



Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021

2021 asp 3

Duty to provide certain forensic medical services

1 Provision of certain forensic medical services

- (1) Every health board must, in respect of its area—
 - (a) provide the examination service (see section 2), and
 - (b) provide the retention service (see section 6).
- (2) A health board's—
 - (a) examination service is to be available to any person falling within section 2(2), regardless of the person's place of residence,
 - (b) retention service is to be available in relation to any person to whom the health board provides the examination service.

The examination service

2 The examination service

- (1) The examination service consists of providing forensic medical examinations to persons falling within subsection (2) (but see section 3).
- (2) A person falls within this subsection if—
 - (a) the person is referred by a constable to the health board for a forensic medical examination in connection with an incident in which—
 - (i) a sexual offence is alleged to have been committed against the person, or
 - (ii) the person is alleged to have been the subject of harmful sexual behaviour by a child under the age of criminal responsibility, or
 - (b) the person is aged 16 or over and requests such an examination in connection with an incident reported to the health board by the person as being of the type mentioned in paragraph (a).

- (3) A forensic medical examination is a physical medical examination carried out for purposes including the collection of evidence for use in connection with—
- (a) any investigation of the incident which gave rise to the need for the examination, or
 - (b) any proceedings in relation to the incident.
- (4) The Scottish Ministers may by regulations substitute a different age for the age for the time being specified in subsection (2)(b).
- (5) The age substituted for the age for the time being specified in subsection (2)(b) in regulations under subsection (4) must be—
- (a) no lower than 13, and
 - (b) no higher than 18.
- (6) Regulations under subsection (4) may make transitional, transitory or saving provision.
- (7) Regulations under subsection (4) are subject to the affirmative procedure.
- (8) Before the end of each reporting period, the Scottish Ministers must lay before the Scottish Parliament a statement explaining—
- (a) why they will be laying draft regulations under subsection (4) before the Scottish Parliament, or
 - (b) why they will not be laying draft regulations under subsection (4) before the Scottish Parliament.
- (9) Whether or not the statement under (8) indicates that the Scottish Ministers will be laying draft regulations under subsection (4), the statement under subsection (8) must indicate—
- (a) what consideration has been given by the Scottish Ministers to the support that would be given to persons under 16 should subsection (2)(b) be amended so that such persons can request a forensic medical examination,
 - (b) what support is being or will be provided to persons under 16 who fall within subsection (2)(a).
- (10) For the purpose of this section, the reporting periods are—
- (a) the period of one year beginning with the day of Royal Assent,
 - (b) each subsequent period of one year.
- (11) In subsection (2)—
- “sexual offence”—
- (a) means an offence which involves—
 - (i) an element of physical, sexual contact, or
 - (ii) the ejaculation of semen, or the emission of urine or saliva sexually, onto a person, and
 - (b) includes an act done outside Scotland which, if done in Scotland, would constitute such an offence,
- “harmful sexual behaviour” means behaviour (in Scotland or elsewhere) which—
- (a) causes or risks causing harm (whether physical or not) to another person, and
 - (b) involves—

Status: This is the original version (as it was originally enacted).

- (i) an element of physical, sexual contact, or
- (ii) the ejaculation of semen, or the emission of urine or saliva sexually, onto a person,

the reference to the age of criminal responsibility is a reference to the age of criminal responsibility in Scotland (as specified in section 41 of the Criminal Procedure (Scotland) Act 1995).

3 Limitation on provision of forensic medical examinations

Nothing in this Act requires—

- (a) a forensic medical examination to be carried out where a professional judgement is made that the examination should not be carried out, or
- (b) a particular action to be carried out as part of a forensic medical examination where a professional judgement is made that the action should not be carried out.

4 Information to be provided before examination

- (1) This section applies where a person is referred for or requests a forensic medical examination as mentioned in section 2(2).
- (2) Before any evidence is collected—
 - (a) the person who has been referred for or, as the case may be, who requested the examination must, so far as reasonably practicable, be provided with the information mentioned in subsection (3), and
 - (b) the information must, so far as reasonably practicable, be explained to the person.
- (3) The information is—
 - (a) information about—
 - (i) the circumstances in which any evidence collected during the examination may be transferred to a constable, and
 - (ii) the purposes for which such evidence may then be used, and
 - (b) where the forensic medical examination is requested under section 2(2)(b), information about—
 - (i) the person's rights to request the return of certain items under section 7 and to request the destruction of evidence under section 8(1)(a), and
 - (ii) the destruction of evidence under section 8(1)(b).
- (4) Failure to comply with subsection (2) does not by itself render any evidence collected during the examination inadmissible in any proceedings in relation to the incident which gave rise to the need for the examination.

