



Trina Budge  
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Our Reference: 202000102701

17 November 2020

Dear Trina Budge,

Thank you for your email, received 23 October, to Jeane Freeman MSP, the Cabinet Secretary for Health and Sport, regarding the use of the word gender in relation to the availability of female forensic examiners, which has been brought up in Parliamentary debates on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill. I have been asked to reply. I note that you have also written to the Health and Sport Committee. Neither the Cabinet Secretary nor I can reply on their behalf; nor can we answer for what different MSPs have said in the Parliament or in Committee.

The word gender is taken from section 9 of the Victims and Witnesses (Scotland) Act 2014, which provides that victims of sexual offences must be given an opportunity to request that the person who is to carry out a forensic medical examination be of a specified gender. The Forensic Medical Services Bill, does not include the word “gender” and does not re-enact or significantly change section 9 of the Victims and Witnesses (Scotland) Act 2014 – it only makes technical amendments so that it can work with the Bill’s provisions and be commenced at the same time.

As you may have noted, the Bill has now passed Stage 2 and no MSPs lodged amendments relating to section 9 of the Victims and Witnesses (Scotland) Act 2014. The revised print of the Bill is available here:

<https://beta.parliament.scot/bills/forensic-medical-services-victims-of-sexual-offences-scotland-bill>.

You will be aware that on 10 November, during the Stage 2 Committee session for the Forensic Medical Services Bill, Sandra White MSP asked a question about the availability of female doctors and nurse chaperones in relation to trauma informed care. This was in the debate about amendment 18 which has now become section 9A of the revised print of the Bill. This new and improved provision makes clear that the Scottish Government and Committee expect health boards to act in ways that avoids re-traumatisation.

As the Cabinet Secretary said in her response to the Stage 1 report, section 9 of the 2014 Act as amended by the Bill ensures that people who access forensic medical examination can request a

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female examiner and the Scottish Government is committed to improving the availability of female sexual offence examiners. This work is being led by the Taskforce for the improvement of healthcare and forensic medical services for people who have experienced rape, sexual assault or child sexual abuse, chaired by the Interim Chief Medical Officer, Dr Gregor Smith.

The Scottish Government strongly supports single sex exceptions in the UK Equality Act 2010. The 2010 Act is generally a reserved matter for Westminster. The single sex exceptions allow trans people to be excluded when this is a proportionate means of achieving a legitimate aim. This means that single sex services, like domestic abuse refuges or rape counselling are protected, as are single sex employment rights in relation to such services and the delivery of relevant health care services, such as intimate examinations.

The use of the term "gender" in section 9 does not affect the operation of the Equality Act exceptions, including the exception permitting an employer to impose an occupational requirement that a person be of a particular sex or that they not have the protected characteristic of gender reassignment.

The Scottish Government is clear that all organisations need to take full account of all relevant aspects of the Equality Act when any changes in policy are being considered. All rights - those of women and trans people - must be protected. The Scottish Government is developing guidance to make sure that policy makers and service providers such as health boards understand better how to ensure that the rights of women and trans people can be collectively realised.

I hope you find this information helpful.

Yours sincerely

*Lynda Dobinson*

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**CMOPD : Rape And Sexual Assault Taskforce & Forensic Medical Services Bill**

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