



Analysis of Responses:

**Equally Safe**

Legislation to improve forensic medical services for victims of rape and sexual assault

**#EquallySafeFMS**

Final Report: August 2019

Conducted for:

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<b>EXECUTIVE SUMMARY.....</b>	<b>3</b>
<b>1. Introduction.....</b>	<b>7</b>
<b>2. Functions of Health Boards .....</b>	<b>12</b>
<b>3. Taking and retention of samples .....</b>	<b>16</b>
<b>4. Safeguarding respect for victims’ human rights .....</b>	<b>27</b>
<b>5. Provisions for children and young people .....</b>	<b>32</b>
<b>6. Potential impacts of the proposals.....</b>	<b>37</b>
<b>7. Other comments.....</b>	<b>48</b>
<b>8. Conclusions.....</b>	<b>49</b>
<b>9. Appendices .....</b>	<b>50</b>
<b>Appendix 1: Functions of Health Boards.....</b>	<b>50</b>
<b>Appendix 2: Taking and Retention of Samples.....</b>	<b>52</b>
<b>Appendix 3: Safeguarding Respect for Victims’ Human Rights .....</b>	<b>56</b>
<b>Appendix 4: Provisions for Children and Young People.....</b>	<b>59</b>
<b>Appendix 5: Potential Impacts of the Proposals.....</b>	<b>61</b>
<b>Appendix 6: Other Comments .....</b>	<b>62</b>

## EXECUTIVE SUMMARY

- i. On the 15<sup>th</sup> February 2019 the Scottish Government opened a consultation on legislation to improve forensic medical services (FMS) for victims of sexual crime. For these victims, forensic medical services may play a significant role in the healthcare response and deliver an essential part of the evidence base within the justice system.
- ii. The consultation received 53 responses from 18 individuals and 35 organisations. It contained questions on health board functions, the framework for handling samples, data and other evidence from police and self-referrals, safeguarding victims' rights, provisions for children and young people; and views on any potential impacts of the proposals put forward.

### Question one: a specific statutory duty for Health Boards

- iii. Respondents were asked '*should a specific statutory duty be conferred on Health Boards to provide forensic medical services to victims of rape and sexual assault for people who have reported to the police as well as those who have not?*'. Almost all – (91%) selected 'yes', 2% selected 'no', 2% selected 'don't know' and 6% did not answer the question.
- iv. Most respondents (44 out of 53) provided additional detail alongside their answer to the consultation question. The majority of these comments explained why the respondent supported the proposal. Themes included the value of a statutory duty, the importance of self-referral routes and the positive impact of embedding trauma-informed care and adopting a health-focused approach to FMS. Thirteen respondents described their support for the proposals and also mentioned other issues for the Scottish Government to consider. These typically involved calls for resources, training and comments on service delivery models.

### Question two: evidence in the case of police referral

- v. This question asked '*do you have any views on how a legislative framework for the taking and retention of samples, personal data and other evidence in the case of police referral should operate?*' Over half (57%) selected 'yes', 15% selected 'no', 8% selected 'don't know' and 21% did not answer the question.
- vi. This question generated comments from over half of the consultation respondents (35 out of 53). Within these a range of views were identified about how a legislative framework should operate in the case of police referral. Themes in the comments included: consent and the need for clear information and communication; the storage, transfer and deletion of data; the need for a legislative framework; considerations in relation to vulnerable groups; consistency with existing guidelines; victims' needs; and considerations in relation to children and young people.

### Question three: evidence in the case of self-referral

- vii. Respondents were asked '*do you have any views on how a legislative framework for the taking and retention of samples, personal data and other evidence in the case of self-referral should operate?*'. Over half (57%) selected 'yes', 11% selected 'no', 8% selected 'don't know' and 25% did not answer the question.
- viii. Many respondents repeated elements of their response to the previous question; there were 20 comments specifically on evidence in the case of self-referral. These included

reflections on the legislative framework, the storage, transfer and deletion of data, consent and the need for clear information and communication, considerations in relation to children and young people and other vulnerable groups.

#### **Question four: impact on data protection and privacy**

- ix. This question asked *'more generally, do you have any views of the potential impacts of the proposals in the chapters of this paper on data protection and privacy (the handling of personal data including "special category" data about health)?'* Just under half (49%) selected 'yes', 21% selected 'no', 6% selected 'don't know' and 25% did not answer.
- x. In 29 comments consultation respondents conveyed a range of views about the impacts of the proposals in relation to data protection and privacy. These included reflections on current data laws, the proposed guidelines, consent, treatment of data, data storage and considerations regarding children and young people.

#### **Question five: safeguarding rights to dignity**

- xi. Respondents were asked *'how might legislation help safeguard victims' rights to respect for their dignity?'* This open-ended question generated comments from over three-quarters of the consultation respondents (42 out of 53). Comments included: reflections on the value of trauma-informed delivery, wider discussions on safeguarding rights, and considerations in relation to children and young people.

#### **Question six: potential impact on human rights**

- xii. Respondents were invited to express views on how the legislation might have an impact on human rights, by responding to the following question: *'more generally, do you have any views on potential impacts of the proposals in the Chapters of this paper on human rights (including economic, social and cultural rights such as the right to the highest attainable standard of physical and mental health)?'*
- xiii. Over half of the consultation respondents (30 out of 53) provided some comment. Twenty-four of these responses contained an additional suggestion, example or consideration for the Scottish Government to consider. Themes included the needs of marginalised or vulnerable groups, accessibility, and practical implications for service delivery. Six respondents emphasised their support for a human rights approach, explaining why the proposed legislation will have a positive impact on victims.

#### **Question seven: special provisions for children and young people**

- xiv. This question asked *'should special provisions be included in legislation to reflect the distinct position and needs of children and young people? Do you have any views on how such special provisions should operate?'* Over three quarters (79%) selected 'yes', 2% selected 'don't know' and 19% did not answer the question.
- xv. Three-quarters of the consultation respondents (40 out of 53) provided some comment. Almost all advocated for special provisions and gave some detail about what these could be, either echoing proposals put forward in the consultation document or describing other matters for consideration by the Scottish Government.

### **Question eight: special provisions for children and young people**

- xvi. Respondents were asked *'more generally, do you have any views on potential impacts of the proposals in the chapters of this paper on children and young people including their human rights or wellbeing?'* Just over one third (38%) selected 'yes', 21% selected 'no' indicating they had no views to share, 6% selected 'don't know' and 36% did not answer the question.
- xvii. Thirty consultation respondents provided some comment. Half of these comments reiterated responses to question 7. Other responses included specific considerations in relation to children and young people, and discussions about child protection.

### **Question nine: Equality Impact Assessment**

- xviii. This question asked: *'do you have any views on potential impacts of the proposals in this paper on equalities (the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation)?'* Over half (58%) selected 'yes', 23% selected 'no', 8% selected 'don't know' and 19% did not answer the question.
- xix. Just over half of the consultation respondents (32 out of 53) provided a comment. Twenty-three respondents reflected on implications for equality in some detail. These responses often described a particular issue for the Scottish Government to consider when developing the legislation, or other opportunities to enhance equality impacts. Seven endorsed the proposals outlined in the consultation document without further suggestion. Their comments conveyed a view that the Government's intentions will achieve a positive impact in relation to equality.

### **Question ten: Socio-Economic Equality Impact Assessment (the Fairer Scotland Duty)**

- xx. Respondents were asked *'do you have any views on potential impacts of the proposals in this paper on socio-economic equality (the Fairer Scotland Duty)?'* Less than one-fifth (17%) selected 'yes', 59% selected 'no', 4% selected 'don't know' and 30% did not answer the question.
- xxi. Eleven respondents commented on potential impacts. These included some discussion about socio economic quality, with four respondents conveying a view that the Government's intentions will achieve a positive impact in this regard.

### **Question eleven: impacts for people in rural or island communities**

- xxii. When asked *'do you have any views on potential impacts of the proposals in the Chapters of this paper on people in rural or island communities?'*, over half (55%) selected 'yes', 15% selected 'no', 8% selected 'don't know' and 23% did not answer the question.
- xxiii. Almost two thirds of respondents (32 out of 53) provided a comment on the potential impacts in relation to people in rural or island communities. Twelve focussed on the impact with almost all seeing it as positive. A further eleven identified challenges associated with delivering FMS in such areas. Six combined discussion on positive impacts with the challenges. Cross-cutting themes evident in the comments included movement of staff, travel by people from rural and island communities and potential service improvements.

### **Question twelve: financial implications of the proposals**

- xxiv.** This question asked *'do you have any views on the financial implications of the proposals in this consultation paper for NHS Scotland and other bodies?'* Just under half (47%) selected 'yes', 23% selected 'no', 6% selected 'don't know' and 25% did not answer the question.
- xxv.** Almost half of respondents (26 out of 53) provided detailed comments on the potential cost implications of the proposals including specific types of costs identified (such as training and premises), general comments about the likely scale of costs and suggestions about models of service delivery.

### **Question thirteen: other comments**

- xxvi.** Respondents were also asked *'do you have any other comments that have not been captured in the responses to other questions you have provided?'* One third (34%) selected 'yes', 44% selected 'no' and 23% did not answer the question.
- xxvii.** Twenty-one respondents provided a final comment. Fifteen shared additional information that they had not provided elsewhere in their response and six reiterated points made previously.

## 1. Introduction

- 1.1. On the 15<sup>th</sup> February 2019 the Scottish Government opened a consultation on legislation to improve forensic medical services (FMS) for victims of sexual assault. The consultation closed on the 8<sup>th</sup> of May and received 53 responses, 18 from individuals and 35 from organisations. See 1.6 for a full breakdown of the profile of respondents.
- 1.2. The consultation is part of Equally Safe<sup>1</sup>; Scotland's strategy to prevent and eradicate violence against women and girls. The Scottish Government believes it is crucial that victims of sexual offences receive consistent, person-centred, trauma informed healthcare and access to recovery. For victims of sexual crime, forensic medical services may play a significant role in the healthcare response and deliver an essential part of the evidence base within the justice system.
- 1.3. In recent years there has been a shift from the traditional justice-centric approach to forensic medical services towards a more holistic, person-centred approach that, for example, ensures that forensic medical examinations take place in appropriate healthcare settings. Several recent strategic reviews have recognised this shifting landscape and identified ways to enhance the systems and processes in place for those utilising, designing and delivering healthcare and forensic medical services. These proposed changes represent opportunities to improve victims' experiences with Scotland's healthcare and justice systems.
- 1.4. Views gathered in the consultation process will inform the development of the legislation based on careful, systematic exploration of the issues and evidence. A Bill on forensic medical services is likely to form part of the Scottish Government's forthcoming legislative programme for 2019-20.
- 1.5. The consultation contained thirteen questions that covered the following themes:
  - Health Board functions
  - The framework for handling samples, data and other evidence from police and self-referrals
  - Safeguarding victims' rights
  - Provisions for children and young people; and
  - Views on any potential impacts of the proposals put forward.

### Profile of respondents

- 1.6. The consultation received 53 responses<sup>2</sup> from 18 individuals and 35 organisations. A full breakdown of the profile of the organisations that took part in the consultation is as follows:
  - Ten organisations that represent specific groups, or equalities issues more broadly, for example; Scottish Commission for Learning Disability, Children 1<sup>st</sup> and deafscotland.
  - Nine organisations that provide a health care perspective, including 7 Health Boards.

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<sup>1</sup> See: <https://www.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

<sup>2</sup> The consultation received 54 responses, however data checks revealed that one individual had submitted two responses. This was merged into one composite document, leaving 53 responses.

- Seven organisations with a focus on victim support such as Rape Crisis Scotland, Victim Support Scotland and Glasgow Violence Against Women Partnership.
- Five organisations that provide a justice perspective, for example; Police Scotland.
- Two Local Authorities.
- Two other relevant organisations, including the Information Commissioners Office.

### **Approach to analysis and reporting**

- 1.7. The analyst team developed a qualitative coding framework based on a review of the consultation questions and sample of responses.
- 1.8. This report presents the range of views expressed and trends amongst responses. During analysis it became evident that a few respondents repeated aspects of their responses across questions. In some cases, parts of a response aligned more closely with another question in the discussion document. To avoid repetition, the analysis is presented under the most appropriate thematic heading.
- 1.9. The report also draws on summaries of discussions at a consultation workshop hosted by the Scottish Government on 26 March 2019. This invited representatives from Police Scotland, the Scottish Police Authority (SPA), the Crown Office and Procurator Fiscal Service (COPFS), NHS Scotland and Rape Crisis Scotland to share expertise in the development of a consistent national model for self-referral.
- 1.10. Where appropriate, quotes have been included to illustrate key points. Quotes provide useful examples, insights and contextual information, but may not always represent the views of entire groups. Where respondents gave permission for their responses to be published we have quoted directly, however minor spelling or grammatical errors have been corrected to improve readability.
- 1.11. Three organisations asked for their response not to be published. Their responses were included in analysis, but no quotes have been drawn from their submissions. Ten organisations asked for their response to be published without naming them, in those cases, we have attributed quotes to 'organisation, anonymous'. In all cases, where quotes are drawn from individual, it has been attributed to an 'individual, anonymous' rather than a specific person.
- 1.12. We highlight similar wording in the responses from three respondents: Scottish Borders Rape Crisis Centre, Orkney Rape & Sexual Assault Service and Rape Crisis Scotland. These have been counted as three separate responses, to provide the weight of support for the particular views expressed.

### **Report Structure**

- 1.13. The Lines Between was commissioned 'to produce a clear and concise report for publication, that reflects a robust analysis of the responses to the consultation'. This report presents the findings:
  - A quantitative summary of responses.
  - Chapter 2 presents the analysis of responses to questions relating to the functions of Health Boards.
  - Chapter 3 presents the analysis of responses to questions relating to the taking and retention of samples.