5 Health care needs

- (1) A health board must take such steps as are reasonably practicable to ensure that, where a person is referred for or requests a forensic medical examination as mentioned in section 2(2), any health care needs of the person arising from the incident which gave rise to the need for the examination are identified and, to the extent that it is a function

of the health board to provide for the health care of the person, addressed by the health board.

- (2) Accordingly, a health board must provide the examination service in conjunction with such other services provided by the health board under or by virtue of the National Health Service (Scotland) Act 1978 as are relevant to the identification and addressing of such health care needs.
- (3) Subsection (1) applies even where the person does not proceed to undergo a forensic medical examination.
- (4) For the purposes of this section, the ways in which health care needs can be addressed include the person being referred to other services provided by the health board.

The retention service

6 The retention service

- (1) The retention service consists of storing, for the purpose mentioned in subsection (2), evidence which—
 - (a) was collected during a forensic medical examination carried out by virtue of section 2, and
 - (b) has not been transferred to a constable under section 9.
- (2) The purpose is the preservation of the evidence for use in connection with—
 - (a) any investigation of the incident which gave rise to the need for the examination, or
 - (b) any proceedings in relation to the incident.

7 Return of certain items of evidence

- (1) This section applies where evidence collected during a forensic medical examination carried out by virtue of section 2(2)(b) and stored by a health board under section 6 includes an item which was worn or otherwise present during the incident which gave rise to the need for the examination.
- (2) The person who underwent the examination may request that the item be returned to the person.
- (3) Subsection (4) applies—
 - (a) where the health board is not satisfied that the requested item belongs to the person who made the request,
 - (b) where the health board considers that the requested item should not be returned to the person on safety grounds,
 - (c) where a request under section 9(2) for the transfer of the requested item to a constable—
 - (i) was made before the making of the request under subsection (2), or
 - (ii) is made after the making of the request under subsection (2) but before the requested item is returned to the person.
- (4) The health board must—
 - (a) refuse the request, and

- (b) except in a case mentioned in subsection (3)(c), explain the reason for the refusal to the person who made the request as soon as reasonably practicable.
- (5) Otherwise, the health board must comply with the request as soon as reasonably practicable.

8 Destruction of evidence

- (1) A health board must ensure that any evidence collected during a forensic medical examination carried out by virtue of section 2(2)(b) and stored by the health board under section 6 is destroyed as soon as reasonably practicable after whichever of the following occurs first—
- (a) the expiry of the period of 30 days beginning with the day of the making, by the person who underwent the examination, of a request that the evidence be destroyed, or
 - (b) the expiry of such period as may be specified by the Scottish Ministers in regulations.
- (2) But the health board must ensure that evidence is not destroyed under subsection (1)—
- (a) on the basis of a request made under paragraph (a) of that subsection if the request is withdrawn by the person who made it before the expiry of the period mentioned in that paragraph, or
 - (b) if subsection (3) or (4) applies.
- (3) This subsection applies where—
- (a) a request was made under section 9(2) before the expiry of the period mentioned in subsection (1)(a) or, as the case may be, (b) for evidence to be transferred to a constable, and
 - (b) at the time the period expires, the request has not been complied with.
- (4) This subsection applies where a request is made under section 9(2) for evidence to be transferred to a constable—
- (a) after the expiry of a period mentioned in subsection (1), and
 - (b) before the evidence is destroyed.
- (5) But subsection (4) does not apply where the request is made at a time when it is not reasonably practicable to stop the destruction of the evidence.
- (6) Regulations under subsection (1)(b) may make—
- (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (7) Regulations under subsection (1)(b) are subject to the affirmative procedure.

