

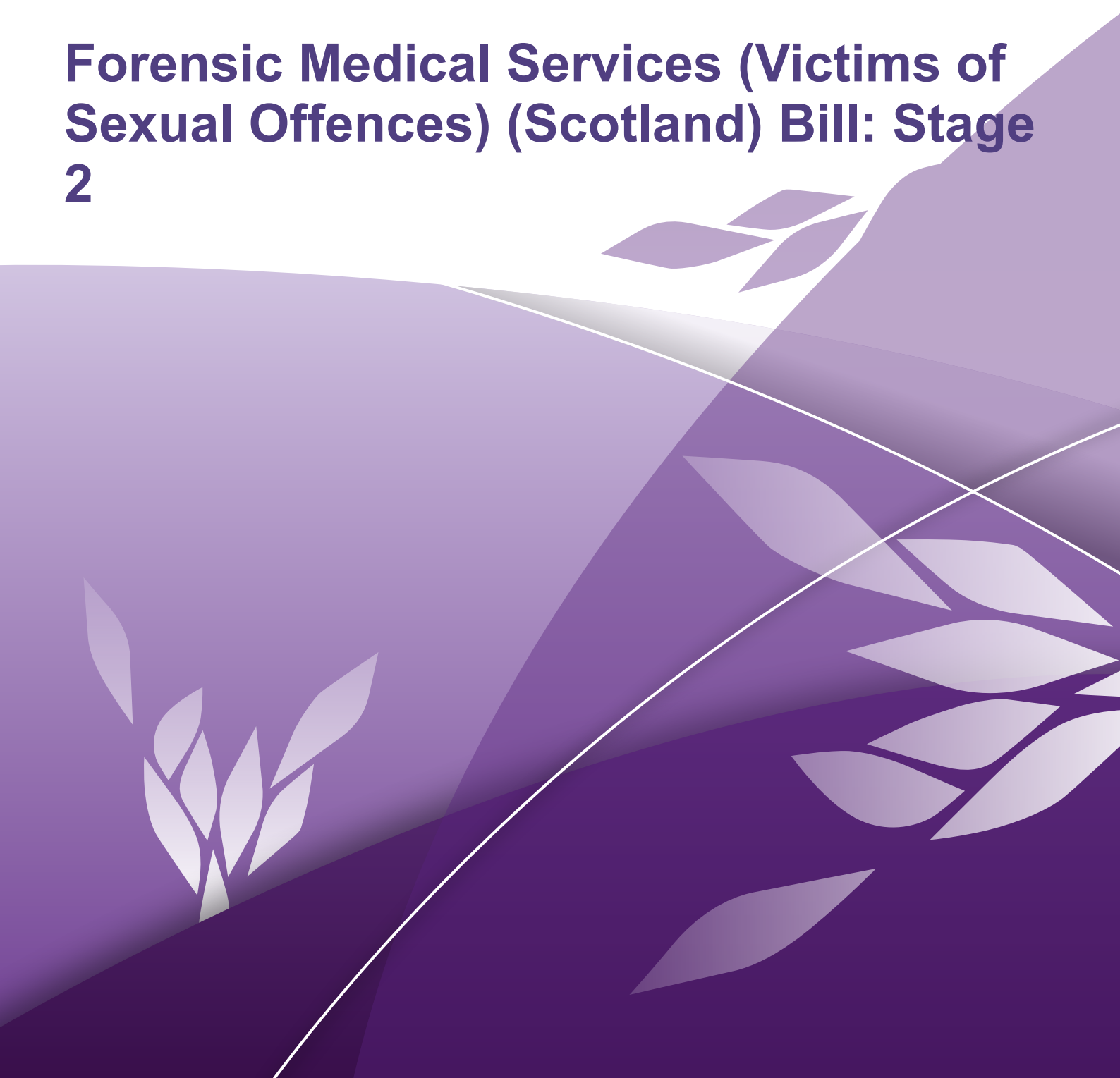


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Pàrlamaid na h-Alba

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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: Stage 2**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Convener**  
**Bill Bowman**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Mary Fee**  
Scottish Labour



**Gil Paterson**  
Scottish National Party



**Michelle Ballantyne**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 1 December 2020, the Delegated Powers and Law Reform Committee considered the supplementary delegated powers in the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill (“the Bill”) as amended at Stage 2.<sup>i</sup>
2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
3. The Committee published its Stage 1 Report on the Bill on 31 January 2020<sup>ii</sup>; it reported it was content with the delegated powers provisions contained in the Bill.
4. The Bill completed Stage 2 on 10 November 2020.

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<sup>i</sup> The Bill as introduced is available [here](#)

<sup>ii</sup> [Delegated Powers and Law Reform Committee, 8th Report 2020 \(Session 5\): Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Bill: Stage 1](#)

# Overview of the Bill

5. The Scottish Government Bill was introduced by the Cabinet Secretary for Health and Sport, Jeane Freeman MSP, on 26 November 2019. The lead committee is the Health and Sport Committee.
6. The Policy Memorandum prepared by the Scottish Government, notes the main policy objective of the Bill is to improve forensic medical services for people who have been affected by sexual crime.<sup>iii</sup>
7. The Bill confers a statutory duty on Health Boards to provide forensic medical examinations to victims and to ensure that an individual's healthcare needs are addressed in a holistic way in the context of any such examination. This duty applies in relation to victims referred for examination by police and to those who self-refer. This means that victims can request forensic medical examination without reporting the incident to the police. The Bill also creates a statutory framework for the retention of samples.

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<sup>iii</sup> The Policy Memorandum is available [here](#)

# Delegated Powers

8. The Scottish Government has produced a Supplementary Delegated Powers Memorandum ("SDPM") which describes the provisions in the Bill conferring power to make subordinate legislation which were introduced at Stage 2. The SDPM supplements the Delegated Powers Memorandum on the Bill as introduced.<sup>iv</sup>

## Section 2(3A) – Power to vary self-referral age

### Power conferred on: the Scottish Ministers

### Power exercisable by: regulations made by Scottish statutory instrument

### Parliamentary procedure: affirmative

#### *Provision*

9. Section 2(2)(b) of the Bill provides that a person over the age of 16 may self-refer for an examination. It follows that a person under the age of 16 may only access the examination service if they have been referred by a police constable.
10. Section 2(3A) of the Bill as amended provides that Scottish Ministers may make regulations to change the minimum age for accessing self-referral. The new power is subject to the limits set out in new subsection (3B) so that the age cannot be changed to an age lower than 13 or higher than 18.
11. The Health and Sport Committee had recommended in its Stage 1 report that the age limit of self-referral be kept under close review, and that provision should be made so that this can be altered in future if appropriate. It also suggested that such regulations should be subject to the super affirmative procedure.

#### *Committee consideration*

12. In the SDPM, the Scottish Government stated that while it was not minded to change the minimum age during the Bill process, it recognised that circumstances could change in future as other law and guidance evolves. However, it did not agree that the super affirmative procedure is proportionate to the circumstances.
13. The Committee considers it is appropriate that Scottish Ministers have the power to make regulations to vary the minimum age for accessing self-referral, which will ensure that the Bill can be kept in line with related law and guidance should it evolve. It also considers it appropriate that such regulations are subject to the affirmative procedure as it provides adequate opportunity for the Parliament to scrutinise regulations made under this section.

14. **The Committee therefore considers the power to vary self-referral age in section 2(3A) acceptable. It is also content that the power is subject to the affirmative procedure.**

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<sup>iv</sup> The Supplementary Delegated Powers Memorandum is available [here](#)