- Chapter 4 presents the analysis of responses to questions relating to safeguarding respect for victims' human rights.
- Chapter 5 presents the analysis of responses to questions relating to provisions for children or young people.
- Chapter 6 presents the analysis of responses to questions relating to any potential impacts of the proposals put forward in equalities including socio-economic equality, people in rural communities, or financial implication for health boards.
- Chapter 7 presents the analysis of other comments that were not captured in responses to previous questions.
- The final chapter contains conclusions and reflections for the Scottish Government to consider.

1.14. Respondents' responses to the consultation, where permission for publication was granted, can be found on the Scottish Government's website<sup>3</sup>.

### **Quantitative Summary**

1.15. The following pages contain a quantitative summary of the responses to each question.

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<sup>3</sup> See: [https://consult.gov.scot/equally-safe/equally-safe-improve-forensic-medical-services/consultation/published\\_select\\_respondent](https://consult.gov.scot/equally-safe/equally-safe-improve-forensic-medical-services/consultation/published_select_respondent)

Question	Yes	% Yes	No	% No	Don't know	% Don't know	Not Answered	% Not Answered	Comments
Question 1: Should a specific statutory duty be conferred on Health Boards to provide forensic medical services to victims of rape and sexual assault, for people who have reported to the police as well as for those who have not?	48	91%	1	2%	1	2%	3	6%	44
Question 2: Do you have any views on how a legislative framework for the taking and retention of samples, personal data and other evidence in the case of police referral should operate?	30	57%	8	15%	4	8%	11	21%	35
Question 3: Do you have any views on how a legislative framework for the taking and retention of samples, personal data and other evidence in the case of self-referral should operate?	30	57%	6	11%	4	8%	13	25%	32
Question 4: More generally, do you have any views on potential impacts of the proposals in the Chapters of this paper on data protection and privacy (the handling of personal data including "special category" data about health)?	26	49%	11	21%	3	6%	13	25%	29
Question 5: How might legislation help safeguard victims' rights to respect for their dignity? Please note for this question instead of the three options of 'yes'/'no'/'don't know' respondents were given two options 'see below'/'don't know'	41	77%	N/A	N/A	6	11%	6	11%	42
Question 6: More generally, do you have any views on potential impacts of the proposals in the Chapters of this paper on human rights (including economic, social and cultural rights such as the right to the highest attainable standard of physical and mental health)?	26	49%	10	19%	4	8%	13	25%	31
Question 7: Should special provisions be included in legislation to reflect the distinct position and needs of children and young people? Do you have any views on how such special provisions should operate?	42	79%	0	0%	1	2%	10	19%	40
Question 8: More generally, do you have any views on potential impacts of the proposals in the Chapters of this paper on children and young people including their human rights or wellbeing?	20	38%	11	21%	3	6%	19	36%	30

Question	Yes	% Yes	No	% No	Don't know	% Don't know	Not Answered	% Not Answered	Comments
Question 9: Do you have any views on potential impacts of the proposals in this paper on equalities (the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation)	27	51%	12	23%	4	8%	10	19%	32
Question 10: Do you have any views on potential impacts of the proposals in this paper on socio-economic equality (the Fairer Scotland Duty)?	9	17%	26	49%	2	4%	16	30%	11
Question 11: Do you have any views on potential impacts of the proposals in this paper on people in rural or island communities?	29	55%	8	15%	4	8%	12	23%	32
Question 12: Do you have any views on the financial implications of the proposals in this consultation paper for NHS Scotland and other bodies?	25	47%	12	23%	3	6%	13	25%	26
Question 13: Finally, do you have any other comments that have not been captured in the responses to the other questions you have provided?	18	34%	23	43%	0	0%	12	23%	21

## 2. Functions of Health Boards

### A specific statutory duty for Health Boards

- 2.1. The consultation document notes a transfer in the delivery of forensic medical services for victims of rape and sexual offences to the territorial health boards in 2013. This was provided for in a Memorandum of Understanding (MoU) between Police Scotland and the territorial health boards. The consultation explains the intention to build on the existing arrangements, noting *'the legislation proposed in this consultation will provide a clear statutory basis for people to access self-referral services in all parts of Scotland'*.
- 2.2. Respondents were invited to express views on the creation of a statutory duty for health boards, by responding to the following question:

Question 1: ***Should a specific statutory duty be conferred on Health Boards to provide forensic medical services to victims of rape and sexual assault for people who have reported to the police as well as those who have not?***

- 2.3. A quantitative overview of responses to this question is provided below:

- 91% (48 out of 53) selected 'yes'
- 2% (1 out of 53) selected 'no'
- 2% (1 out of 53) selected 'don't know'
- 6% (3 out of 53) did not answer the question

### Overview of responses to the proposed statutory duty

- 2.4. This question generated the largest number of comments across the consultation. Most respondents (44 out of 53) provided additional detail alongside their answer to the consultation question. The comments varied considerably, reflecting the diverse skills and experience across the respondent groups.
- Most comments (29 out of 44) explained why the respondent supported the proposal. Themes included the value of a statutory duty, the importance of self-referral routes and the positive impact of embedding trauma-informed care and adopting a health-focused approach to forensic medical services.
  - Thirteen respondents described their support for the proposals and also mentioned other issues for the Scottish Government to consider. These typically involved calls for resources, training and service delivery models.
  - One respondent said they did not support the proposal. They described their preference for an alternative commissioning model which would enable delivery by private sector service providers.
- 2.5. A summary of respondents' comments, presented by theme and frequency of the view expressed, is provided below.

### ***The need for a statutory duty***

- 2.6. Eleven respondents reflected on the value of introducing a statutory duty. Within this group, five respondents suggested the statutory duty would provide guidance to the health boards and Police in terms of implementation, roles and responsibilities.
- 2.7. Four reflected that a statutory duty on health boards would build on the current Memorandum of Understanding between Police Scotland and Health Boards.
- 2.8. Two respondents highlighted that the statutory duty should make it clear that health boards are responsible to deliver FMS. One felt a statutory duty would help hold local services to account and ensure health boards comply with other requirements and public sector duties.

### ***Self-referral***

- 2.9. References to the importance of self-referral routes were identified in responses from 20 respondents. Most of this group (16 of the 20 respondents) expressed their support for offering FMS to those who self-refer and reflected that access to these services should not depend on reporting to the police.
- 2.10. Ten respondents highlighted the importance of victims having time to decide whether to report, but nonetheless wish evidence to be taken. One respondent expressed concern that a statutory duty might prevent people being open about their circumstances but did not expand.

### ***Shifting to trauma-informed care and a health focused approach***

- 2.11. Discussion of trauma-informed care was identified in responses from fifteen respondents. Most of these (12 respondents) highlighted the need for trauma-informed care and the important role this plays in the recovery of victims.
- 2.12. Three highlighted that health boards are better placed to provide trauma-informed care and support, because of the skills and expertise of staff. In reflecting on trauma-informed care, one respondent said victims should be given the choice of sex of the examiner.
- 2.13. The shift towards a health-focus approach was endorsed by four respondents. In this discussion three respondents suggested that such an approach would avoid re-traumatising victims. Three respondents highlighted the importance of focussing on the health and wellbeing of victims, given the traumatic experience.

### ***Consistent service delivery***

- 2.14. Twelve respondents reflected on the potential for the statutory duty to result in consistent service delivery for victims. These ranged from brief comments from seven respondents expressing a view that the statutory duty would produce a more consistent service, to more detailed responses from four respondents. In the more detailed comments were indications that the statutory duty would achieve consistency in relation to responsibilities and practice, with one specifically mentioning a need for this when considering delivery across urban and rural communities.

### ***Potential to address under-reporting***

- 2.15. Eleven respondents highlighted the potential for the proposals to address under-reporting of sexual offences. In these responses, nine respondents noted current under-reporting, or reflected on the reluctance of victims to report. Two respondents suggested the proposals could have a positive impact by increasing the number of incidents reported.

### ***Models of delivery and improved access to services***

- 2.16. Issues related to accessing services were described by eleven respondents. In most of these responses (nine respondents) were brief or general remarks expressing a view that the proposals would lead to improved access to services. One respondent highlighted the current need for those in rural/island areas to have to wait or travel for an examination.
- 2.17. Considerations in terms of the design and development of FMS were noted by seven respondents. The specific issues raised in these responses are summarised in Appendix 1.

### ***Capacity, Resourcing and Training***

- 2.18. Eight respondents reflected on capacity within health boards to provide the services outlined in the consultation, often expressing concerns about their capacity to do so within existing resources.
- Five respondents made comments about the ability of the NHS or health boards to provide FMS given staff / resource / funding concerns or made calls for extra funding.
  - Three respondents made comments in relation to training. These can be found in Appendix 1.
  - Singular responses can be found in Appendix 1. These included the creation of the forensic nurse examiner role, the creation of an authoritative body to oversee processes to recruit and train staff and an acknowledgement of progress in and call for further work to improve the gender balance of the workforce.

### ***Equalities and Human Rights***

- 2.19. The proposals in the context of equality and rights were discussed by seven respondents. In these, three respondents mentioned the impact on LGBTI people, for example reducing barriers and increasing presentation to services.
- 2.20. Two respondents made broader observations on this theme; one noted that the legislation should be principle based, reflect human rights and be sensitive of the need for equality. One commented that the system should be one that fits with the vision of a country which strives to uphold the rights of its citizens.
- 2.21. Four respondents highlighted the needs and experiences of vulnerable groups in their response. Two of these referred to barriers faced by women who are physically disabled or have learning disabilities, one suggested that further work was required to develop expertise and interventions for those with severe-profound learning disabilities and questioned how they would be supported. Another commented that many complainants of rape are vulnerable and would prefer relationship building prior to reporting.
- 2.22. One respondent asked the Government to be mindful of the specific experiences of Catholic women.

### **Children and Young People**

- 2.23. Impacts of the proposals in relation to children and young people were highlighted by six respondents. In these, four respondents noted the duty of child protection that health boards would have and the need to follow child protection procedures / share information with agencies responsible for intervention. They suggested that in these instances, self-referral would not be appropriate.
- 2.24. One organisation gave a very detailed response based on their knowledge of the area which has been signposted to the Scottish Government for review. Another respondent suggested that consideration should be given to young people over thirteen to access self-referral services.

### **Evidence and relevant examples of current practice**

- 2.25. Examples and additional relevant information were shared in five consultation responses. These are detailed in Appendix 1 and included a detailed response signposted to the Scottish Government for review.

### **Disagreement with the proposal and other issues raised**

- 2.26. One respondent expressed disagreement with proposal and gave a detailed response as to why. They voiced doubt that the NHS is equipped to provide either state of the art FMS or recovery therapies for victims of sexual assault and shared concerns about the ability of nurses in Scotland to provide evidence in court. This respondent suggested that *“responsibility for providing services should be co-commissioned by Police and the NHS with a separate board overseeing the SARCs in each regional location”*.
- 2.27. Four respondents called for clarity on certain issues which are listed in Appendix 1.
- 2.28. A number of other varied suggestions were identified in comments about the creation of a statutory duty. These are available in Appendix 1.

### **A sample of illustrative quotes that typify the themes identified in this section:**

- “ Statutory duty will oblige health boards to improve access of victims. (Organisation, anonymous)
- “ A statutory duty would assist the progression of guidance for health to implement appropriate medical services to be provided. (Individual, anonymous)
- “ People may need time to be in a position where they can report but wish evidence to be taken and secured. (Individual, anonymous)
- “ Scotland is moving now towards a healthcare and recovery focused approach whilst recognising the importance of reliable forensic evidence gathering techniques to support the criminal justice system. The legislation proposed in this consultation will provide a clear statutory basis for people to access self-referral services in all parts of Scotland. (Organisation, anonymous)

### 3. Taking and retention of samples

- 3.1. The consultation document explains that taking and retaining samples require modern, clear and robust statutory provisions. These are an important aspect of forensic medical services for victims of sexual offences. It notes the Scottish Government welcomes views on the need to enact new legislative provisions about data sharing to cover whether, with whom and for what purposes forensic medical examination data might be shared.
- 3.2. A number of relevant reference points are highlighted, including:
- Healthcare Improvement Scotland’s National Standard, which requires that each health board ensures that forensic examinations of people who have experienced rape, sexual assault or child sexual abuse are recorded consistently
  - The General Data Protection Regulation and Data Protection Act 2018
  - Caldicott principles relating to the use of patient identifiable information
  - The Age of Criminal Responsibility (Scotland) Bill (now an Act)
  - The forthcoming Biometric Data Bill (now introduced to the Scottish Parliament as the Scottish Biometrics Commissioner Bill)

#### Responses to question two: evidence in the case of police referral

- 3.3. Respondents were invited to express views on evidence in the case of police referral, by responding to the following question:

Question 2: *Do you have any views on how a legislative framework for the taking and retention of samples, personal data and other evidence in the case of police referral should operate?*

- 3.4. A quantitative overview of responses to this question is provided below:
- 57% (30 out of 53) selected ‘yes’
  - 15% (8 out of 53) selected ‘no’
  - 8% (4 out of 53) selected ‘don’t know’
  - 21% (11 out of 53) did not answer the question

#### Overview

- 3.5. This question generated comments from over half of the consultation respondents (35 out of 53). Within these a range of views were identified about how a legislative framework should operate in the case of police referral. Themes in the comments included:
- Consent and the need for clear information and communication
  - Storage, transfer and deletion of data
  - The need for a legislative framework
  - Considerations in relation to vulnerable groups
  - Consistency with existing guidelines
  - Victims’ needs
  - Considerations in relation to children and young people



### ***Consent and the need for clear information and communication***

- 3.6. Seventeen respondents discussed issues around consent, highlighting the need for clear information and communication to inform this. Many of these respondents (eleven of the seventeen) emphasised that any actions with samples or data can only be undertaken with victim's (informed) consent, including the right to withdraw consent.
- 3.7. Seven respondents highlighted the need for and importance of clear, accessible information and language being used to provide information to victims to inform consent. Three respondents commented on the need to keep victims informed during the process.
- 3.8. There were two comments about the retention and retaining of samples in relation to the police. One respondent suggested that in the case of a police referral, the victim will be consenting to the transfer of samples. Another highlighted paragraph 32 of the consultation, suggesting there is a need to consider the issue of consent at an earlier stage as the wording of this section presumes consent from all in the case of police referral.
- 3.9. Other comments from individual respondents in relation consent and the role of the police are available in Appendix 2.