Transfer of evidence

9 Transfer of evidence to police

- (1) This section applies—
- (a) where a forensic medical examination has been carried out following a person being referred for such an examination as mentioned in section 2(2)(a),

- (b) where—
 - (i) a forensic medical examination has been carried out following a person requesting such an examination as mentioned in section 2(2)(b), and
 - (ii) the person has subsequently reported the incident in connection with which the examination took place to a constable, or
 - (c) where—
 - (i) a forensic medical examination has been carried out following a person requesting such an examination as mentioned in section 2(2)(b),
 - (ii) the health board which carried out the examination has subsequently established that the person was, at the time of the examination, under the age mentioned in that section at that time, and
 - (iii) the matters mentioned in sub-paragraphs (i) and (ii) have been reported to a constable.
- (2) A constable may request the transfer to the constable of any evidence collected during the examination and stored or otherwise held by a health board which is required for the purposes of—
- (a) investigation of the incident which gave rise to the need for the examination, or
 - (b) proceedings in relation to the incident.
- (3) The health board must comply with the request as soon as reasonably practicable.

*Provision of examination and retention services: health care principles***10 Trauma-informed care**

- (1) The Patient Rights (Scotland) Act 2011 is amended as follows (see also paragraph 4 of the schedule).
- (2) In the schedule (health care principles), after paragraph 7, insert—
- “7A (1) Regard is to be had to the importance of providing health care in a way that seeks to avoid re-traumatisation and is otherwise trauma-informed.
- (2) Sub-paragraph (1) applies only in relation to the exercise of functions conferred by section 1 of the 2021 Act.”.

*Examination of under-age persons***11 Examination of under-age person under section 2(2)(b)**

- (1) Subsection (2) applies where—
- (a) a forensic medical examination has been carried out by virtue of section 2(2)(b), and
 - (b) the health board subsequently establishes that the person was, at the time of the examination, under the age mentioned in that section at that time.
- (2) The fact that the person was under that age at that time does not affect the validity of—
- (a) the carrying out of the examination,

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

Victim support information and referrals

12 Victim support information and referrals

- (1) Subsection (2) applies where—
- (a) a person requests a forensic medical examination as mentioned in paragraph (b) of section 2(2), and
 - (b) the incident in connection with which the examination is requested is of the type mentioned in paragraph (a)(i) of that section.
- (2) The health board to which the request is made must inform the person that—
- (a) the person may request from the health board—
 - (i) a copy of the Victims' Code for Scotland, and
 - (ii) information relating to the rights of victims,
 - (b) the person may request the health board to refer the person to providers of victim support services, and
 - (c) the person may contact providers of victim support services directly without being referred as mentioned in paragraph (b).
- (3) The health board must, as soon as reasonably practicable after a person mentioned in subsection (1) or section 8A(1) of the 2014 Act makes a request for—
- (a) a copy of the Victims' Code for Scotland—
 - (i) provide the person with a copy of the Code, or
 - (ii) advise the person where a copy of the Code may be obtained,
 - (b) information relating to the rights of victims—
 - (i) provide the person with such information held by, or accessible to, the health board as the health board considers relevant to the request, and
 - (ii) provide the person with contact details for any other body which the health board considers may hold or be able to access information relevant to the request.
- (4) Where a person mentioned in subsection (1) or section 8A(1) of the 2014 Act requests a referral of the type mentioned in subsection (2)(b), the health board must, subject to the views of the person—

- (a) disclose the person's details to such providers of victim support services as the authority considers appropriate to the person's needs, or
 - (b) provide the person with the name, address and telephone number of such providers of victim support services.
- (5) Subsections (6) to (8) apply where—
- (a) a person requests a copy of the Victims' Code for Scotland from a health board under this section, and
 - (b) the person does not understand or speak English.
- (6) The person may request that the copy provided be a translation in a language that the person understands.
- (7) The health board may transmit that request to the Scottish Ministers.
- (8) The Scottish Ministers must—
- (a) translate the Code into the language required, and
 - (b) provide a copy of the translated Code to the health board.
- (9) In this section—
- “2014 Act” means the Victims and Witnesses (Scotland) Act 2014,
 - “Victims' Code for Scotland” means the document prepared and published under section 3B of the 2014 Act,
 - “victim support services” has the meaning given by section 3D(5) of the 2014 Act.”.

