



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

2021 asp 3

General provisions

16 Minor and consequential modifications

The schedule makes minor and consequential modifications of other enactments.

Commencement Information

II [S. 16](#) in force at 1.4.2022 by [S.S.I. 2022/24, reg. 2](#)

17 Meaning of references to “evidence”

- (1) References in this Act (however expressed) to evidence collected during a forensic medical examination include reference to—
 - (a) images created,
 - (b) samples (for example, samples of blood, semen, urine, or hair and samples taken by swabbing a person's genitals or bodily orifices) collected,
 - (c) any notes or other records (including notes or records about matters other than the physical condition of the person undergoing the examination) created,
 - (d) items worn or otherwise present during the incident which gave rise to the need for such an examination and collected,during or in connection with the examination.
- (2) But such references do not include reference to anything collected or created during or in connection with the examination if the thing was collected or created for use other than use as is mentioned in section 2(3) (for example, for use in identifying, recording and addressing the health care needs of the person undergoing the examination).
- (3) Anything collected or created in anticipation of a forensic medical examination being carried out under this Act is to be regarded as having been collected or created during or in connection with such an examination even where the person who was referred

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for or, as the case may be, requested the examination does not proceed to undergo such an examination.

- (4) References in this section to images, notes and other records include reference to those things in all forms that the things exist (for example, digital or physical form).

18 Interpretation

- (1) In this Act—

“1978 Act” means the National Health Service (Scotland) Act 1978,

“the Agency” means the Common Services Agency for the Scottish Health Service,

[^{F1}“constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012 (but see sections 2(12) and 9(4)),]

“forensic medical examination” has the meaning given by section 2(3),

“health board” means a board constituted under section 2(1)(a) of the 1978 Act,

“HIS” means Healthcare Improvement Scotland,

“investigation” means—

(a) a criminal investigation, or

(b) a police investigation of behaviour by a child under the age of criminal responsibility,

“proceedings” means—

(a) criminal proceedings, or

(b) proceedings under the Children's Hearings (Scotland) Act 2011,

[^{F2}“service police force” means—

(a) the Royal Navy Police,

(b) the Royal Military Police, or

(c) the Royal Air Force Police,]

“special health board” means a board constituted under section 2(1)(b) of the 1978 Act.

- (2) References in this Act to the need for a forensic medical examination include, where the person referred for or, as the case may be, requesting the examination does not proceed to undergo such an examination, reference to the need for the referral or, as the case may be, request for such an examination.

- (3) Subsection (4) applies where, by virtue of section 17(3), something is to be regarded as having been collected or created during or in connection with a forensic medical examination despite the person who was referred for or requested the examination not proceeding to undergo such an examination.

- (4) Sections 6, 7, 8 and 9 are to be read as if a forensic medical examination has been carried out, and references to the person undergoing the examination are to be construed accordingly.

- [^{F3}(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)—

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- (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, 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,
 - (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.]

Textual Amendments

- F1** Words in s. 18 substituted (1.4.2022) by The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Modifications) Order 2022 (S.I. 2022/261), arts. 1(1), **5(2)**
- F2** Words in s. 18 inserted (1.4.2022) by The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Modifications) Order 2022 (S.I. 2022/261), arts. 1(1), **5(3)**
- F3** S. 18(5)-(7) inserted (1.4.2022) by The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Modifications) Order 2022 (S.I. 2022/261), arts. 1(1), **5(4)**

19 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

20 Commencement

- (1) This section and sections 17, 18, 19 and 21 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

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- (3) Regulations under subsection (2) may—
- (a) make transitional, transitory or saving provision,
 - (b) make—
 - (i) different provision for different purposes,
 - (ii) different provision for different areas.

21 Short title

The short title of this Act is the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021.

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