### ***The storage, transfer and deletion of data***

- 3.10. Fourteen respondents discussed ways in which data should be stored, transferred and deleted. Views on this issue varied, with key points identified below.
  - Six respondents reflected on timeframes for the storage of data:
    - Three highlighted the need for clarity about how long samples or data will be held, and when they will be destroyed.
    - Two argued that there should be lifetime retention (with the subject having the right to report the crime or delete the data), with one of these referring specifically to cases of historical offences.
    - One suggested that a period of 30 years would seem reasonable.
  - Three made a general observation that samples and data should be stored securely and in an appropriate way.
  - Two respondents reflected specifically on taking and retention of a sample in relation to police cases. One noted that these cases were straightforward and that the police were responsible for storage and management; another highlighted that in this instance, the victim will be consenting to the transfer of data.
  - Two respondents raised the issue of using a separate identifier from the existing Community Health Index (CHI) number to protect personal information, they also called for clarity on what personal data can be used/shared and when.
- 3.11. Singular responses made in relation to this theme are detailed in Appendix 2.
- 3.12. During the workshop (see 1.9) there was a discussion about the retention and storage of forensically or evidentially important clothing. It was highlighted that justice authorities could provide useful guidance to health boards on these issues.
- 3.13. The retention time for samples was also discussed in the workshop, acknowledging that longer retention times will require greater provision of storage capacity. There was some discussion about whether or not different timescales should apply to different types of evidence; reaching a general consensus that all types of evidence should be held for the same retention period.

- 3.14. Workshop attendees recognised that health boards would need to comply with Environmental Monitoring (EM) protocols, such as those in place where evidence is held by the criminal justice authorities. Practical considerations include sample security and maintenance of freezer temperatures.
- 3.15. In discussions about sample freezing, there was consensus at the workshop that health boards will require to have access to NHS freezer facilities including uninterrupted power supplies and contingency arrangements.

#### ***Considerations when developing the legislative framework***

- 3.16. Eleven respondents reflected on issues for consideration in the development of the legislative framework.
- 3.17. Six respondents commented on the need for a framework to ensure the integrity of the chain of evidence and that evidence withstands scrutiny, even in cases of self-referral. Related to this, three respondents commented on the need for the taking and retention of samples to be done by a specialised / trained individuals who document evidence appropriately and accurately so that no doubt can be cast on the accuracy of evidence. Three also noted the need to apply processes consistently, be it standard operating procedures to support staff to comply or consistent retention of samples.
- 3.18. Other comments which included a reference to the legislative framework are available in Appendix 2.

#### ***Vulnerable Groups***

- 3.19. Seven respondents reflected on the legislative framework in relation to vulnerable groups, sharing suggestions, examples or other issues for consideration by the Scottish Government. These are summarised in Appendix 2.

#### ***References to other guidelines***

- 3.20. Six respondents referred to existing guidelines and the need to ensure consistency with these. Four of these responses included brief comments that highlighted the need to comply with existing frameworks or legislation such as GDPR (three respondents), Caldicott principles (one respondent) and Faculty of Forensic and Legal Medicine Guidelines (one respondent). Additional individual references are detailed in Appendix 2.

#### ***Putting victims' needs first***

- 3.21. Six respondents specifically highlighted victims' needs within the development of legislative framework and models of service delivery. Most of these comments were included as part of a larger discussion.
- 3.22. One respondent stated that more needs to be done to advise victims of the benefits of samples being shared and processed, noting that better communication of these will promote confidence and provide support to the victim.
- 3.23. Other individual references to victims' needs included expressions of support for trauma-informed healthcare. There were calls for the Scottish Government to consider victim's needs, for empowerment of victims in relation to authorisation of their data, and to recognise that emotional support is most important at the stage of presentation.

## References to children and young people

- 3.24. Five respondents commented on how the proposals will impact children and young people, or provided suggestions, examples or other issues consideration for the Scottish Government in relation to this group.
- Two respondents included children in a list of vulnerable groups whose rights need to be respected. One respondent simply stated that “*Special rules are required for children*” but did not expand on this comment.
  - Two respondents commented specifically in relation to the impact on child protection: one observed that child protection proceedings cannot be delayed whilst consent to use of samples is granted; another provided a very detailed response in relation to the needs of children covering issues such as disclosure of medical information to parents who do not have care of their children and the needs of children who have experienced sexual abuse.

## Specific examples

- 3.25. Three respondents cited specific examples for the consideration by the Scottish Government. These are summarised in Appendix 2.

### ***A sample of illustrative quotes that typify the themes identified in this section:***

“ *The terms ‘any other information’ should be clearly explained in an accessible way. Lack of accessible communication is one of the main barriers people with learning disabilities often face within the health care system and the justice system. Information should be communicated in clear, jargon-free language and suited to the communication support needs of the person. That goes for verbal communication as well as written communication. Any written information should be available in Easy Read format, as well as other accessible formats. (Organisation, anonymous)*

“ *Members agree there is a need to ensure there is a clear forensic chain of evidence from health to police in these cases. The Royal College of Paediatrics and Child Health (RCPCH).*

“ *Immediately following a rape or sexual assault, someone is likely to be in shock and unable to take in or process a lot of information. Police and civilian police staff at all levels would benefit from trauma aware training so that survivors are not re-traumatised by the constant requests to re-tell the narrative of their assault by different members of staff. Consideration should be given for the provision of drinks and food for the survivor during the lengthy waiting times between reporting, statement taking and attending a forensic examination especially where travel is also required. Orkney Rape & Sexual Assault Service (ORSAS)*

“ *We note that the Scottish Government intend to bring forward a Biometric Data Bill in the current parliamentary year so that much will depend on how that legislative framework is set out. Bringing forward statutory provisions will benefit all in providing clarity of the process, outlining respective rights and ensuring the consistent retention of samples etc. (Law Society of Scotland)*

## Responses to question three: evidence in the case of self-referral

- 3.26. Respondents were invited to express views on evidence in the case of self-referral, by responding to the following question:

Question 3: *Do you have any views on how a legislative framework for the taking and retention of samples, personal data and other evidence in the case of self-referral should operate?*

- 3.27. A quantitative overview of responses to this question is provided below:

- 57% (30 out of 53) selected 'yes'
- 11% (6 out of 53) selected 'no'
- 8% (4 out of 53) selected 'don't know'
- 25% (13 out of 53) did not answer the question

### Overview

- 3.28. This question generated comments from over half of the consultation respondents (32 out of 53). Within these a range of views were identified about how a legislative framework should operate in the case of self-referral.
- 3.29. Despite the focus of self-referral in question three, many (18 out of the 32) respondents cited the full response they had already provided at question 2 in relation to police referrals. For the purposes of analysis in this section:
- Twelve provided an identical response as at question 2 or, simply directed the Scottish Government to their question 2 response. These comments are not analysed in this chapter and are considered to be covered in question 2<sup>4</sup>.
  - Six respondents provided the same response as at question 2 or referenced question 2 but provided further comments. Only these additional comments are included in the analysis in this chapter.
- 3.30. The analysis below is based on the fourteen respondents who provided a new detailed comment and the six respondents who provided additional comments to those already given at question 2.
- 3.31. Themes in the comments included:
- Reflections on the legislative framework
  - Storage, transfer and deletion of data
  - Consent and the need for clear information and communication
  - Considerations in relation to children and young people
  - Considerations in relation to vulnerable groups
  - Examples for the Scottish Government to be aware of

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<sup>4</sup> For reference, key themes in those responses included consent and the need for clear information and communication; storage, transfer and deletion of data; the need for a legislative framework; considerations in relation to vulnerable groups; consistency with existing guidelines; victims' needs; and considerations in relation to children and young people

### ***Reflections on the legislative framework***

- 3.32. Eight respondents shared comments for the Scottish Government to consider when developing the legislative framework, with specific reference to self-referral to FMS.
- Two said the framework must ensure samples are collected and retained in a way which withstands scrutiny of the legal system, even if a desire to involve criminal justice partners for prosecution is not deemed likely at the time of collection.
  - Two called for the framework to provide clarity on the roles and responsibilities of those involved, processes involved in taking and storing samples, consent, age limits etc.
  - Two respondents explicitly stated that the same standards and services offered should apply regardless of whether a victim has reported to the police or self-referred.
  - Two respondents highlighted that health boards will need adequate resources to meet the new requirements.
  - Two respondents called for the framework to put victims first, with one suggesting that there is a need for more controls and a more victim-centred approach in cases of self-referral. Another referenced the need for the framework to protect the rights of victims who self-refer.
  - Two respondents observed that developments in science, and increases in historical cases, means that old/retained samples could be used for a prosecution in the future. They suggested framework will need to promote future-proof standards for the collection and retention of samples.
  - One observed the framework should provide equal access to those who choose to report to police at a later date.
  - One respondent suggested that a timetable for reviewing health board's success in meeting the new duties should be incorporated into the legislation.

### ***The storage, transfer and deletion of data***

- 3.33. Seven respondents commented the storage, transfer and deletion of data.
- 3.34. Four respondents reflected on storage. Two highlighted the potential burden on health boards. One felt samples should be stored by health boards and inaccessible to the police (until consent given), another requested clarity on who is responsible for management.
- 3.35. Four reflected on timescales. All called for clarification on how long samples should be stored, for different purposes; with two suggesting there should be a national standard for storage time, which should not vary according to facilities in each health board.
- 3.36. Additional singular comments on this theme are summarised in Appendix 2.

### ***Consent and the need for clear information and communication***

- 3.37. Seven respondents commented on consent and the need for clear information and communication to inform this.
- Four respondents reflected on informed consent, including the right to withdraw consent. Three of these referred to how best to inform individuals: two highlighted the need to communicate with individuals about what happens to their samples or data; another suggested there should be distinct guidance to victims about the information or data transferred to the criminal justice agencies. One of these

respondents suggested this needs to be done throughout the process and suggested a check built into the clinical pathway.

- Two respondents commented that police should not be able to access samples collected without the consent of the person from whom the samples were taken.

### ***References to children and young people***

- 3.38. Five respondents made comments about the legislation in relation to children and young people, or provided an additional suggestion, example, or issue for consideration by the Scottish Government about this group.
- Four respondents raised issues specifically relating to child protection.
    - Three of these made a general comment that self-referral would not be appropriate for those under 16 as this would need to be considered under a child protection pathway.
    - Another provided a more detailed comment, suggesting that clarification is needed regarding the age limit for self-referral in line with other child protection legislation. They highlighted the need for staff to discuss with the young person the actions they are duty bound to take in relation to child protection.
  - One respondent highlighted the potential conflict with other legislation related to children and young people but did not give specific examples.

### ***Vulnerable Groups***

- 3.39. Four respondents discussed how vulnerable groups might be impacted by the legislative framework. Three referred to how the framework may interact or conflict with existing legislation relating to vulnerable groups: two mentioned the need to refer to Adult Support and Protection legislation and another made a general statement to this effect. One respondent suggested that police referrals may be more likely in cases of vulnerable individuals, but did not explain why.

### ***References to other guidelines***

- 3.40. There were four references to existing guidelines and reflections on ensuring consistency with these. Two respondents simply stated that there is a need to ensure there are no conflicts with existing legislation, but did not provide details. Another mentioned the Human Tissue Act but did not make clear which specific Act of Parliament they were referring to. One stated that the legislative framework for self-referral will need to ensure actions are taken to satisfy the COPFS (Procurator Fiscal) and court system (as this is where evidence will be scrutinised).

### ***Specific examples***

- 3.41. In addition to examples shared in responses to question two, another respondent provided examples of services which they consider best practice for self-referral. They suggested these should be looked at as examples of ways to improve the support provided for victims.

**A sample of illustrative quotes that typify the themes identified in this section:**

“ Given the advancements in science and the increased prevalence of historical cases, we would welcome a legislative framework which promotes scientifically robust yet accessible sample collection, storage, analysis and disposal standards, which are future proof for a retrospective challenge. (Organisation, anonymous)

“ The principles set out in the consultation appear sound and reasonable. (Organisation, anonymous)

“ The legislative framework must therefore provide clarity in relation to the roles and responsibilities of the agencies involved, with health having the responsibility for the collection; handling; packaging; storage and retention up until the time the samples are disposed of or up until a time as the person has formally engaged with Police Scotland and samples transferred to Police Scotland. (Police Scotland)

“ We would suggest that the legislative framework should also protect victims who have self-referred in a way that puts their needs first... where individuals have self-referred, they need clearly communicated with in terms of what is happening to their samples, where and how they will be stored and for how long for... . There are examples of services that promote best practice for self-referrals for victims of rape and serious assault in some parts of the UK which should be looked at as a way of improving support for victims. (Organisation, anonymous)

“ Legal & statutory duties related to child protection must prevail. For under 16s who self-refer, staff should sensitively discuss the actions they are duty bound to take with the young person, bearing in mind statutory responsibilities... Similar issues exist in relation to vulnerable adult self-referrals... There is a need to ensure new legislation does not conflict with current legal duties. (NHS Greater Glasgow and Clyde and Glasgow HSCP)



## Responses to question four: impact on data protection and privacy

- 3.42. Respondents were invited to express views on impact in relation to data protection and privacy, by responding to the following question:

Question 4: ***More generally, do you have any views of the potential impacts of the proposals in the chapters of this paper on data protection and privacy (the handling of personal data including “special category” data about health)?***

- 3.43. A quantitative overview of responses to this question is provided below:

- 49% (26 out of 53) selected ‘yes’
- 21% (11 out of 53) selected ‘no’
- 6% (3 out of 53) selected ‘don’t know’
- 25% (13 out of 53) did not answer the question

### Overview of responses

- 3.44. This question generated comments from over half of the consultation respondents (29 out of 53). Within these, there were a range of views about the impacts of the proposals in relation to data protection and privacy. These included comments on current data laws, the proposed guidelines, consent, treatment of data, data storage and considerations regarding children and young people.

