including why a police report may have to be made in their case.	Gives children an opportunity to discuss their position with professionals.	Supports rights under article 12.	Works in tandem with wider child wellbeing duties.
5 – health care needs	Ensures a focus on health care needs.	Ensures child victims' wider holistic needs are provided for.	Supports rights under articles 24 and 39.	Works in tandem with wider child wellbeing duties.
6 – the retention service	Gives over 16s a right to have evidence stored – usually because they have not made a report to the police ("self-referral")	Children under 16 may not access self-referral, and this would be explained to the child under section 4.	Supports rights under article 12.	Works in tandem with wider child wellbeing duties.

Bill - Section	Aims of measure	Likely to impact on . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
7 – return of certain items of evidence	Gives over 16s who self-refer a right to have their property returned to them.	Children under 16 may not access self-referral, and this would be explained to the child under section 4.	Supports rights under article 12.	Works in tandem with wider child wellbeing duties.
8 – destruction of evidence	Gives over 16s who self-refer a right to have their samples and property destroyed. Destruction would also happen at the end of the statutory retention period that must be communicated to the victim.	Children under 16 may not access self-referral, and this would be explained to the child under section 4.	Supports rights under article 12.	Works in tandem with wider child wellbeing duties.
9 – transfer of evidence to the police	A legal basis for the transfer of evidence to the police, in the case of a police report.	In the case of a child under 16, or an older child who wishes to report to the police, there would be a report to the police.	Supports rights under article 19.	Works in tandem with wider child wellbeing duties.

The remaining sections of the Bill are technical in nature and support the earlier sections discussed above. The schedule includes the application of the healthcare principles in the Patients Rights (Scotland) Act 2011 to the delivery of services under the Bill.

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The Scottish Government
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Edinburgh
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