

EXPLANATORY MEMORANDUM TO

THE FORENSIC MEDICAL SERVICES (VICTIMS OF SEXUAL OFFENCES) (SCOTLAND) ACT 2021 (CONSEQUENTIAL MODIFICATIONS) ORDER 2022

2022 No. 261 (S. 1)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order makes provision in consequence of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (the “2021 Act”), to ensure all relevant police forces in Scotland are operating from the same legal position when referring for, and obtaining evidence from, forensic medical examinations to victims of sexual offences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Scotland.
4.2 The territorial application of this instrument is Scotland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998 (“the 1998 Act”). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament.
- 6.2 The Order is made in consequence of the 2021 Act, which places a duty on Scottish health boards to provide forensic medical services to victims of sexual offences, and requires health boards to provide a service to retain certain evidence for potential future investigations. This Order is required to make provisions on matters outside devolved competence that are consequential on the 2021 Act.
- 6.3 The Order directly amends the 2021 Act, expanding references to a “constable” to include members of certain UK wide police forces, such as the Ministry of Defence Police. It also expands the definition of criminal proceedings and criminal investigations to include investigations of service offences by the Royal Navy Police, Royal Military Police or Royal Air Force Police (“service police forces”) and

proceedings in the Court Martial and other service courts. The Order, and direct amendment of an Act of the Scottish Parliament, is deemed necessary with respect to the Ministry of Defence Police and service police forces as these UK-wide police forces have roles related to reserved matters. It would therefore not be within the legislative competence of the Scottish Parliament to legislate for these matters.

- 6.4 The Scottish Parliament has legislative competence to legislate in respect of policing of railways and railway property in Scotland. It is however appropriate for the British Transport Police to be included in this s104 Order as they are a cross border police force sponsored by a UK Government Department. Consequently, similar provision is required in respect of the British Transport Police to that required for the Ministry of Defence Police and service police forces. This allows for the consideration regarding UK-wide police forces to be concentrated in one place.

7. Policy background

What is being done and why?

- 7.1 The 2021 Act places a duty on health boards in Scotland to provide forensic medical services for victims of sexual offences to a nationally agreed standard and to provide a retention service for evidence gathered during a self-referral forensic medical examination. The Act also establishes a legal framework for consistent access to “self-referral” where a victim can access healthcare and request a forensic medical examination without first having to make a report to the police. Self-referral will be available to those who are 16 years old and over, subject to professional judgement.
- 7.2 This section 104 Order is necessary to ensure all relevant police forces operating in Scotland are placed in the same legal position. The 2021 Act references Police Scotland, and this Order will make appropriate provision for other police forces operating in Scotland who have jurisdiction over relevant sexual offences, including equivalent service offences. These are the British Transport Police, the Ministry of Defence Police, and the service police forces.
- 7.3 The Order will allow relevant officers from these forces to make referrals and obtain evidence under the 2021 Act. This will ensure victims are in the same position irrespective of which police force has jurisdiction over their particular case. This will further ensure that police forces, and also the health boards involved, all have the same legal clarity and legal underpinning for their work in Scotland.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 As the 2021 Act is a new piece of legislation, and the Order only makes minor amendments to it, consolidation would not be appropriate in the circumstances.

10. Consultation outcome

- 10.1 As amendments in this Order are consequential, no consultation on the draft Order was considered necessary. Full consultation was however carried out by the Scottish Government on the key proposals which led to the 2021 Act. 53 responses were received with 91% of respondents agreeing that there should be a specific statutory

duty placed on health boards to provide forensic medical services to victims of sexual offences. Other key findings, which have been embedded into the Act, were the importance of self-referral routes and the positive impact of embedding trauma-informed care and adopting a health-focused approach.

11. Guidance

- 11.1 No guidance will be made available on the use of these powers or on the powers of the 2021 Act as this is not necessary.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the Scottish Government does not anticipate any impact on the private or voluntary sectors.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Order is consequential upon the 2021 Act. No formal monitoring or review is considered necessary.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement: “There is no need for review or monitoring as the Order does not regulate businesses.”

15. Contact

- 15.1 Arthur Halfhide at the Office of the Secretary of State for Scotland (telephone: 07557896644 or email: Arthur.Halfhide@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.