### References to current data laws and policies

- 3.45. Nine respondents highlighted the need to comply with/not conflict with existing frameworks or legislation. Seven referenced GDPR and the Data Protection Act 2018, one mentioned the Caldicott principles and two made brief general comments about compliance with existing legislation.
- 3.46. One respondent called for the existing national Information Sharing Protocol (ISP) between NHS Boards, Police Scotland and the Crown Office and Procurator Fiscal Service to be updated to ensure that it is acting in accordance with GDPR.
- 3.47. Another respondent specifically mentioned that the transfer of data should comply with s22 of the Gender Recognition Act 2004.

### Discussions on the proposed guidelines

- 3.48. Nine respondents discussed the proposed guidelines and framework, sharing an additional suggestion, example or issue for consideration by the Scottish Government.
- Five respondents gave brief comments in relation to specific elements of the proposed guidelines. Four of these welcomed or highlighted the importance of the Data Protection Impact Assessment in informing guidelines; two suggested that the Information Governance Delivery Group will provide clarity and consistency and one observed that the Information Sharing Agreement will inform future practice.
  - Other individual responses are detailed in Appendix 2.



### ***Consent and the need for clear information and communication***

- 3.49. Eight respondents discussed issues around consent and the need for clear information and communication to inform this.
- Three respondents effectively reiterated their response to question two and three; highlighting the need for clear and accessible information to be provided, that the process should be underpinned by informed consent and that in the case of self-referral a follow-up should be built into the pathway.
  - Two respondents commented on consent: one felt the sharing of “special category” data should only take place with the consent of the victim in respect of self-referral cases; the other suggested the introduction of a records release consent form which clearly outlines the treatment of records.
  - Two respondents highlighted the need for language and communication to be adequately addressed, one specifically in relation to people with learning difficulties.
  - One welcomed an approach which ensures support in decision making.
  - Another highlighted concerns from their role as a clinician, about gaining valid consent and additional responsibilities on services over time to manage records.

### ***Treatment of personal data***

- 3.50. Six respondents reflected on how personal data should be treated.
- Three of these comments included brief mentions of privacy and data protection: one observed that the process should protect the privacy of the victim; another that dignity, respect and privacy should be an integral part of the service standard; and one noted that Data Protection requirements are even higher than for general medical data due to the accounts and images likely to be gathered.
  - Other singular comments are provided in Appendix 2. These included the need for non-forensic information to be protected, for a unique ID and adequate labelling, for guidance on handling data consistently across health boards and data control.

### ***References to the storage, transfer and deletion of data***

- 3.51. Five respondents discussed ways in which data should be stored, transferred and deleted.
- Three respondents made general comments about use and storage of data. One felt that timescales for holding data should be considered based on historic sexual abuse cases, ownership respected and authority to transfer or destroy data should be supported by access to support services. Another observed that any photographs and digital images should be transferred by secure means. One suggested that DNA and intimate samples should be stored securely for a set period and not used for any other purpose.
  - A further three specific comments made by individuals are provided in Appendix 2.
- 3.52. At the workshop, the Archway<sup>5</sup> model for storing samples and other evidence was noted, with the police having no role to play in retaining evidence in self-referral cases.
- 3.53. During the workshop there was discussion around where evidence should be stored, for example within each health board, in a regional hub or in a central location. It was

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<sup>5</sup> Archway refers to the Archway Sexual Assault Referral Centre in Glasgow.

suggested that an NHS shared service option could be explored. A robust process around this was seen as key in maintaining integrity around the chain of evidence.

### **References to children and young people and age or child protection issues**

- 3.54. Four respondents commented on data protection and privacy with regards to children and young people.
- Three of these highlighted the need to consider data protection and privacy in the context of child protection. One observed that child protection concerns override an individual's rights to determine how samples are used, another noted that legal and statutory duties for child protection must prevail and another said that legislative provisions for forensic material need to take account of the specific situation of the child (specifically a parent's ability to request medical records).
  - One respondent highlighted that they are engaging with the CMO Taskforce for the improvement of services for adults and children who have experienced rape and sexual assault.

### **Vulnerable groups**

- 3.55. Three respondents commented on data protection and privacy with regards to vulnerable groups. These are detailed in Appendix 2 and include a detailed response about the requirements of victims with learning difficulties.

### **Specific examples**

- 3.56. Two respondents cited examples which are detailed in Appendix 2.

#### **A sample of illustrative quotes that typify the themes identified in this section:**

“ This is particularly important and sensitive and the Data Protection requirements here are very significantly higher than even for general medical data, given the intimate nature of the accounts and images which are likely to be gathered. (Individual, anonymous)

“ Getting data protection right at the legislative design stage will help ensure that victims' personal data and ECHR Article 8 rights are protected and that victims experience no further trauma as a result of weak data protection practices. It will also ensure that third party's data rights are upheld. (Information Commissioner's Office)

“ Key to any ethical approach to this must be informed consent. Immediately following a rape or sexual assault, someone is likely to be in shock and unable to take in or process a lot of information. Clear and accessible written information should be provided setting out the position with samples, retention times, what to do and who to contact should they wish to report to the police. In cases where an individual has self-referred, a check in should be built into the clinical pathway to ensure the individual understands what is happening with their samples, how long they will be kept for and to see how they feel now about the prospect of reporting. It is crucial that this is approached in a way that does not put pressure on someone to report, and that this entire process is underpinned by informed consent. Orkney Rape & Sexual Assault Service (ORSAS)

## 4. Safeguarding respect for victims' human rights

### Introduction

- 4.1. The consultation document describes the Scottish Government's ambition to safeguard victims' rights to dignity and outlines existing approaches, standards, frameworks and legislation that underpin respect for dignity. These include:
- That no forensic examinations of victims of sexual offences take place in police settings.
  - The human rights outcome in Scotland's national performance framework.
  - Respect for dignity enshrined in legislation such as the Patient Rights (Scotland) Act 2011 and the Social Security (Scotland) Act 2018.
  - The intention to implement section 9 of the Victims and Witnesses (Scotland) Act 2014 which provides for victims of sexual offences who have made a police report to request the gender of the medical examiner.
  - Having regard to all human rights set out in international human rights treaties and facilitating the participation of people affected by policy changes.

### Responses to question five: safeguarding rights to dignity

- 4.2. Respondents were invited to express views on how the legislation might help safeguard victims' rights, by responding to the following question:

Question 5: *How might legislation help safeguard victims' rights to respect for their dignity?*

### Overview

- 4.3. This open-ended question generated comments from over three-quarters of the consultation respondents (42 out of 53). A range of views were identified within the responses. These included: reflections on the value of trauma-informed delivery, wider discussions on safeguarding rights, and considerations in relation to children and young people.

### Trauma-informed delivery

- 4.4. Twenty-one respondents reflected on trauma-informed delivery as a means to safeguard victims' rights to respect and dignity. Aspects of these discussions are described in more detail below.
- 4.5. Sixteen respondents suggested that allowing the victim to choose the sex of the practitioner would help to safeguard victim's rights; ten of these respondents specifically highlighted this level of choice will contribute to a more trauma-informed delivery model of FMS. We highlight that many described choice in the sex of the examiner (typically, the ability to choose a female practitioner) as one the most important elements of trauma-informed delivery, and therefore a crucial aspect of a rights-based approach. The following points were raised in these discussions:
- Four respondents suggested the introduction of forensic nurse examiners in Scotland would facilitate victims' rights to choose the sex of their examiner.
  - Four respondents called for adequate staff resources to create the means to provide choice in the sex of forensic medical practitioners.

- Other singular responses are available in Appendix 3, including one which has been signposted to SG for consideration discussing the experiences of LGBTI victims.
- 4.6. Eight respondents described other aspects of a trauma-informed approach. These include consistent standards of service, making sure victims are informed and supported throughout their experience, ensuring the examination space is private and comfortable, and that services are delivered when needed. These respondents emphasized that FMS should not add to the trauma already experienced by the victim
  - 4.7. Four respondents observed the need for aftercare and support following the examination. They suggested models of support, including advocacy workers or connection with relevant agencies.
  - 4.8. Three respondents advocated for specific models of trauma-informed delivery. One suggested The New Pathways model in Wales, noting it introduces the role of an advocacy worker from the outset of criminal proceedings, and collaboration with a victims' support organisation to provide ongoing support throughout the process. Another respondent expressed support for a multi-agency model; one called for the creation of sexual assault referral centres, to provide a holistic approach to long term recovery and offer a range of services to support the needs of the victim. Another described a model of rigorous recruitment processes to ensure those conducting examinations hold progressive views about sexual violence, comprehensive sensitivity training, and on-going monitoring of victims' experience of the process.
  - 4.9. Three respondents reflected on the location of services and access to these in relation to ensuring a trauma-informed delivery. Two of these discussed the experiences of victims living in rural and remote areas who have to travel long distances to access FMS. One observed that victims are often accompanied by police, asked to wear the same clothes as worn when they were assaulted, which can contribute to further trauma. Another made a more general expression of support for the proposals to place a statutory duty on health boards to deliver forensic examinations, noting all victims should have access to such support regardless of geographical location.
  - 4.10. Two respondents reflected that examinations held in police stations or settings could further contribute to the trauma of the victim; with one discussing the importance of FMS delivery in healthcare settings to ensure the focus remains on the wellbeing of the victim. One called for improved training for police and court staff on the medical consequences of sexual assault.
  - 4.11. One respondent called for a supportive and empathetic response to victims be a feature of the model of service delivery, noting that professional culture is as important as the statutory duty.
  - 4.12. Another noted that *'any digital recording of genital images as part of an examination... should be in line with guidance published by the Faculty of Forensic and Legal medicine (FFLM)'*

#### ***Wider discussions on safeguarding victims' rights***

- 4.13. A range of points were shared by respondents in their reflections on safeguarding victims' rights. Many of these related to the potential for the legislation to play a role in enacting

rights to justice or engagement with the justice process, should victims decide to involve the police. Some examples are discussed in Appendix 3.

- 4.14. Five respondents called for assurances that victims who self-refer will receive the same services and be entitled to the same rights as those who access services as a result of a police referral. Two further singular responses are shared in Appendix 3.

### **Children and young people**

- 4.15. Four respondents referenced children and young people in their response to question five. These comments are provided in Appendix 3 but included the need for a joined-up approach including a paediatrician and a practitioner during an examination process, choosing the sex of an examiner, a discussion of trauma-informed healthcare being a route to access appropriate support and calls for more research into young peoples' preferences.

### **Other views**

- 4.16. Two respondents suggested that there are challenges when it comes to legislating to ensure respect and dignity. One said, *'it is difficult to legislate for "respect": what you can do is specify acceptable (and observable) good practice, behaviours and communication'*. The other observed *'I am not convinced that the law has any place in this area'*.
- 4.17. Conversely, another respondent observed *'individuals who have experienced harm should be treated with respect and dignity at all stages of the process... treating people with dignity and respect can be done whilst fulfilling statutory functions in relation to data collection and retention'*.

### **A sample of illustrative quotes that typify the themes identified in this section:**

“ Forensic evidence could be made collected and held until the victim is ready to decide whether to take legal action. (Individual, anonymous)

“ We would envisage any legislation being principle-based, reflecting human rights including the values of the UN Convention on the Rights of the Child (UNCRC) and the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The law should also reflect that victims are generally able to make informed decisions for themselves, and where this is not the case the law should make clear how decisions should be made, drawing on the approach of the UNCRPD – that the will and preferences of adults are included and reflected in decisions, and that there should be support for decision making. (Organisation, anonymous)

“ With regard to question 5, SCLD believes giving full legislative powers to health boards may increase the likelihood of important evidence being gathered which could become vital to later criminal prosecutions. This will support a right to justice as outlined under Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). (Scottish Commission for Learning Disability)

## Responses to question six: potential impact on human rights

- 4.18. The consultation document notes that the Scottish Government proposes to take a human-rights based approach to the development of legislation to improve forensic medical services for victims of rape and sexual assault. It explains that this includes regard for human rights treaties, facilitating the participation of people affected by policy changes and moving beyond the civil and political rights to encompass economic, social and cultural rights.
- 4.19. Respondents were invited to express views on how the legislation might have an impact on human rights, by responding to the following question:

Question 6: *More generally, do you have any views on potential impacts of the proposals in the Chapters of this paper on human rights (including economic, social and cultural rights such as the right to the highest attainable standard of physical and mental health)?*

### Overview

- 4.20. This open-ended question generated comments from over half of the consultation respondents (30 out of 53). A range of views were identified within these, including:
- Twenty-four responses which contained an additional suggestion, example or consideration for the Scottish Government.
  - Six respondents reiterated their support for a human rights approach, explaining why they believe the proposed legislation will have a positive impact on victims.

### Vulnerable Groups

- 4.21. Nine respondents referenced vulnerable groups in response to this question. Most of these discussed vulnerable groups in relation to adults with disabilities (physical disabilities, profound and multiple learning disabilities (PMLD)) and the specific risks, issues and challenges that they can encounter.
- 4.22. Seven respondents signposted the Scottish Government to specific reference points. These are listed in Appendix 4.
- 4.23. Two focused on informed decision-making, with one highlighting confidentiality issues concerning women with disabilities. They suggested that supported decision-making can lead to a lack of autonomy when it comes to a person with disabilities deciding when and if to take legal action in a case of rape or sexual assault. To address this, they called for practitioner training around Adult Support and Protection regarding decision-making. Another respondent gave a detailed discussion about the importance of ensuring rights are respected by providing accessible information to inform their decisions.

### General reflections on the proposals

- 4.24. Eight respondents shared general reflections on the proposals in response to this question. Five of these praised the inclusion of trauma-informed practices and three iterated their support with the intention to uphold human rights for those who have experienced sexual violence.

