



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

## 2021 asp 3

### *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).
- (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.

---

**Changes to legislation:** There are currently no known outstanding effects for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021, Cross Heading: The examination service. (See end of Document for details)

---

- (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”—
- (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).

- [<sup>F1</sup>(12) In this section a reference to a constable includes a reference to—
- (a) a member of a service police force;
  - (b) a constable of the Ministry of Defence Police;
  - (c) a constable of the British Transport Police.]

**Changes to legislation:** There are currently no known outstanding effects for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021, Cross Heading: The examination service. (See end of Document for details)

#### Textual Amendments

- F1** S. 2(12) 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), 3

#### Commencement Information

- I1** S. 2 in force at 1.4.2022 by [S.S.I. 2022/24](#), reg. 2

### 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.

#### Commencement Information

- I2** S. 3 in force at 1.4.2022 by [S.S.I. 2022/24](#), reg. 2

### 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).
- (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.

---

**Changes to legislation:** There are currently no known outstanding effects for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021, Cross Heading: The examination service. (See end of Document for details)

---

---

**Commencement Information**

**I3** S. 4 in force at 1.4.2022 by [S.S.I. 2022/24, reg. 2](#)

**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.

---

**Commencement Information**

**I4** S. 5 in force at 1.4.2022 by [S.S.I. 2022/24, reg. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021, Cross Heading: The examination service.