



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

2021 asp 3

The retention service

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- (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.