



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

2021 asp 3

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 10th December 2020 and received Royal Assent on 20th January 2021

An Act of the Scottish Parliament to confer on health boards functions relating to the provision of forensic medical services to victims of sexual offences; and for connected purposes.

PROSPECTIVE

Duty to provide certain forensic medical services

1 Provision of certain forensic medical services

- (1) Every health board must, in respect of its area—
 - (a) provide the examination service (see section 2), and
 - (b) provide the retention service (see section 6).
- (2) A health board's—
 - (a) examination service is to be available to any person falling within section 2(2), regardless of the person's place of residence,
 - (b) retention service is to be available in relation to any person to whom the health board provides the examination service.

PROSPECTIVE

The examination service

2 The examination service

- (1) The examination service consists of providing forensic medical examinations to persons falling within subsection (2) (but see section 3).

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: *Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 is up to date with all changes known to be in force on or before 24 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) A person falls within this subsection if—
 - (a) the person is referred by a constable to the health board for a forensic medical examination in connection with an incident in which—
 - (i) a sexual offence is alleged to have been committed against the person, or
 - (ii) the person is alleged to have been the subject of harmful sexual behaviour by a child under the age of criminal responsibility, or
 - (b) the person is aged 16 or over and requests such an examination in connection with an incident reported to the health board by the person as being of the type mentioned in paragraph (a).
- (3) A forensic medical examination is a physical medical examination carried out for purposes including the collection of 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.
- (4) The Scottish Ministers may by regulations substitute a different age for the age for the time being specified in subsection (2)(b).
- (5) The age substituted for the age for the time being specified in subsection (2)(b) in regulations under subsection (4) must be—
 - (a) no lower than 13, and
 - (b) no higher than 18.
- (6) Regulations under subsection (4) may make transitional, transitory or saving provision.
- (7) Regulations under subsection (4) are subject to the affirmative procedure.
- (8) Before the end of each reporting period, the Scottish Ministers must lay before the Scottish Parliament a statement explaining—
 - (a) why they will be laying draft regulations under subsection (4) before the Scottish Parliament, or
 - (b) why they will not be laying draft regulations under subsection (4) before the Scottish Parliament.
- (9) Whether or not the statement under (8) indicates that the Scottish Ministers will be laying draft regulations under subsection (4), the statement under subsection (8) must indicate—
 - (a) what consideration has been given by the Scottish Ministers to the support that would be given to persons under 16 should subsection (2)(b) be amended so that such persons can request a forensic medical examination,
 - (b) what support is being or will be provided to persons under 16 who fall within subsection (2)(a).
- (10) For the purpose of this section, the reporting periods are—
 - (a) the period of one year beginning with the day of Royal Assent,
 - (b) each subsequent period of one year.
- (11) In subsection (2)—

“sexual offence”—

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- (a) means an offence which involves—
 - (i) an element of physical, sexual contact, or
 - (ii) the ejaculation of semen, or the emission of urine or saliva sexually, onto a person, and
- (b) includes an act done outside Scotland which, if done in Scotland, would constitute such an offence,
“harmful sexual behaviour” means behaviour (in Scotland or elsewhere) which—
 - (a) causes or risks causing harm (whether physical or not) to another person, and
 - (b) involves—
 - (i) an element of physical, sexual contact, or
 - (ii) the ejaculation of semen, or the emission of urine or saliva sexually, onto a person,

the reference to the age of criminal responsibility is a reference to the age of criminal responsibility in Scotland (as specified in section 41 of the Criminal Procedure (Scotland) Act 1995).

3 Limitation on provision of forensic medical examinations

Nothing in this Act requires—

- (a) a forensic medical examination to be carried out where a professional judgement is made that the examination should not be carried out, or
- (b) a particular action to be carried out as part of a forensic medical examination where a professional judgement is made that the action should not be carried out.

4 Information to be provided before examination

- (1) This section applies where a person is referred for or requests a forensic medical examination as mentioned in section 2(2).
- (2) Before any evidence is collected—
 - (a) the person who has been referred for or, as the case may be, who requested the examination must, so far as reasonably practicable, be provided with the information mentioned in subsection (3), and
 - (b) the information must, so far as reasonably practicable, be explained to the person.
- (3) The information is—
 - (a) information about—
 - (i) the circumstances in which any evidence collected during the examination may be transferred to a constable, and
 - (ii) the purposes for which such evidence may then be used, and
 - (b) where the forensic medical examination is requested under section 2(2)(b), information about—
 - (i) the person's rights to request the return of certain items under section 7 and to request the destruction of evidence under section 8(1)(a), and
 - (ii) the destruction of evidence under section 8(1)(b).

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- (4) Failure to comply with subsection (2) does not by itself render any evidence collected during the examination inadmissible in any proceedings in relation to the incident which gave rise to the need for the examination.

5 Health care needs

- (1) A health board must take such steps as are reasonably practicable to ensure that, where a person is referred for or requests a forensic medical examination as mentioned in section 2(2), any health care needs of the person arising from the incident which gave rise to the need for the examination are identified and, to the extent that it is a function of the health board to provide for the health care of the person, addressed by the health board.
- (2) Accordingly, a health board must provide the examination service in conjunction with such other services provided by the health board under or by virtue of the National Health Service (Scotland) Act 1978 as are relevant to the identification and addressing of such health care needs.
- (3) Subsection (1) applies even where the person does not proceed to undergo a forensic medical examination.
- (4) For the purposes of this section, the ways in which health care needs can be addressed include the person being referred to other services provided by the health board.

PROSPECTIVE

The retention service

6 The retention service

- (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.

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- (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—