### **Mention of health boards in the discussion on rights**

- 4.25. Five respondents discussed health boards and FMS in their response to the question on wider human rights.
- Two suggested that intentions behind the legislation extend beyond FMS and called for responsibility be extended to follow-up care providers to ensure the highest standard of mental and physical health.
  - Further singular responses are provided in Appendix 3.

### **Minority groups and human rights**

- 4.26. Four respondents referenced minority groups in relation to equality and human rights. These comments are summarised in Appendix 3 and included two reflecting on the importance of equal rights for LGBTI communities, one discussing the experience of transgender women and one discussing the importance of including the lived experience of victims from diverse backgrounds.

### **Accessibility**

- 4.27. Three respondents mentioned accessibility, in relation to location or geography. These comments are discussed in Appendix 3.

### **Other Views**

- 4.28. A small number of comments did not align within the groupings described above. These are summarised in Appendix 3.

### **A sample of illustrative quotes that typify the themes identified in this section:**

“ *The proposals will have a positive impact on those who have experienced sexual violence to access relevant healthcare and support as well as access to justice, if they do so choose to seek it. (NHS Highland)*

“ *Human-rights based approach must underpin the delivery of care across Scotland. The responsibility for this work must extend beyond territorial Health Boards and should include all commissioned services, psychological support services and incorporated in law. (Glasgow Violence Against Women Partnership)*

“ *Improving patient access to services is a key human right. At present, citizens do not really have an equity of healthcare or an equivalence of access to the right evidence-based care following rape and sexual assault. NHS would allow this area of care to be accessible to people from all backgrounds who may have dual diagnoses, and this would NOT be seen as an impediment to the case. Rape is an outlier at present regarding the social determinants of health. Sexual violence is now considered to be a volume crime and takes up a majority of Court time in Scotland. However, the equivalent response in healthcare is not writ large. Taking responsibility would allow public health and dedicated services to address the impact of complex sexual violence on individuals, families and society. (Individual, anonymous)*



## 5. Provisions for children and young people

### Introduction

- 5.1. The consultation document describes the Scottish Government’s ambition to make Scotland the best place for children in which to live and grow up. It outlines existing research, approaches, standards, frameworks and legislation that explore and underpin respect and protection for children and young people within the context of forensic medical services. These include:
- The National Guidance for Child Protection in Scotland and Guidance for Health Professionals in Scotland
  - Getting it Right for Every Child (GIRFEC)
  - The UN Convention on the Rights of the Child (UNCRC)
  - An explanation of the Barnahus model, which seeks to provide a trauma-informed response to child victims and witnesses of serious and traumatic crimes in a familiar and non-threatening setting
  - The Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill (now an Act)
  - The Age of Legal Capacity (Scotland) Act 1991

### Responses to question seven: special provisions for children and young people

- 5.2. Respondents were invited to express views on special provisions within the legislation for children and young people, by responding to the following question:

Question 7: ***Should special provisions be included in legislation to reflect the distinct position and needs of children and young people? Do you have any views on how such special provisions should operate?***

- 5.3. A quantitative overview of responses to this question is provided below:
- 79% (42 out of 53) selected ‘yes’
  - 2% (1 out of 53) selected ‘don’t know’
  - 19% (10 out of 53) did not answer the question

### Overview

- 5.4. This question generated comments from three-quarters of the consultation respondents (40 out of 53). A range of views were identified in these responses. Almost all advocated for special provisions and gave some detail about what these could be, either echoing proposals put forward in the consultation document or describing other matters for consideration by the Scottish Government.

### ***Provisions for children and young people***

- 5.5. Eleven respondents explicitly expressed support for the implementation of a Barnahus Model as a means of providing special provisions for children and young people. Eight of these left general comments of support; three explained the nature of the Barnahus Model and its key principles, while reiterating that it would be an appropriate model to implement in Scotland.



- 5.6. Seven respondents discussed the importance of on-going support for children and young people without providing detail about what this would mean in practice. Another provided a detailed response with a range of recommendations for implementation which have been signposted to the SG for consideration. This included discussion of six essential features of a child's pathway following sexual abuse.
- 5.7. Five respondents discussed facilities, suggesting that legislation should specify that examinations would be carried out in suitable facilities for age and developmental stage of children and young people. Within this discussion, two respondents emphasised that this should not be in police settings.
- 5.8. Four called for greater provision of advocacy services for children and young people.
- 5.9. Additional comments made by one or two respondents are summarised in Appendix 4.

***Age-appropriate support***

- 5.10. Nine respondents suggested that there should be special provisions for adolescents (ages 13-16) who may not receive appropriate FMS from children's or adult's services. Eight respondents discussed the need for appropriate support throughout the examination process, suggesting that FMS staff should be trained in providing age appropriate support. In this discussion two suggested the implementation of the 'Gillick competence', the principle used to judge capacity in children to consent to medical treatment.
- 5.11. Two further singular responses are listed in Appendix 4.

***Vulnerable groups***

- 5.12. Six respondents discussed vulnerable groups in response to the distinct position of children and young people. All suggested that there should be specific provisions for vulnerable groups of children and young people, such as those with additional support needs, disabilities or profound and multiple learning disabilities (PMLDs).
- 5.13. Two of this group called for additional support and information for those groups e.g. accessible information, including information about data ownership, consideration of support, assessment of capacity, communication and training for professionals.
- 5.14. Another expressed concern that there was no dedicated chapter in the consultation for vulnerable groups. They called for the SG to consider the CRPD<sup>6</sup> as this equally applies to children and young persons. They also suggest consideration of provisions of both the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill and the Age of Criminal Responsibility (Scotland) Bill, both of which are now Acts of the Scottish Parliament.

***LGBTI community***

- 5.15. Five respondents reflected on provisions for LGBTI children and young people. One respondent suggested that those who are transgender, non-binary and intersex may not feel comfortable receiving FMS due to discomfort revealing their physical sex characteristics. They believe the right to choose the sex of the practitioner should extend to children and young people, calling for the pathway to reflect the additional impacts of abuse on LGBTI children and young people. This respondent described actions to reduce

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<sup>6</sup> UN Convention on the Rights of Persons with Disabilities

barriers to reporting, seeking support and accessing health services after experiencing sexual violence.

### **Self-referral**

- 5.16. Four respondents reflected on self-referral routes for children and young people. Three noted that they did not think self-referral to police would be possible for those under 16 years, reflecting child protection guidelines and legislation. The other said: *'We would consider that people [age] 13 and over be afforded access to self-referral without the automatic requirement for information to be shared with police, but appreciate that this may be out of scope'*.

#### **A sample of illustrative quotes that typify the themes identified in this section:**

“ *Children and young people should receive services from staff trained in supporting and caring for people of their age group. The environment that examinations and wider treatment and care take place in should be child friendly designed to reduce the trauma experienced. All information provided should be cognisant of the age of the child or young person receiving treatment and care. (Individual, anonymous)*

“ *Yes, children and vulnerable adults have different requirements and require different support needs. Information should be understandable to all, appointed representatives to support and guide through the process, and a knowledge of the ownership. (Individual, anonymous)*

“ *We would strongly urge the Scottish Government to develop specific provision reflecting children's distinct needs, to create a legislative framework which will underpin the government's principle policy objective of a recovery focussed service response. In order to do this, provision must reflect the imperative of a jointly planned, multi-agency response to children and young people, of which the forensic medical examination is just one aspect. (NSPCC Scotland)*

“ *A key issue for consideration in working across both child and adult pathways is the area of 'Gillick competence' and ensuring there is support, guidance and training available in this area across both the child and adult workforce. (Organisation, anonymous)*

“ *Fully supportive of the development of the Barnahus concept to ensure that facilities preserve the rights and dignity of any child. In addition, special provisions should be made to ensure that there are age appropriate services for adolescents. Adolescents as a group have a distinct set of needs that are not automatically met in adult settings. Adolescents should for example be able to state a preference for facility and that there should be service standards established specifically for adolescents that can be used in adult as well as children's services. There is a distinct lack of after care and psychological services for adults, children and young people and it is fundamentally important that there is access to continued care and support and that this forms part of legislation. (Glasgow Violence Against Women Partnership)*

## Responses to question eight: potential impact on children and young people

- 5.17. Respondents were invited to express views on potential impacts for children and young people, by responding to the following question:

Question 8: *More generally, do you have any views on potential impacts of the proposals in the chapters of this paper on children and young people including their human rights or wellbeing?*

- 5.18. A quantitative overview of responses to this question is provided below:

- 38% (20 out of 53) selected 'yes'.
- 21% (11 out of 53) selected 'no', indicating they had no views to share
- 6% (3 out of 53) selected 'don't know'
- 36% (19 out of 53) did not answer the question

### Overview

- 5.19. Thirty respondents shared their views on the potential impacts, some with an additional suggestion(s), example(s) or issue for the Scottish Government to consider.
- Fourteen of these responses reiterated their support for the inclusion of special provisions for children and young people as described in the discussion of responses to question 7. For reference, themes in responses to question 7 included: implementation of a Barnahus model, provision of age-appropriate support, meeting the needs of vulnerable groups and LGBTI young people and self-referral considerations.
  - The remaining 16 responses form the basis of analysis in this chapter.

### Specific issues

- 5.20. Eight respondents noted specific considerations to reflect on in relation to children and young people.
- Two respondents described delays for children and young people in accessing support from paediatricians in suitable examination facilities. One suggested a legislative duty on health boards to ensure forensic paediatric availability would prevent children and young people being adversely impacted by such delays; the other suggested recommended standards should be enshrined in legislation.
  - One respondent suggested that a multi-agency support model is best equipped to ensure all children's right to recover from sexual abuse.
  - One described issues around privacy and confidentiality, explaining that this is a challenge when there is a need for the presence of a guardian and might prohibit the victim seeking FMS or support.
  - Another noted that children and young people represent some of the most vulnerable groups, and that it is imperative to provide support to meet those needs. They also discuss that people in this group of victims may experience some of the longest lasting effects of sexual abuse and trauma and that any legislation should consider this.

- Another respondent noted that any decision to undertake forensic medical examinations must be in relation to the best interest of a child or young person; not the justice system.
- One noted that a child's developmental stage and ability to disclose and engage with the medical assessment should be assessed.
- Another said that boards need to be adequately resourced to meet all their requirements.

### **National guidance and policies**

- 5.21. Seven respondents discussed the need to uphold child protection guidance, often referencing the implementation of GIRFEC principles as a way to support children and young people. Three respondents endorsed the reference in the consultation document to embedding GIRFEC principles. Additional singular comments are detailed in Appendix 4.

### **Other themes**

- 5.22. Two reflected on children and young peoples' experiences in relation to justice. One stated that children and young people should not be presented with the trauma of having to face an abuser. Another suggested that giving pre-recorded evidence would benefit the wellbeing of children and young people.
- 5.23. Another welcomed the increased access to healthcare but suggested that '*service responses should be carefully considered regarding inter familial violence and protection*'.
- 5.24. One respondent reflected on issues facing young people from conservative cultural or religious backgrounds. They discussed consent and confidentiality implications, noting that the obligation to have a guardian present may cause danger to the children or young people in relation to family honour. This respondent also raised the importance of having wider choice in the examiner; for example, if they were concerned about a potential lack of confidentiality within their minority ethnic community, they would feel more comfortable being examined by someone from a different ethnic background.

### **A sample of illustrative quotes that typify the themes identified in this section:**

“ *The proposals recognise the rights of children and young people and I feel will ensure consistent standards of service are delivered with full regard to the well-being and rights of children and young people. (Individual, anonymous)*

“ *The child's views should always be taken into consideration and as stated above children should have an advocate to assist them through the process. (Organisation, anonymous)*

“ *Children and young people are amongst the most vulnerable people in our society – they struggle to be heard and even more so when they have a disability or the younger they are. It is therefore essential that the service they require is suitably responsive to their needs. The Royal College of Paediatrics and Child Health (RCPCH)*

## 6. Potential impacts of the proposals

- 6.1. The consultation documented notes the Scottish Government's intention 'to carry out a Data Protection Impact Assessment and a Child Rights and Wellbeing Impact Assessment in the wider context of a human-rights based approach to the development of legislation'. It explains that an Equality Impact Assessment, a Fairer Scotland Assessment, and an Islands Impact Assessment will also be carried out.
- 6.2. Respondents were invited to identify any potential impacts, and to share views in relation to equalities and costs. This chapter presents an analysis of those responses.

### Responses to question nine: Equality Impact Assessment

Question 9: *Do you have any views on potential impacts of the proposals in this paper on equalities (the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation)?*

- 6.3. A quantitative overview of responses to this question is provided below:
- 51% (27 out of 53) selected 'yes'
  - 23% (12 out of 53) selected 'no'
  - 8% (4 out of 53) selected 'don't know'
  - 19% (10 out of 53) did not answer the question

### Overview

- 6.4. Just over half of the consultation respondents (32 out of 53) provided a comment on potential impacts in relation to equality. Of these:
- Twenty-three respondents reflected on implications for equality in some detail. These responses often described a particular issue for the Scottish Government to consider when developing the legislation, or other opportunities to enhance equality impacts.
  - Seven endorsed the proposals outlined in the consultation document without further suggestion. Their comments conveyed a view that the Government's intentions will achieve a positive impact in relation to equality.
  - Two provided general comments which did not convey a view on any potential impacts.
- 6.5. A number of themes were evident with the responses. Common discussion points included reflections on the value of an Equality Impact Assessment (EQIA), the potential for service improvements, experiences of specific groups, views on self-referral, access to female examiners, staff training, confidentiality, and consent. Each theme is discussed in more detail below, presented in order of prevalence, from the issues discussed most frequently to one-off comments.

