
STATUTORY INSTRUMENTS

2022 No. 261 (S. 1)

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CRIMINAL PROCEDURE**

The Forensic Medical Services (Victims of Sexual Offences)
(Scotland) Act 2021 (Consequential Modifications) Order 2022

<i>Made</i>	- - - -	<i>9th March 2022</i>
<i>Laid before Parliament</i>		<i>10th March 2022</i>
<i>Coming into force</i>	- -	<i>1st April 2022</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998⁽¹⁾.

Citation, commencement and extent

1.—(1) This Order may be cited as the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Modifications) Order 2022 and comes into force on 1st April 2022.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order, “the 2021 Act” means the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021⁽²⁾.

Application of section 2 of the 2021 Act to other police forces

3. In section 2 of the 2021 Act (the examination service), after subsection (11) insert—

“(12) In this section a reference to a constable includes a reference to—

- (a) a member of a service police force;
- (b) a constable of the Ministry of Defence Police;

(1) 1998 c. 46. There are amendments to section 104 which are not relevant to this Order.
(2) 2021 asp 3.

(c) a constable of the British Transport Police(3).”

Operation of section 9 of the 2021 Act in relation to other police forces

4. In section 9 of the 2021 Act (transfer of evidence to police), after subsection (3) insert—

“(4) In this section a reference to a constable includes a reference to a member of a service police force.

(5) Where a constable of the British Transport Police or the Ministry of Defence Police has made a request under subsection (2), the health board must comply with the request as soon as reasonably practicable.”.

Amendments to section 18 of the 2021 Act

5.—(1) Section 18 of the 2021 Act (interpretation) is amended as follows.

(2) For the entry for “constable” substitute—

““constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012(4) (but see sections 2(12) and 9(4)),”.

(3) At the appropriate place insert—

““service police force” means—

- (a) the Royal Navy Police,
- (b) the Royal Military Police, or
- (c) the Royal Air Force Police,”.

(4) After subsection (4), insert—

“(5) In this Act a reference to a sexual offence includes a service offence which involves—

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

(6) In subsection (1)—

(a) in the definition of “investigation”—

- (i) the reference to a “criminal investigation” includes an investigation by a service police force of an allegation which indicates, or circumstances which indicate, that a service offence has or may have been committed, and
- (ii) the reference to a “police investigation” includes a reference to an investigation by a service police force of behaviour by a child under the age of 10(5), and

(b) in the definition of “proceedings”, the reference to “criminal proceedings” includes proceedings in respect of a service offence before—

- (i) the Court Martial,
- (ii) the Service Civilian Court,

(3) Section 375 of the Armed Forces Act 2006 (c. 52) defines service police force. Section 1 of the Ministry of Defence Police Act 1987 (c. 4) defines the Ministry of Defence Police and the persons who are members of that police force. Section 24 of the Railways and Safety Act 2003 (c. 20) defines who is a constable of the British Transport Police.

(4) 2012 asp 8. There is an amendment to section 99 that is not relevant to this Order.

(5) The new section 18(6)(a) inserted by article 5(4) expands the definition of an investigation in section 18(1) of the 2021 Act, which includes investigations of behaviour by a child under the age of criminal responsibility, to cover equivalent investigations by service police. Service police are responsible for investigating service offences rather than offences under the general criminal law, and the age of criminal responsibility for such offences is 10 in all parts of the United Kingdom, so the new section 18(6)(a)(ii) refers to that age instead of the normal age of criminal responsibility in Scotland.

(iii) the Court Martial Appeal Court, or

(iv) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

(7) In subsections (5) and (6) “service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006⁽⁶⁾.”

Dover House
London
9th March 2022

Alister Jack
Secretary of State
Office of the Secretary of State for Scotland

⁽⁶⁾ 2006 c. 52. There are amendments to section 50 that are not relevant to this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (“the 2021 Act”). The Act confers on health boards functions relating to the provision of forensic medical services to victims of sexual offences. It also makes provision about constables making referrals to a health board for a forensic medical examination of a victim of certain sexual offences, and for constables to request evidence from an examination.

This Order makes provision so that constables of the Ministry of Defence Police, constables of the British Transport Police, and members of the Royal Navy Police, Royal Air Force Police and Royal Military Police can make a referral to health boards and request evidence.

Article 3 of the Order extends the application of section 2 of the 2021 Act to include a member of the Royal Navy Police, Royal Military Police and Royal Air Force Police (“members of a service police force”), or a constable of the British Transport Police or Ministry of Defence Police. This allows members of these police forces to refer a victim of a sexual offence to a health board for a forensic medical examination.

Article 4 alters the operation of section 9 of the 2021 Act, so that members of a service police force can request evidence obtained in a forensic medical examination. It is considered that section 9 of the 2021 Act provides a new police power to constables of Police Scotland to request the evidence obtained in a forensic medical examination. Since constables of the British Transport Police and Ministry of Defence Police already have the powers and privileges of constables of Police Scotland under section 31 of the Railways and Transport Safety Act 2003 (c. 20) and section 2 of the Ministry of Defence Police Act 1987 (c. 4), there is no need to insert references to them in section 9. However, the reference to the transfer of evidence to Ministry of Defence Police and British Transport Police constables confirms on the face of the 2021 Act that constables of these police forces can request evidence from a forensic medical examination and that health boards are obliged to comply with such a request by constables of these police forces in the same way they are required to do so if the request was made by constables of Police Scotland.

The Order also ensures that members of the relevant police forces come within the references to constables in other sections of the 2021 Act, these being sections 6, 7 and 8, as these references either refer directly to processes under sections 2 or 9 or are clearly ancillary to these processes.

Article 5 makes amendments to section 18 of the 2021 Act to reflect the differences in procedure and terminology used in relation to service police forces and proceedings, from that used in the civilian criminal justice system in Scotland, to ensure that the Act works in all of these circumstances.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.