

## **Island Communities Impact Assessment**

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

#### **Introduction**

1. This is an updated version of the Island Communities Impact Assessment (ICIA) which was published in 2019<sup>1</sup> to accompany the introduction of the Bill for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021<sup>2</sup> (the “FMS Act”). It became a statutory requirement in December 2020 for the Scottish Government to conduct an ICIA to test any new policy, strategy or service which is likely to have an effect on an island community which is significantly different from the effect on other communities.
2. Whilst the Scottish Government policy aims have not changed since the introduction of the Bill<sup>3</sup> the ICIA has been updated as part of the consideration of island communities in respect of the secondary legislation that is being produced to support the Act and the operational measures that will be in place when the Act (and the accompanying secondary legislation) comes into force. The secondary legislation will be laid in the Scottish Parliament on 27 January 2022 and, subject to approval, this will come into force on 1 April 2022.
3. Following screening of the full range of impact assessments an updated Equality Impact Assessment (EQIA)<sup>4</sup> and a Children’s Rights and Wellbeing Impact Assessment (CRWIA)<sup>5</sup> have also been produced. The EQIA, ICIA and CRWIA are the most relevant impact assessments in relation to the secondary legislation being brought forward and the changes made during the Bill process.

#### **FMS Act**

4. The FMS Act enshrines the principles of trauma informed care for anyone who has been the victim of a sexual crime. The Act places a statutory duty on all territorial health boards in Scotland to provide forensic medical services for victims of rape or sexual assault to nationally agreed standards. The Act will establish a legal framework for consistent access to “self-referral” where a person can access healthcare and request a forensic medical examination (FME) without first having to make a report to the police. Self-referral will be available to those who are 16 and over, subject to professional judgement.

#### **Secondary legislation**

5. The secondary legislation being brought forward to the Scottish Parliament consists of:

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<sup>1</sup><https://www.gov.scot/publications/forensic-medical-services-victims-sexual-offences-scotland-bill-icia/>

<sup>2</sup> <https://www.legislation.gov.uk/asp/2021/3/contents/enacted>

<sup>3</sup><https://www.parliament.scot/-/media/files/legislation/bills/current-bills/forensic-medical-services-victims-of-sexual-offences-scotland-bill/introduced/policy-memorandum--forensic-medical-services-victims-of-sexual-assault-bill.pdf>

<sup>4</sup> <https://www.gov.scot/isbn/9781802019254>

<sup>5</sup> <https://www.gov.scot/isbn/9781802019278>

- The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Commencement Regulations
  - i. This will commence the FMS Act, insofar as not already in force, in its entirety<sup>6</sup>. Upon commencement all health boards will be under a duty to provide FME services, and to retain evidence collected during that examination. An annual report on the operation of the Act will be produced by Public Health Scotland.
- The Victims and Witnesses (Scotland) Act 2014 Commencement No. 9 Order 2022
  - i. Feedback from survivors consistently tells us that victims prefer to be examined by a female. The enactment of Section 9 of the Victims and Witnesses Scotland Act (2014) gives victims the right to be able to request the sex of examiner of their choice.
- The Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022
  - i. These Regulations set the length of time that evidence collected during a self-referral FME will be retained by health boards. This will be nationally applied thus ensuring consistency of service, regardless of which health board provides someone with support.
  - ii. The Scottish Government proposes to set a retention period of 26 months under these regulations, which will be subject to approval by the Scottish Parliament. The 26 month period was set following a consultation, and having taken on board the various responses aims to strike the right balance between ensuring that evidence is held for a reasonable timescale, should an individual decide to report to the police, and the practical considerations on health boards if required to retain evidence for lengthy periods of time. If emerging evidence shows that a 26 month retention period is not working future consideration can be given to amending the time period.
- The Forensic Medical Services (Modification of functions of Healthcare Improvement Scotland and Supplementary Provision) Regulations 2022
  - i. These Regulations are largely technical and make amendments to the National Health Service (Scotland) Act 1978 to ensure that relevant Healthcare Improvement Scotland (HIS) functions apply to the FMS Act. The Regulations give HIS functions in relation to services provided under the FMS Act similar to those which it currently has in relation to the health service. The new functions include a general duty of furthering the improvement in the quality of services provided under that Act. The Regulations also extend the inspection power of HIS to any

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<sup>6</sup> Sections 17,18,19,20 and 21 of the FMS Act came into force on 21 January 2021

service provided under the FMS Act and require that HIS carry out an inspection if Scottish Ministers request it to do so. The impact of the inspection provisions would only be felt if the powers are exercised: they would positively impact on all users regardless of geographical location.