### ***Comments on the Scottish Government's proposal to conduct an Equality Impact Assessment***

- 6.6. The most frequent theme in comments, identified in eighteen responses, was some form of endorsement of the Scottish Government's decision to undertake an EQIA. Within these comments, four respondents suggested they did not believe anything put forward in the consultation document would have an adverse impact on equality.
- 6.7. A range of benefits were identified in relation to undertaking the EQIA, including enhanced understanding of specific needs of groups with protected characteristics; and the value of assessing how the proposed services will contribute to the Equality Duty.
- 6.8. Other respondents highlighted positive impacts stemming from the implementation of the legislation, such as improving the equity of experiences for groups with specific needs or addressing an existing inequality, by focusing on women who are disproportionately impacted by rape and sexual assault.
- 6.9. However, one respondent suggested that the EQIA should have been undertaken already; they urged the Scottish Government to publish the assessment ahead of any draft legislation. One suggested that greater consideration should be given to people with profound and multiple learning difficulties. Another suggested that there may be unanticipated impacts of the approach but did not expand on this comment to suggest what these might be.
- 6.10. When discussing equality one respondent suggested that the legislation should consider the role of decision-making proxies and signposted the Scottish Government to existing guidance.

### ***Service design***

- 6.11. The second most common theme concerned equality impacts in relation to different aspects of service design and provision. This was mentioned by twelve respondents, whose comments centred on:
  - Provision of services and processes which offer victims control and choice.
  - Effective communication, including accessible information available in a range of formats.
  - Permitting the presence of an advocate or other support worker during an examination, if desired by the victim. Within these discussions were references to the CRPD and The Mental Health (Care and Treatment) (Scotland) Act 2003.
  - Linked to the point above, for services to recognise the role of advocates in providing support and facilitating informed decision-making and support prior and post to forensic examination.
  - For services to tackle barriers to access, for example by providing interpretation services.
  - A need for victims to access services locally.
  - To create sufficient capacity within services to meet the specialist needs of groups with protected characteristics, or those in rural areas (discussed in more detail below). Suggestions in this vein included the potential role of the forensic nurse examiner. A small number highlighted the need for appropriate equipment and examination settings.

6.12. One respondent suggested that best practice guidelines and ring-fenced funding would be crucial for meeting the aims of the legislation.

### ***Equality impacts on vulnerable groups***

6.13. Nine respondents commented on the equality impacts of the proposals in relation to vulnerable groups. Many of these responses focused on service delivery considerations, linking to the comments described above.

6.14. One respondent suggested that improved patient access, including self-referral routes, would reduce health inequalities among groups with protected characteristics as well as men and boys who experience sexual assault. Another highlighted that greater engagement with FMS would improve access to justice, and for the rights of vulnerable and minority groups to be enacted.

6.15. One highlighted the importance of local access to FMS as a key factor to enable self-referral for people with disabilities, who may face additional mobility barriers.

6.16. It was also highlighted that particularly at-risk groups, for example, people who are trafficked, are more likely to access health service than engage with criminal justice agencies.

6.17. One expressed a concern that people with learning disabilities will not be treated equally within due to other laws in place, citing the Adults With Incapacity (Scotland) Act 2000 as an example.

### ***Training***

6.18. Interlinked with discussions about services, the importance of staff training was raised in eight responses. In these comments respondents reflected on the importance of developing an understanding among forensic medical practitioners about the needs, experiences and challenges experienced by specific groups.

6.19. Themes in training in relation to supporting vulnerable adults included: appropriate communication skills; not patronising adults with learning disabilities; and understanding sexual relationships.

6.20. Respondents who commented on training gaps also highlighted the need for LGBTI awareness and wider training to overcome prejudice and assumptions about people from minority ethnic communities, sex workers, human trafficking victims and victims of female genital mutilation.

### ***LGBTI community***

6.21. Seven respondents commented on the proposed legislation in relation to its impact on LGBTI people. General comments about the importance of training for staff about the needs and experiences of this community were the focus of many of these comments.

6.22. One respondent suggested the consultation document had not considered transgender women victims of male or transmale rape. Another described specific barriers to reporting experienced by male, gay, transgender and intersex victims and urged the Scottish Government to focus on addressing these issues.



- 6.23. In noting the underreported rates of sexual violence experienced by the LGBTI community, one highlighted their expectation that the trauma-informed approach to FMS would lead to increased engagement with health care and justice agencies by victims.

#### ***Female examiners***

- 6.24. Six respondents commented on the importance of access to female examiners in relation to equality. One suggested that provision of a male examiner was also a consideration, stating: *'LGBTI survivors however, may prefer a male examiner for various reasons relating to their own sexual orientation or gender identity, and/or the gender of the perpetrator. This may be particularly pertinent for gay and bisexual men, trans people, and intersex people/ people with variations of sex characteristics (VSCs)'*. Another emphasised that this provision should be explicitly extended to those who make a self-referral.

#### ***Children and young people***

- 6.25. Four respondents reflected on the Equality Impact Assessment in relation to children and young people. One called for clarity in the age criteria for self-referral. Another reflected on the need for appropriate education for children and young people about consent and relationships.
- 6.26. One organisation highlighted the need for a different approach to ensuring appropriate services are available for children and young people. They noted that this group, by virtue of their protected characteristic of age, will require specific support.
- 6.27. In discussion about improved patient access, a respondent suggested that provision of NHS self-referral routes would also encourage young people to engage with trauma-informed support, who might otherwise be reluctant to go to the police.

#### ***Support for men and boys***

- 6.28. Four respondents reflected on the Equality Impact Assessment in relation to men and boys. They highlighted the need to reduce access barriers to trauma-informed services and called for the provision of support and psychological services for men and boys.

#### ***Consent***

- 6.29. Consent was mentioned in four responses. One respondent noted that consideration within the legislation and provision of safeguards were needed if an individual's ability to consent to a forensic medical examination is absent or impaired. Another highlighted that victims should be made aware that they have the right to withdraw their consent at any time in the forensic examination process.
- 6.30. As described above, the issue of consent in relation to sexual activity was also raised by one person who reflected on the need for appropriate education about consent within sexual relationships.

#### ***Implications for those in rural areas***

- 6.31. Notwithstanding responses to the question 11, which asks specifically for views on impact in relation to people in rural or island communities, two respondents referenced rural areas in their response to the Equality Impact Assessment. One highlighted significant delays and travel burdens for victims from rural areas in the current system. The other suggested that local delivery models may not have the capacity to provide specialist care.



### **Evidence from the lived experience**

6.32. One respondent suggested evidence from the lived experiences of victims should be included in the Equality Impact Assessment process. Linked to this, another said that more broadly, the lived experience should inform further development of the legislation.

### **Other comments and examples**

6.33. Three respondents shared comments that fall outwith the discussion themes described above. These are summarised in Appendix 5.

#### ***A sample of illustrative quotes that typify the themes identified in this section:***

“ *These proposals will have positive impacts on women who are disproportionately impacted by rape and sexual assault. (NHS Highland)*

“ *Important to emphasise these aspects since people from ethnic minorities, vulnerable adults (especially those with a learning disability), sex workers or LGBT people may be subject to prejudice and assumptions about lifestyles which lead to a lesser service. (Individual, anonymous)*

“ *We welcome the Scottish Government proposals and we think they improve the access to forensic examinations and other health services for victims of rape and sexual abuse. We think it is a positive thing that people will be given access to forensic examinations and medical support at self-referral level. Like all people, we should be encouraged to report a crime, and get the support we need to make an informed decision about this. (Organisation, anonymous)*

“ *There are specific barriers to reporting for male, gay, transgender and intersex victims and therefore any legislative reform should have a focus on improving service provision and preventing further barriers. Forensic examination facilities and associated arrangements should not further prohibit or discourage individuals from seeking medical assistance. (Organisation, anonymous)*

## Responses to question ten: Socio-Economic Equality Impact Assessment (the Fairer Scotland Duty)

Question 10: *Do you have any views on potential impacts of the proposals in this paper on socio-economic equality (the Fairer Scotland Duty)?*

6.34. A quantitative overview of responses to this question is provided below:

- 17% (9 out of 53) selected 'yes'
- 59% (26 out of 53) selected 'no'
- 4% (2 out of 53) selected 'don't know'
- 30% (16 out of 53) did not answer the question

### Overview

6.35. Almost one-fifth of the consultation respondents (11 out of 53) commented on potential impacts in relation to socio-economic equality. Of these:

- Six respondents discussed the implications for socio-economic equality.
- Four endorsed the proposals outlined in the consultation document without further suggestion. Their comments conveyed a view that the Government's intentions will achieve a positive impact in relation to socio-economic equality.
- One shared a general observation which did not convey a clear view.

### The impact assessment process

6.36. Two respondents suggested that socio-economic equality should be incorporated within the Equality Impact Assessment, with one of these calling for the Duty to extend beyond health boards to all services involved in any linked processes.

6.37. Another respondent suggested that any public bodies referred to in the Fairer Scotland Duty should be made aware of their duty in the planning process and one made a general statement of support for the proposal to carry out a Fairer Scotland assessment.

### Equity of access

6.38. Two respondents noted that enhancements to legislation or services would improve access for all, including those at a socio-economic disadvantage. In the discussion about equity of access, one respondent raised the issue of appropriate communication and language to enable engagement with FMS.

### Other views

6.39. Singular other comments given in response to this question are listed in Appendix 5.

#### *A sample of illustrative quotes that typify the themes identified in this section:*



*Providing services more locally can only improve access for all regardless of socio-economic circumstances. (Individual, anonymous)*



*Police Scotland supports any legislative enhancements which promote consistent service delivery across all communities of Scotland. (Police Scotland)*

## Responses to question eleven: impacts for people in rural or island communities

Question 11: *Do you have any views on potential impacts of the proposals in the Chapters of this paper on people in rural or island communities?*

6.40. A quantitative overview of responses to this question is provided below:

- 55% (29 out of 53) selected 'yes'
- 15% (8 out of 53) selected 'no'
- 8% (4 out of 53) selected 'don't know'
- 23% (12 out of 53) did not answer the question

### Overview

6.41. Almost two-thirds of the consultation respondents (32 out of 53) commented on potential impacts in relation to people in rural or island communities. In these responses:

- Twelve respondents focused on the impact of the proposals for people in rural or island areas; almost all identified a positive impact.
- Eleven identified challenges associated delivering forensic medical services in rural or island areas, and within these comments, many shared views on how these might be overcome.
- Six respondents comments' combined discussion on positive impacts and challenges of delivering services.
- Three provided general comments that did not convey a clear view.

6.42. A number of cross-cutting themes were evident in the discussion on benefits and challenges outlined above. These included:

- Movement of staff to rural areas
- Potential service improvements
- The role of legislation
- Travel by people from rural and island communities
- Impacts for minority communities and children and young people

6.43. Each of the themes above is described in the remainder of this chapter.

### *Impacts of the proposals*

6.44. There were two key themes in the discussion of impacts of the proposals for people in rural or island areas. Firstly, respondents welcomed greater equity of access to FMS. Secondly, they identified other positive impacts of resulting from changes to service design and provision.

6.45. Greater equity of provision was anticipated by five respondents. In these comments four specifically referred to a 'postcode lottery' of access to specialist support, depending on location. Respondents highlighted the importance of local availability of services as important to a victim-centred delivery; one commented on local access as significant for a child-centred approach.

6.46. Other positive impacts resulting from the proposals included reduced delays, limiting the distress associated with travel after experiencing sexual violence, helping to normalise the

provision of services in rural and remote areas, and development of increased knowledge and experience among local providers.

- 6.47. Two respondents highlighted the challenge of maintaining confidentiality within small communities and suggested that people might not wish to access local FMS for fear of their attacker being known to staff.

### **Challenges**

- 6.48. Several themes were evident in the discussion of the challenges of delivering FMS for people in people in rural or island areas. These included service design and resourcing.

### **Service design and resourcing**

- 6.49. Most common was discussion of resource implications, raised by seventeen respondents. This included comments on the expense of providing local capacity with references to the specialist expertise and facilities required and in particular the recruitment and retention of staff to fulfil these roles. One respondent called for an audit of sites and personnel, in order to inform planning.

### **Travel**

- 6.50. Nine respondents reflected on travel to access services. Views were mixed; some felt strongly that that victims should not have to travel, sharing examples of lengthy journeys undertaken by women and children victims from island communities. Others suggested travel would be necessary, for example to provide choice and access to specialist support.

### **Models of delivery**

- 6.51. Various outreach models were suggested by five respondents. For example, one reflected on the potential of a network approach to provide swift access and flexible services. The others described regional centres or a central hub with outreach facilities.
- 6.52. Two respondents highlighted the potential for telemedicine systems to play a role within service provision, for example *'to help facilitate interpretation of injuries by centres of excellence from afar'*.

### **Compromise**

- 6.53. Three respondents suggested that a spirit of compromise might be required to reflect the challenges of delivering services in rural areas; one noted that modification of expectation for those in remote places might be required.

### ***A sample of illustrative quotes that typify the themes identified in this section:***

“ *Victims' rights should be respected and they should get the same standardised services wherever they live. For GG&C there are parts of the former Argyll & Clyde that would fall into this category. Likely to be significant resource implications to ensure availability of standardised services country wide. (NHS Greater Glasgow and Clyde and Glasgow HSCP)*

“ *Access to this highly specialist service in remote and rural communities where recruitment and retention is an issue presents significant challenges. The possible development of a network approach might be helpful and consideration of how*

*legislation might ensure swift access to high quality services whilst taking account of the need for flexibility in some areas. (Organisation, anonymous)*

“

*Ensuring the local availability of forensic examinations and related services across the geography of Scotland is vital to a child-centred approach. The shortages in paediatrician availability locally can result in lengthy journeys and delays (Children 1st)*

“

*This may help to normalise the necessity for practitioners to be available in remote and rural areas to protect the rights of individuals who live there, including privacy, but in particular person-centred care. (Individual, anonymous)*

## Responses to question 12: views on financial implications

Question 12: *Do you have any views on the financial implications of the proposals in this consultation paper for NHS Scotland and other bodies?*

6.54. A quantitative overview of responses to this question is provided below:

- 47% (25 out of 53) selected 'yes'
- 23% (12 out of 53) selected 'no'
- 6% (3 out of 53) selected 'don't know'
- 25% (13 out of 53) did not answer the question

### Overview

6.55. Almost half of the consultation respondents (26 out of 53) commented on the potential cost implications of the proposals. A number of themes were identified in these comments:

- Fourteen provided detail about cost implications
- Eleven shared a general comment of the likely scale of costs
- Six made suggestions about models of service delivery
- Four highlighted other issues to consider when reflecting on costs.

