

FORENSIC MEDICAL SERVICES (VICTIMS OF SEXUAL OFFENCES) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT: AN OVERVIEW

3. The Act imposes duties on health boards to provide certain forensic medical services to victims of sexual offences (and of harmful sexual behaviour by children under the age of criminal responsibility).
4. The Act places on a statutory footing the pre-existing arrangements under which forensic medical examinations of such victims were carried out by health boards. Those arrangements were set out in a memorandum of understanding agreed between Police Scotland and health boards, which allowed Police Scotland to refer victims to health boards for forensic medical examination.¹ The carrying out of such examinations by health board staff facilitates the simultaneous addressing of any health care needs of the victim arising from the incident in connection with which the examination is required.
5. As well as providing examinations in these “police-referral” cases, some health boards² also provided forensic medical examinations on a “self-referral” basis. “Self-referral” means that victims can undergo a forensic medical examination without first having reported the incident to police. Any evidence collected is stored. This allows victims to make a decision about whether to report the incident to police in their own time. The Act requires all health boards to make forensic medical examination available on a self-referral basis in cases involving sexual offences (or harmful sexual behaviour by children under the age of criminal responsibility).
6. What makes a physical medical examination a *forensic* medical examination is the fact that evidence is being collected for use in any subsequent investigation or court proceedings in relation to the incident. This aspect of forensic medical examination distinguishes the functions conferred by the Act from health boards’ other functions. The Act sets out this part of the purpose of forensic medical examinations clearly, ensuring that health boards have a clear legal basis for their actions in this area (for example, in collecting, retaining and transferring information³).
7. The Act requires health boards to have regard to the importance of exercising the functions it confers in a trauma-informed way.
8. The Act also deals with various other matters to do with health boards’ provision of forensic medical examinations and the storing and transfer of evidence collected during such examinations. In addition, it includes provisions allowing related functions to be conferred on, for example, special health boards, and ensuring co-operation

¹ <https://www.policecare.scot.nhs.uk/wp-content/uploads/2015/03/Police-Healthcare-Forensic-Medical-Services-MoU-Final-v1.pdf>. The 2014 memorandum of understanding covers services other than those dealt with in the Act (for example, it covers health care services required by persons in the care of the Police Service of Scotland and medical examination and collection of samples from alleged perpetrators in police custody). Services not covered by the Act continue to be dealt with under the memorandum of understanding.

² NHS Greater Glasgow and Clyde and NHS Tayside.

³ Which may be “personal data” for the purposes of data protection legislation.

These notes relate to the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3) which received Royal Assent on 20 January 2021

between health boards in this area; creates rights for victims to request victim support information from health boards; requires reports to be made on the operation of the Act for 10 years following implementation; and makes various consequential modifications of other enactments.