

POLICY NOTE

THE FORENSIC MEDICAL SERVICES (MODIFICATION OF FUNCTIONS OF HEALTHCARE IMPROVEMENT SCOTLAND AND SUPPLEMENTARY PROVISION) REGULATIONS 2022

SSI 2022/88

The above instrument is made in exercise of the powers conferred by sections 13(1) and 19(1) of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (“the FMS Act”). The instrument is subject to the affirmative procedure.

Purpose of the instrument.

These Regulations make technical amendments to the National Health Service (Scotland) Act 1978. The amendments ensure that relevant Healthcare Improvement Scotland (HIS) functions extend to forensic medical services in respect of victims of rape and sexual assault (as set out in the FMS Act). The instrument also ensures health boards extend their quality of care requirements to services under the FMS Act.

What the FMS Act does

The FMS Act places a statutory duty on all territorial health boards in Scotland to provide forensic medical services for people who have experienced rape or sexual assault. The Act enshrines the principles of trauma informed care and will establish a legal framework for access to appropriate support and healthcare services as well as a Forensic Medical Examination (FME) to collect any potential evidence, at a time when a person may not feel ready to report to the police. This is known as “self-referral” and will be available to those who are 16 and over, subject to professional judgement.

Policy Objectives

The instrument gives HIS functions in relation to services provided under the FMS Act similar to those it holds in relation to other clinical services.

The functions include a general duty of furthering the improvement in the quality of services provided under the FMS Act and also functions of providing information to the public about the availability and quality of those services.

This instrument also extends the inspection power of HIS to any service provided under the FMS Act, so that HIS can carry out an inspection of its own volition or must do so if instructed by Scottish Ministers (for example, if performance data highlighted a particular issue (s) that required specific attention/resolution).

This instrument also amends section 12(H) of the 1978 Act so that health boards are required to have arrangements in place to monitor and improve the quality of the services which they provide under the FMS Act, as they are required to do for other health care services provided to individuals. This will be done by applying their business-as-usual governance and audit processes. For example, performance data may feed in to health board regular board meetings

and/or, the Ministerial- led Board Annual Review process, as and when required/appropriate. This information is likely to inform Scottish Ministers as to whether an inspection is deemed to be necessary.

Consultation

The Forensic Medical Services (Modification of functions of Healthcare Improvement Scotland and Supplemental Provision) Regulations 2022 were subject to targeted consultation with Healthcare Improvement Scotland and health boards in respect of the functions to be conferred on them. No concerns were raised in response to this consultation.

Impact Assessments

The following impact assessments have been published which cover this instrument and other secondary legislation being prepared for the FMS Act:

- Children's Rights and Wellbeing Impact Assessment¹
- Island Communities Impact Assessment²
- Equalities Impact Assessment³

A screening process was carried out which determined there was no further update required to the following impact assessments which were previously carried out to accompany the introduction of the FMS Bill:

- Data Protection Impact Assessment (DPIA)⁴. A revised DPIA was published in November 2020⁵.
- Fairer Scotland Duty Assessment (FSDA)⁶

No Strategic Environmental Assessment (SEA) has been undertaken as there are no environmental impacts.

Financial Effects

The Cabinet Secretary for Health and Social Care has confirmed that a Business and Regulatory Impact Assessment is not required for this instrument. There is no anticipated cost in conferring the duties in respect of furthering the improvement in the quality of services and providing information to the public about the availability and quality of those services. Should any cost be incurred by HIS in this regard this would be met by the Scottish Government.

Any work undertaken by HIS in relation to carrying out its functions, for example undertaking an inspection, would also be met by the Scottish Government (if the need arose). There is no additional cost to health boards in relation to the extension of the duty of quality provision. Health boards are already required do this in order to meet the national Healthcare

¹ <https://www.gov.scot/isbn/9781802019278>

² <https://www.gov.scot/isbn/9781802019261>

³ <https://www.gov.scot/isbn/9781802019254>

⁴ <https://www.gov.scot/publications/forensic-medical-services-victims-sexual-offences-scotland-bill-dpia/>

⁵ <https://www.gov.scot/publications/forensic-medical-services-victims-sexual-offences-scotland-bill-revised-data-protection-impact-assessment/>

⁶ <https://www.gov.scot/publications/forensic-medical-services-victims-sexual-offences-scotland-bill-fsda/>

Improvement Scotland Standards⁷ in relation to these services and a range of performance measures are in place to monitor this.

Scottish Government
CMO Rape and Sexual Assault Taskforce Unit

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⁷ https://www.healthcareimprovementscotland.org/our_work/standards_and_guidelines/stnds/sexual_assault_services.aspx