6. The secondary legislation being brought forward to the UK Parliament consists of:

- The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Provisions) Order 2022 [Section 104 order].
  - i. This gives the reserved police forces of the MOD, the Armed Forces and British Transport Police the same legal parity as Police Scotland in respect of investigating rape and sexual offences in Scotland.
  - ii. This Scotland Act Order has been developed through targeted consultation with the relevant police forces and respective UK Government departments. Although impact assessments are not required for this Order it is included here for completeness in terms of the secondary legislation being produced.

## Consultations

7. The Bill for the FMS Act was informed by a public consultation conducted in 2019<sup>7</sup>, stakeholder views and the impact assessments that were carried out as part of the Bill process. A range of equality groups were invited to respond.
8. A public consultation<sup>8</sup>, held between 5 February and 30 April 2021, gathered views on how long health boards should retain evidence collected in the course of self-referral forensic medical services. The retention period will be nationally applied thus ensuring consistency in service regardless of which health board provides the individual with support. As with the 2019 consultation, a range of equality groups were invited to participate.
9. The 2021 consultation specifically sought views on whether there were potential impacts not sufficiently covered by the previous suite of impact assessments carried out to support the passage of the Bill. No respondents suggested any further impact assessments were needed although some responses we received highlighted the importance of ensuring equitable and timely access to services for all island and remote communities.
10. The Forensic Medical Services (Functions of Health Bodies) Regulations 2022 regulations were subject to targeted consultation with Healthcare Improvement Scotland in respect of the functions to be conferred to them. No concerns were raised in response to this consultation

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<sup>7</sup> <https://consult.gov.scot/equally-safe/equally-safe-improve-forensic-medical-services/>

<sup>8</sup> <https://consult.gov.scot/equally-safe/equally-safe-retention-period-of-samples/>

## **Impact of the Act on island communities**

11. The provisions in the FMS Act apply equally to all communities across Scotland. This means that a victim of a sexual offence in rural or island communities has the same legal rights to access NHS forensic medical services, as those in urban and mainland areas, irrespective of whether a police report has been made.
12. How services should be delivered by health boards is set out in the Healthcare Improvement Scotland (HIS) Standards<sup>9</sup>. These were published in December 2017 to ensure consistency in approach to healthcare and forensic medical services for anyone who has experienced rape, sexual assault or child sexual abuse. The standards set the same high level of care for everyone, regardless of the geographical location or an individual's personal circumstances or age. To support implementation and monitoring of the 2017 standards, a set of interim indicators were published in December 2018 and piloted to ensure they provided meaningful data to help inform the continuous improvement of services. The finalised indicators were published in March 2020 following consultation.
13. All NHS health boards undertook a self-assessment against the HIS Standards. These assessments were then used to prepare local improvement plans covering premises development; enhancements to staffing, both in terms of numbers and skills development; and provision of specialist equipment. In this way Scottish Government investment was targeted to the aspects of service improvement highlighted in local plans and to ensure that all services regardless of location could meet the national standards.
14. It is recognised that there is no one size fits all solution to delivering low volume healthcare services in remote and island communities, and that each health board may need to adopt a slightly different approach in response to local need and circumstance. However, each health board which delivers care in remote and island communities is already making good progress against the HIS standard and quality indicators.

## **Chief Medical Officer (CMO) Rape and Sexual Assault Taskforce: Operational measures to support the FMS Act**

15. The main impact of the Act will be the introduction of a national model of self-referral which will ensure that people receive the same standard of trauma-informed, person-centred-care regardless of their geographical location. As set out in the financial memorandum that was produced to support the Bill to this Act, there may be a small, incremental increase in demand for forensic medical services in each health board which delivers care in remote and island communities.
16. To support implementation of the Act the CMO Taskforce will publish a national Self-Referral protocol. This will ensure that all health boards are aware of what self-referral means for them at an operational level so that the "chain of evidence" is maintained in a way that meets the requirements of the Scottish criminal justice

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<sup>9</sup>[https://www.healthcareimprovementscotland.org/our\\_work/standards\\_and\\_guidelines/stnds/sexual\\_assault\\_services.aspx](https://www.healthcareimprovementscotland.org/our_work/standards_and_guidelines/stnds/sexual_assault_services.aspx)

system for self-referral FMEs. The protocol has been developed with Health Boards, Police Scotland, Scottish Police Authority (SPA), the Crown Office and Procurator Fiscal Service (COPFS) and third sector stakeholders.