### Cost implications

6.56. Fourteen respondents identified specific types of costs associated with the proposals. Provision for training and sufficient staff capacity was raised by six respondents. The costs of premises and equipment was noted by six respondents. Five respondents highlighted the need to fund wider services that play a role in trauma-informed recovery, including ongoing counselling for victims, or support for family members.

### The scale of costs

- 6.57. There were eleven comments about the scale of costs associated with the Scottish Government's proposals. Many of these were non-specific, such as *'ambition requires money'* or *'there will be resource implications'*.
- 6.58. Four respondents reflected on the competition for resources among health and social care service providers. Linked to this, when discussing budgets, one respondent called for central ring-fencing of resources specifically for FMS.
- 6.59. Three respondents called for the Scottish Government to undertake a financial appraisal to inform decisions about resource allocation. Two of these suggested that the proposed changes are likely to result in an increase in self-referrals, noting that increased demand should be factored into budgets and capacity planning.
- 6.60. Another acknowledged the scale of start-up costs for new FMS but called for recognition that this could lead to greater savings in the longer term, for example due to faster recovery and improved mental health outcomes.

### Delivery models

6.61. Reflections on delivery models were also evident in any discussion of costs. Six respondents commented on this theme, with varied suggestions evidenced in these responses, which are available in Appendix 5.

## Other views

- 6.62. One respondent suggested that the Scottish Government consider a joint commissioning model, which could open up service provision to other suppliers.
- 6.63. Another called for the Scottish Government to consider the impact on legal aid with regard to the provision of legal advice and assistance. They highlighted potential challenges to how forensic samples have been obtained. The possibility for legal advice in civil cases where a damages action is brought against a person who has been acquitted of an alleged rape was also raised.
- 6.64. One suggested that services for adolescents and men should be separately funded.
- 6.65. One expressed a fear that forensic medical examination more widely may limit the development of the Scottish Barnahus model or prevent access to it, but did not explain why.

### ***A sample of illustrative quotes that typify the themes identified in this section:***

“ *In order to meet the Standards in relation to both gender choice and timeous access, there is a need to increase both the female FME workforce and nursing workforce in terms of chaperones. This comes with an increased financial resource requirement, which as it stands is a risk with competing financial priorities for Boards who are already under pressure. (NHS Ayrshire and Arran)*

“ *Ambition requires money, to meet the objectives of this paper there must be significant additional resource allocated. (Rape Crisis Scotland)*

“ *Should the retention of samples in self-referral become a responsibility of the Health Boards, investment will be required. A workforce will be required to be developed and recurrently resourced to achieve and maintain the skills required to provide assurance to the Judiciary concerning the veracity of stored samples. Purpose built or refurbished facilities for the storage of samples will require capital investment. (Organisation, anonymous)*

“ *The number of victims likely to seek the range of medical provision as proposed in the consultation paper is unclear, and this is particularly true of respect of self-referral cases. However, there should be a focus on encouraging victims to seek medical assistance, whether that includes a forensic medical examination or not, or whether that forensic medical examination relates to a police case or a self-referral. That being the case, it is reasonable to assess that the number of cases will increase from current and recent levels. There will therefore be an associated cost in respect of consumables as well as practical arrangements in respect of the appropriate storage and retention of samples. (Organisation, anonymous)*

## 7. Other comments

Question 13: ***Finally, do you have any other comments that have not been captured in the responses to other questions you have provided?***

7.1. A quantitative overview of responses to this question is provided below:

- 34% (18 out of 53) selected 'yes'
- 44% (23 out of 53) selected 'no'
- 23% (12 out of 53) did not answer the question

### Overview

7.2. Almost two-fifths of the consultation respondents (21 out of 53) provided a final comment. Of these:

- Fifteen shared additional information with the Scottish Government that they had not provided elsewhere in their response.
- Six reiterated points they had previously made; to avoid duplication these comments are not revisited in this chapter.

### ***New information provided in response to the final question***

7.3. Four respondents called for 'continued leadership across health and justice' to support the development and implementation of the proposed changes.

7.4. Four described specific evidence for the Scottish Government to review. This covered:

- Quality standards for paediatric forensic assessments.
- Context for women and children with physical and learning disabilities with regard to gendered experiences of rape and sexual assault, barriers accessing health and justice services, and recommendations to address the issues identified.
- An individual's research project into the experience of transgender sexual abuse.

7.5. Three respondents commented on sex.

- One anticipated the Scottish Government would be criticised for focusing on women and girls and suggested including more evidence about comparative rates of sexual violence experienced by males and females would provide useful context.
- Conversely, another felt that the goal should be to support anyone who has experienced rape or sexual assault, regardless of gender.
- Linked the point above, one respondent noted '*although paragraph 12 of the consultation highlights the prevalence of sexual offending involving women, it is important to recognise that rape does affect men as well. There is a need for any legislation that is brought forward to be gender neutral in keeping with equality and diversity implications as illustrated by the Sexual Offences (Scotland) Act 2009 (and indeed, the requirements of modern drafting guidance)*'.

7.6. A number of singular comments are listed in Appendix 6.

7.7. Finally, eight respondents welcomed the consultation as an opportunity to take part in the legislative development process, with one describing it as: '*hugely valuable work...will be a major achievement when completed*'.



## 8. Conclusions

- 8.1. A range of informed stakeholders took part in the consultation. They were typically highly-engaged and knowledgeable about relevant issues, including planning, managing and delivering health or justice services, representing equality issues or supporting victims and survivors.
- 8.2. These respondents shared suggestions, examples and reflections on ways the legislation may improve victims' experiences of the health and justice system. They endorsed the intention to minimise trauma and support victims' recovery and engagement with justice processes. The responses provide a useful evidence base for the Scottish Government to draw upon in the development of the legislation.
- 8.3. The high-level responses to key consultation questions were positive; a large majority support the introduction of a statutory duty for health boards and advocate for special provisions to be made for children and young people. In and around these overall endorsements of the proposed legislation, many expressed a desire for more detail about monitoring and implementation; for example, national standards, delivery models, funding arrangements and data sharing arrangements.
- 8.4. Cross-cutting themes included discussion of the needs of children, young people, LGBTI people and people with disabilities. Respondents also called for more detail about how Scotland will deliver equitable and consistent access to forensic medical services, with many comments on the workforce, training needs and suitable premises. Some asked for continued leadership across health and justice to achieve the change; a small number suggested that flexibility would be needed to provide capacity for Scotland to respond to new evidence about best practice, as it becomes available.

## 9. Appendices

Given space limitations, singular comments in response to the consultation questions have been noted in the main body of the report with examples given where relevant. These comments are summarised in the following appendices and the individual responses can be viewed in full (where permission for publication was granted) on the Scottish Government's website.

### Appendix 1: Functions of Health Boards

#### Responses to question one: a specific statutory duty for Health Boards

##### *Models of delivery and improved access to services*

- Due to time sensitivities examinations should be a priority and that GP surgeries, hospitals or specialised clinics are all appropriate settings.
- Specialist provision for people with profound and multiple learning disabilities.
- The ability of those who self-refer to request the sex of the medical examiner.
- For forensic medical services to address other barriers to reporting abuse including provision of communication aids and advocacy where appropriate, suitable equipment, accessible service locations and specialist knowledge.
- For the statutory duty to drive the development of a multi-agency delivery model.
- A call for the use of nurses for forensic medical examination and the provision of training to a standard that expert evidence can be provided where necessary.

##### *Capacity, Resourcing and Training*

- One respondent questioned what extra training will be required to understand trauma.
- Another respondent asked for consideration to be given to requiring specialised training for doctors so that only those who have undergone training can act under the law.
- There was a suggestion that Health Boards could oversee the curriculum development appropriate to Scotland, training and possible mentorship programmes, and periodic re-certification exercises – arguing that this would ensure consistency, but could be adapted for more rural areas.
- One respondent explicitly supported the creation of the forensic nurse examiner role and another suggested the creation of an authoritative body to oversee processes to recruit and train staff, moving beyond primarily physician-led forensic medical examinations to professionalise nurses.
- Another respondent acknowledged progress in and called for further work to improve the gender balance of the workforce.

### ***Evidence and relevant examples of current practice***

- One cited academic examples of barriers facing women with learning difficulties reporting sexual assault.
- Another highlighted noted the on-going multi-disciplinary evaluation of Sexual Assault Referral Centres (SARCs) in England and Wales.
- One respondent provided a very detailed response which has been signposted to the Scottish Government for review. It cited several academic examples pertaining to the value of forensic evidence to identification in instances of rape, to the knowledge, experience and role of nurse examiners. They also suggested that police should still be aware of and understand the process of and use of forensic medical evidence.
- Another respondent detailed the background and operation of the Archway Sexual Assault Referral Centre in Glasgow.
- One cited some evidence from Aberdeen Health Village and Havens in London that use of services by LGBTI people and men would increase if self-referral pathways were in place.

### ***Disagreement with the proposal and other issues raised***

#### *Calls for clarity*

- Two asked for detail about what the legislation would involve for health boards particularly in situations where a victim is unable or unwilling to give consent to an examination or for medical rather than therapeutic recovery.
- One made a general call for 'clarity around responsibility'.
- Another asked for clarity on what consideration has been given to children who have experienced sexual abuse.

#### *Other suggestions*

- For the Scottish Government to establish an oversight body with audit and inspection powers to avoid variable practice.
- To consider the appropriateness of evidence gathering and the correct processes and pathways for information sharing; on this theme, another respondent highlighted the need for communication with victims around how their samples will be used.
- For the development of an accompanying Code of Practice or best practice guidelines.
- For public education to ensure there is awareness of the service provision.
- To ensure that police are not distanced from the process of forensic medical examinations and evidence collection.
- For the Scottish Government to consider having two separate duties – one for forensic medical services for adult victims of rape and sexual assault, and a separate duty around forensic medical services for children and young people suspected to have suffered abuse including, but not limited to, sexual offences.

## Appendix 2: Taking and Retention of Samples

### Responses to question two: evidence in the case of police referral

#### *Consent and the need for clear information and communication*

- A comment that victims' consent to transfer or not transfer data of any sort should only be overridden by a court order granted by a judge or a jury.
- For clarification on the role of the medical practitioner, especially when a victim is unable for some reason to give consent.
- One respondent provided a detailed response in relation to consent in relation to women with learning disabilities which has been signposted to the Scottish Government for review.

#### *The storage, transfer and deletion of data*

- One respondent suggested that the framework should include legal clarification on who owns samples at different points in the process; and at what points responsibility transfers and to whom. Linked to this point, another stated that while they had no suggestions for the framework, they felt there was a need for a clear forensic chain of evidence.
- A reflection that the storage, use and destruction of sample should be done consistently across Scotland.
- A comment that data should only be transferred in appropriate circumstances; at the behest of the victim in cases of self-referral.
- For the same approach to be taken to the collection, storage and release of samples regardless of whether the case relates to a police referral, self-referral or child protection issue.
- An observation that '*Police Scotland retention policy will be applicable in relation to samples seized as productions*'.
- One respondent said samples should not be used for anything other than the prosecution of a crime; they did not provide details about other forms of usage they had concerns about.
- Reflections on the challenges of sharing details without explicit consent, given the large number of support agencies who may be involved.
- A specific point that the 7th principle of the Caldicott protocol<sup>7</sup> should not be applicable in the handling of any evidence in rape or sexual assault, and that data should only be transferred outside of the NHS when written consent by the victim is granted with a written signature.
- A detailed response about the needs of children, covering issues such as disclosure of medical information to parents for whom there is a child protection concern and the needs of children who have experienced sexual abuse.

#### *Considerations when developing the legislative framework*

- Two respondents' observations that the framework needs to balance the rights of the victim with those of the person accused of rape or a sexual offence.

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<sup>7</sup> The duty to share information can be as important as the duty to protect patient confidentiality

- Two respondents' comments that the framework would allow clarity over the responsibility/liability for the management of personal data/samples.
- One respondent called for the framework to detail how the sample could be adapted or used via publishing, disclosing or sharing.
- Another indicated that a legislative framework would ensure appropriate streamlining of resource allocations and service provision across various parts of Scotland.
- One respondent commented that the CMO taskforce was best placed to develop the framework; another highlighted the value of input from Police or Forensic Medical Examiners.

### ***Vulnerable Groups***

- Two respondents highlighted that individuals with additional support needs, poor mental health or intellectual disabilities must be included in a list of groups whose rights need to be respected.
- Two respondents discussed communication barriers and needs; one noted that those with deafness and other communication barriers would get support to overcome these, the other observed that verbal and written communication should be clear, jargon-free, easy to read format and suited to the support needs of the person in order to overcome barriers.
- One respondent provided a detailed response for consideration by Scottish Government which, among other things, highlighted the need to consider those who cannot consent, the role of appropriate adults and legal capacity. Linked to this, another also raised the issue of those without the capacity to consent (i.e. under adult support or protection three-point test) and ask for clarification on how the legislation will balance their needs and the need to collect evidence.
- One respondent emphasised their support for the Scottish Government's proposal to conduct an equality impact assessment, noting this will ensure that the needs of women with learning difficulties are robustly addressed.

### ***References to other guidelines***

- One respondent welcomed the commitment to consider the upcoming Biometric Data Bill and a model data sharing agreement. Linked to this, another respondent observed that much of the legislative framework will depend on what the Biometric Bill sets out. A Scottish Biometrics Commissioner Bill has now been introduced to the Scottish Parliament.
- Another respondent suggested that the Scottish Government should consider how the framework could link to and learn from existing pathways, specifically in relation to how those with learning disabilities get appropriate support.
- One respondent commented that the existing national Information Sharing Protocol (ISP) between NHS Boards, Police Scotland and the Crown Office and Procurator Fiscal Service requires to be updated to ensure that it is acting in accordance with GDPR.