Section 1 functions: conferral of related functions and co-operation

13 Power to confer functions on other bodies

- (1) The Scottish Ministers may by regulations confer on the bodies listed in subsection (2) functions relating to the services mentioned in section 1.
- (2) The bodies are—
- (a) a special health board,
 - (b) the Agency,
 - (c) HIS.
- (3) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes,
 - (c) make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

14 Co-operation

- (1) Health boards must co-operate with one another, and with the bodies listed in subsection (2), in relation to the planning and provision of the services mentioned in section 1, with a view to securing, across Scotland, adequate provision and continuous improvement in the delivery of those services.
- (2) The bodies are—
 - (a) any special health board with functions relating to the provision of those services,
 - (b) the Agency,
 - (c) HIS.
- (3) Subsections (2) to (4) of section 12J of the 1978 Act apply for the purposes of subsection (1) as they apply for the purposes of subsection (1) of that section, subject to the modification that subsection (3)(a) has effect as if for “or the Agency” there was substituted “, the Agency or HIS”.

Reports

15 Report on operation of Act

- (1) Public Health Scotland must—
 - (a) as soon as reasonably practicable after the end of each reporting period, prepare a report on the operation of this Act during the reporting period, and
 - (b) no later than 2 months after the end of the reporting period to which the report relates—
 - (i) lay the report before the Scottish Parliament, and
 - (ii) publish the report in such ways as Public Health Scotland considers appropriate.
- (2) In this section, “reporting period” means—
 - (a) the period beginning with the day on which section 1 comes into force and ending on 31 March in the following year,
 - (b) each of the subsequent 9 periods of one year ending on 31 March.

General provisions

16 Minor and consequential modifications

The schedule makes minor and consequential modifications of other enactments.

17 Meaning of references to “evidence”

- (1) References in this Act (however expressed) to evidence collected during a forensic medical examination include reference to—
 - (a) images created,
 - (b) samples (for example, samples of blood, semen, urine, or hair and samples taken by swabbing a person’s genitals or bodily orifices) collected,
 - (c) any notes or other records (including notes or records about matters other than the physical condition of the person undergoing the examination) created,

- (d) items worn or otherwise present during the incident which gave rise to the need for such an examination and collected, during or in connection with the examination.
- (2) But such references do not include reference to anything collected or created during or in connection with the examination if the thing was collected or created for use other than use as is mentioned in section 2(3) (for example, for use in identifying, recording and addressing the health care needs of the person undergoing the examination).
- (3) Anything collected or created in anticipation of a forensic medical examination being carried out under this Act is to be regarded as having been collected or created during or in connection with such an examination even where the person who was referred for or, as the case may be, requested the examination does not proceed to undergo such an examination.
- (4) References in this section to images, notes and other records include reference to those things in all forms that the things exist (for example, digital or physical form).

18 Interpretation

- (1) In this Act—
- “1978 Act” means the National Health Service (Scotland) Act 1978,
- “the Agency” means the Common Services Agency for the Scottish Health Service,
- “constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,
- “forensic medical examination” has the meaning given by section 2(3),
- “health board” means a board constituted under section 2(1)(a) of the 1978 Act,
- “HIS” means Healthcare Improvement Scotland,
- “investigation” means—
- (a) a criminal investigation, or
 - (b) a police investigation of behaviour by a child under the age of criminal responsibility,
- “proceedings” means—
- (a) criminal proceedings, or
 - (b) proceedings under the Children’s Hearings (Scotland) Act 2011,
- “special health board” means a board constituted under section 2(1)(b) of the 1978 Act.
- (2) References in this Act to the need for a forensic medical examination include, where the person referred for or, as the case may be, requesting the examination does not proceed to undergo such an examination, reference to the need for the referral or, as the case may be, request for such an examination.
- (3) Subsection (4) applies where, by virtue of section 17(3), something is to be regarded as having been collected or created during or in connection with a forensic medical examination despite the person who was referred for or requested the examination not proceeding to undergo such an examination.
- (4) Sections 6, 7, 8 and 9 are to be read as if a forensic medical examination has been carried out, and references to the person undergoing the examination are to be construed accordingly.

19 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

20 Commencement

- (1) This section and sections 17, 18, 19 and 21 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
 - (a) make transitional, transitory or saving provision,
 - (b) make—
 - (i) different provision for different purposes,
 - (ii) different provision for different areas.

21 Short title

The short title of this Act is the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021.