17. A national 24/7 telephony service is being developed in partnership with NHS 24 to allow anyone over the age of 16, regardless of where they live to request a self-referral forensic medical examination. Once a person has called the national number, they will be supported to access a self-referral FME or immediate health care needs. This will include all people, including remote and island communities, having the choice to undergo an examination out with their home board area. This may provide a more accessible option for them and/or reduces anxiety if someone is concerned about presenting in their own local area if they are part of a small community.
18. NHS Inform web content will be published that will provide national information and signposting that covers all aspects of the Act and what the Sexual Assault Response Coordination Service (SARCS) can offer. A national awareness raising campaign will support the implementation of the Act. The reach of the campaign will be inclusive of all areas.

### **Workforce training**

19. Delivering FMS services consistently across Scotland requires well trained staff to be available in all health board areas. NHS Education Scotland (NES) received CMO Taskforce funding to revise the “Essentials in Sexual Offences Forensic Examination and Clinical Management (Adults & Adolescents) - Best Practice for Scotland” training and to make it easily accessible to staff in all locations and to include nurse-specific elements. The revised training programme was updated to incorporate the principle of trauma-informed care and is mandatory for all doctors who are involved in the delivery of forensic medical examinations. The training is now available online and accessible from anywhere at any time. As a result of this training all of the NHS health boards that provide care in remote or island communities in Scotland have access to both female forensic medical examiners and female forensically trained nurses (which complies with key HIS Quality Standards requirements).
20. As part of the Scottish Government’s commitment to developing a multi-disciplinary workforce which meets requests for a female examiner, funding has been given for a project, which commenced in January 2021, to explore the potential role of nurse Sexual Offence Examiners. For the first time in Scotland, two appropriately qualified and experienced nurses have been recruited to the role of Sexual Offence Examiner. This will mean that they can undertake a FME of a victim of rape or sexual assault and give evidence in court. This funding has also paid for priority places on a new Postgraduate Qualification course in Advanced Forensic Practice being delivered at Queen Margaret University in Edinburgh which commenced in January 2021. Developing the role of nurse Sexual Offence Examiners is vital to supporting the sustainability of services in rural and island communities as well as to increasing the number of females available to undertake this important work.

## **Children and Young People**

21. Further information about the impact on children and young people is provided in the updated Child Rights and Wellbeing Impact Assessment (CRWIA) accompanying the Act.
22. In remote and rural communities, if there are no paediatricians available locally, the child or young person may need to travel to an age appropriate setting. In these circumstances, there may also be other factors that would need to be considered, such as access to complementary healthcare or play specialists needed to support the child or young person as well as their parent or carer, which may be more readily available on the mainland. If travel is required, a specific, child centred pathway and appropriate arrangements will be put in place to minimise any unnecessary trauma. For example, arrangements are in place with the Scottish Ambulance Service to consider requests to provide air assets for a flight to the mainland rather than using commercial transport.
23. This model of care is in line with access to other small volume, specialist services for remote and rural areas of Scotland where travel is required for appropriate interventions, with other care being delivered locally.

## **Finance**

24. Variations in Urban, Urban/Rural and Island costings were considered and costed during the development of the Act<sup>10</sup>.
25. Each health board in Scotland has a senior nominated lead responsible for working collaboratively with the CMO Taskforce and their multi-agency partners to develop and implement costed local improvement plans in line with the HIS Standards and the agreed service model. As outlined at paragraph 13, Scottish Government investment is targeted to service improvements highlighted in these plans.

## **Conclusion**

26. The Scottish Government is committed to supporting health boards that provide care in remote or island communities. Workforce training which builds staff capacity at a local level, the national telephony service and online resources are being put in place to ensure that the provisions of the FMS Act are applicable to anyone in Scotland regardless of their geographical location. As a result, positive impacts of the FMS Act and the secondary legislation have been identified for remote and island communities.

## **Declaration and Publication**

I am satisfied with the island community impact assessment that has been undertaken for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021

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<sup>10</sup><https://www.parliament.scot/-/media/files/legislation/bills/current-bills/forensic-medical-services-victims-of-sexual-offences-scotland-bill/introduced/financial-memorandum--forensic-medical-services-victims-of-sexual-assault-bill.pdf>

and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

**Name:** Greig Chalmers

**Position:** Head of Chief Medical Officer Policy Division

**Authorisation date:** 17 December 2021