### ***Specific examples***

- One respondent referenced the 2017 HM Inspectorate of Constabulary in Scotland (HMICS) Strategic Overview of Provision of Forensic Medical Services to Victims of Sexual Crime and subsequent Progress Review of Provision of Forensic Medical Services to Victims of Sexual

Crime published in November 2018, which highlighted the need to introduce self-referral facilities to victims of rape and sexual crime across Scotland.

- Another referred to several sources in relation to the needs of those with learning disabilities.
- One provided a detailed response about experiences of reporting sexual assault or rape to a police officer.

### Responses to question three: evidence in the case of self-referral

#### *The storage, transfer and deletion of data*

- One respondent made a specific comment concerning the Human Tissue Act but did not make clear which specific Act of Parliament they were referring to. They noted that if Health Boards were to store samples which had no justifiable health purpose they would have to conform to the requirements of the Human Tissue Act. For this reason, they suggest Police Scotland should continue to retain samples, submitted anonymously in the case of self-referrals.
- Another respondent made a general comment on the need for legislation to provide clarity on most elements of the process including ownership, destruction, timescales and conditions of storage.
- One respondent highlighted that there may need to be a distinction made between the taking of the samples themselves and the data which is obtained from them.
- Another respondent made a brief reference to a rights-based approach with assurances of confidentiality and data protection.

### Responses to question four: impact on data protection and privacy

#### *Discussions on the proposed guidelines*

- One respondent highlighted that because responsibility will lie with Health Boards, legislation must be clear in the requirement of health boards to share “special category” data with criminal justice partners.
- Another commented that there should be no exceptions or special categories within the data policies.
- One respondent made a general comment about consideration being given when legislating around the release of data and the need for supporting guidance.
- Another provided specific comments about the legislation in relation to child protection, highlighting their concerns that data from a forensic examination may not fit into the “special data” category and that firm provisions around data sharing are written into legislation.
- One respondent emphasised the need to put victims first and ensure no further trauma is experienced as a result of data protection practices.
- Two respondents commented on the broader concept of ensuring rights in relation to data are protected.

### ***Treatment of personal data***

- One respondent highlighted the need for other information recorded in a forensic examination, such as past sexual history, to be protected as private non-forensic information (to avoid it being used against a victim).
- Another respondent highlighted the need for a unique ID and adequate labelling which minimises cross reference to another data. They believe the existing Community Health Index (CHI) number is not suitable as it would link to health records.
- One respondent gave a more detailed comment in relation to ensuring the handling of data is consistently applied across Health Boards and sexual health services. They called for detailed guidance to support this.
- Another reflected on data control, noting *'ownership of data by the individual should be respected, and capacity to authorise destruction or transfer should be supported by the provision of or access to relevant support services'*.

### ***References to the storage, transfer and deletion of data***

- One respondent raised the need to protect medical records and additional information divulged to clinical staff which may not be relevant to a criminal case and specifically suggested the need for someone with experience of the "Caldicott role" to scrutinise records before release.
- Another respondent questioned the extent to which the police will be able to test DNA samples to identify multiple victims from an individual perpetrator and at what stage this can be done in cases of self-referral.
- One respondent reflected on data control, noting *'ownership of data by the individual should be respected, and capacity to authorise destruction or transfer should be supported by the provision of or access to relevant support services.'*

### ***Vulnerable groups***

- One provided a detailed response for consideration by the Scottish Government about the requirements of victims with learning difficulties. For example, they highlighted an opportunity to link victims with support services, issues in relating to consent and effective ways to communicate and share information.
- Another commented on the need to refer to the Mental Health (Care and Treatment) Act 2003 for those with mental health issues when developing the Information Sharing Agreement
- One noted that the legal and statutory duties must prevail and include anyone with fluctuating capacity.

### ***Specific examples***

- One response cited research (Feldberg, 1997; Rees, 2010) which has shown that other information recorded in a forensic examination e.g. past sexual history can be used against a victim.
- Another cited Part 3 of the Revenue Scotland and Tax Powers Act 2014 as an example of how restrictions can be applied when sharing sensitive information with relevant authorities.

## Appendix 3: Safeguarding Respect for Victims' Human Rights

### Responses to question five: safeguarding rights to dignity

#### **Trauma-informed delivery**

- One respondent gave a detailed response to this question which has been signposted to the SG for consideration. They highlighted the experiences of LGBTI victims and suggested providing choice of in the sex of the practitioner was key crucial to ensuring victims' right to respect and dignity.
- Another discussed the experiences of disabled women, and observed that based on evidence that in general, women prefer to be seen by a female practitioner, the same must be assumed for disabled women who may not be able to articulate that request.
- One respondent noted their agreement with the statement in the consultation document that the provisions that currently sit within existing legislation should be implemented, giving the example of section 9 of the Victim and Witnesses (Scotland) Act 2014.

#### **Wider discussions on safeguarding victims' rights**

##### *Examples*

- One respondent noted '*forensic evidence could be collected and held until the victim is ready to decide whether to take legal action*'.
- One observed '*giving full legislative powers to health boards may increase the likelihood of important evidence being gathered which could become vital to later criminal prosecutions. This will support a right to justice as outlined under Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)*'.
- However, one respondent reflected on the increased interplay resulting from the legislation between health and criminal justice agencies, highlighting '*it is crucial that no conflict of interest is allowed to arise between the need to provide care for the victim and the need to obtain evidence to secure a criminal prosecution*'.

##### *Singular responses*

- One respondent noted that they support the development of forensic medical services which are healthcare and recovery focused. They believe this will encourage and enable more victims to report and seek support.
- One respondent called for the '*same treatment for male, female, trans*' and also urged '*don't judge victims for being drunk*'.

#### **Children and young people**

- One respondent discussed the need for a joined-up approach including a paediatrician and an FMS practitioner during an examination process due to the complex nature of examination for children and young people. They observed that this added complexity may make it difficult to provide a choice in the sex of both practitioners.
- Another respondent felt that victims should have a right to choose the sex of their FMS practitioner but noted that it should not be assumed that a female examiner is always preferable, depending on the sex of the child or young person's abuser.



- One respondent discussed broader aspects of criminal proceedings, suggesting provision of trauma-informed healthcare could be an important route to ensuring that children and young people have access to appropriate support, for example advocacy and mental health services, thus safeguarding rights to dignity and respect.
- Another respondent referenced the material cited in the consultation, observing that it does not include evidence about the preference of children and young people about the choice of the sex of practitioners; they called for more research into young peoples' preferences.

## **Responses to question six: potential impacts on human rights**

### ***Vulnerable Groups***

- Four alluded to the UN Convention on the Rights of Persons with Disabilities (CRPD), with Articles 12 and 16 highlighted as important.
- One referenced European Convention on Human Rights (ECHR) Article 8 and suggested it should be considered when drafting legislation.
- Another mentioned the Human Rights Act 1998.
- One called for a statement of principles in the legislation which draws on human rights obligations such as the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003.
- One respondent discussed a range of human rights commitments to consider in relation to the rights of disabled women, including the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW).
- Another suggested existing legislation such as the Adults with Incapacity (Scotland) Act 2000 could be replicated. They also called for legislation arising out of the First Minister's Advisory Group on Human Rights Leadership to be considered in relation to forensic medical services.

### ***Mention of Health Boards in the discussion on rights***

- One expressed concern that the proposals for forensic medical services may absorb disproportionate resources compared to other areas of health care.
- Another described doubt that it will be possible to provide victims with a choice in the sex of the examining practitioner, particularly within smaller health boards.
- One respondent made a general statement about a need for health boards to increase patient access to services, noting that this would positively impact individuals, families and society. They highlighted the importance of considering locations for hubs and spokes, assuring they are accessible via public transport to ensure self-referral is accessible for those on a low income.
- One called for multi-agency guidance to support the implementation of the legislation, noting this would help to address differences and stipulate and clarify roles of agencies.

### ***Minority groups and human rights***

- One discussed the experience of transgender women, and the risk of discrimination they may face if they have not yet received a gender recognition certificate. They also discuss the need for services to be sensitive to religious or cultural beliefs.

- Two reflected on the importance of equal rights for LGBTI people. One of these discussed the potential impacts of the consultation proposals on those with the protected characteristics of sexual orientation or gender reassignment. They provided a detailed discussion about the high risk of sexual violence, and listed the elements of the proposals that are imperative to upholding the rights of LGBTI communities.
- Another respondent discussed the importance of including the lived experience of victims from diverse backgrounds.

### ***Accessibility***

- One suggested that the current situation regarding access to forensic examination was a human rights issue, as not all victims have access without lengthy travel.
- Another felt that the proposed hub and spoke model will provide equitable access to forensic medical services.
- One said it might not be possible for victims within smaller health boards to have a choice in the sex of the examining practitioner as they may rely on examiners travelling to meet demand.

### ***Other Views***

- One expressed concern that by employing more female doctors rape prevention becomes ‘a female preserve’.
- One respondent noted that language and communication are human rights and should be considered within the proposed legislation.
- Another referenced people with PMLD and said there is currently a lack of support and services which can result in trauma to those individuals and their families and carers.
- One respondent signposted their response to the previous question in which they provide a detailed discussion about vulnerable groups and their right to an ‘appropriate adult’ who can assist with communication needs.
- One respondent referenced their response to the previous question in which they discussed the rights of children and young people and in particular that the child’s best interests must be the priority in all decisions that affect children.
- Another suggested the legislation will address current inequity in health care following rape and sexual assault.

## **Appendix 4: Provisions for Children and Young People**

### **Responses to question seven: special provisions for children and young people**

#### ***Provisions for children and young people***

- Two respondents highlighted their support for the Scottish Government's intention to carry out a Child's Rights and Wellbeing Impact Assessment. They urged for consultation with children's organisations, or the creation of an expert group in this process. One suggested that consultation should include organisations with experience of complex cases of abuse involving children and young people with learning disabilities.
- Two respondents suggested the use of video links as evidence in order to reduce trauma for victims during court proceedings.
- Two called for multiagency approaches to deliver services for children and young people.
- A suggestion that in addition to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, the Scottish Government should reference the Age of Criminal Responsibility (Scotland) Bill in the development of the legislation. These Bills have subsequently become Acts of the Scottish Parliament.
- A call for any clinical pathway to consider the additional impacts of abuse on LGBTI young people and include key actions to reduce barriers to reporting, seeking support and accessing health services after experiencing sexual violence.
- One respondent provided a detailed response with a range of recommendations which have been signposted to the SG for consideration. They questioned why children were not specifically referenced in the title of the consultation paper. The respondent also described six essential features of a child's pathway following sexual abuse.

#### ***Age-appropriate support***

- One highlighted that *'while there are various ages when a person is defined a 'child' in legislation, they would suggest a child or young person is under 16 years of age, which aligns to the Sexual Offences (Scotland) Act 2009'*.
- One called for distinct duties for forensic medical services for adult victims of rape and sexual assault; with a separate duty for forensic medical services for children and young people suspected to have suffered abuse including, but not limited to, sexual abuse.

### **Responses to question eight: potential impact on children and young people**

#### ***National guidance and policies***

- One respondent praised the Scottish Government for incorporating UNCRC in domestic law in Scotland, stating that this will provide rights to access support, specific consideration of children's needs and will help the Government and local statutory services to fulfil article 39 of that Convention.
- One respondent expressed concern that any deviation from national child protection guidance would diminish arrangements which protect children from the risk of sexual abuse and exploitation.

- Conversely, another suggested that '*the use of GIRFEC may violate a child victims' rights*'. They did not explain why but referenced a judgement in the case of The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland) on 28th July 2016.

## **Appendix 5: Potential Impacts of the Proposals**

### **Responses to question nine: Equality Impact Assessment**

#### ***Other comments and examples***

- One called for protected characteristics to apply to the accused and alleged victim.
- Another argued for disabled women to have a statutory right to access or challenge care models.
- One expressed concerns about confidentiality in the event of the accused working for an organisation with access to forensic medical evidence.

### **Responses to question ten: Socio-Economic Equality Impact Assessment (the Fairer Scotland Duty)**

#### ***Other views***

- One provided a general comment about the importance of enshrining the principles of dignity, respect and quality in a trauma-informed and human-rights based approach to service delivery.
- Another suggested that if abuse is not recorded then equalities data will be inaccurate but did not explain what they meant by this in relation to the proposals put forward in the consultation document.
- One suggested that the state should cover the costs of prosecution for anyone experiencing poverty.
- Another observed that sexual violence disproportionately affects women and girls but did not expand on this view in relation to the socio-economic assessment.

### **Responses to question twelve: financial implications of the proposals**

#### ***Delivery models***

- Two respondents highlighted that they valued involvement of community planning partnerships and wider relevant workforce in developing the proposals.
- One called for further investment in rape advocacy services.
- Another suggested that the model for service provision should not solely be for forensic medical services, but for a wider multi-agency approach.
- One expressed concerns that a local delivery model, as opposed to a national model might lead to the development of inconsistent approaches.

## Appendix 6: Other Comments

### *New information provided in response to the final question*

- One raised the issue of support for the carers of victims, noting the significant impact of rape and sexual violence on the circle around the victim. They suggested that holistic support for the network around the victim should be part of trauma-informed care.
- Another identified scope to improve levels of support for children by going beyond the current focus on health and justice. They suggested the Scottish Government *'join up the somewhat parallel improvement journeys in health, justice and social care, in order to significantly drive forward the development of this best practise model in Scotland'*.
- One highlighted their support for the proposals contained within consultation paper, noting they will maximise the scientific support for investigation of crime and subsequent prosecutions.
- Another called for details about how any performance standards linked to implementation and delivery will be monitored.
- Consideration of the surroundings in which forensic interviews take place was called for by one respondent. Examples in this response included making sure the settings are child-friendly, or conversely, appropriate for adults.



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