

Analysis of responses: Equally Safe

**Retention period for evidence collected in
the course of self-referral forensic medical
services**

#EquallySafeFMS

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Introduction

1. In March 2017, the Chief Medical Officer (CMO) for Scotland, was asked by Scottish Ministers to establish a Taskforce to provide national leadership for the improvement of healthcare and forensic medical services for those who have experienced sexual crime.
2. The CMO Taskforce vision is for consistent, person-centred, trauma-informed healthcare and forensic medical services and access to recovery, for anyone who has experienced rape or sexual assault in Scotland.
3. The work of the Taskforce is underpinned by the landmark Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (the “FMS Act”) which was unanimously passed by the Scottish Parliament on 10 December 2020 and gained Royal Assent on 20 January 2021.
4. Once commenced, the FMS Act will place a statutory duty on health boards to provide access to person-centred, trauma-informed healthcare and forensic medical examinations for victims of sexual crime, and will establish a legal framework for consistent access to “self-referral” for those aged 16 and over, subject to professional judgement. This will mean that a person can access healthcare and request a forensic medical examination without first making a report to the police.
5. On 5 February 2021 the Scottish Government launched a public consultation to seek views on how long health boards should retain evidence taken during a self-referral forensic medical examination for victims of rape and sexual assault: this is referred to as the “retention period”. The Scottish Parliament agreed during the Bill process for the FMS Act that the retention period would be set in regulations, rather than being specified on the face of the Act, to provide flexibility on this matter.
6. The consultation proposed a retention period of 26 months (2 years and 2 months). This was based on evidence drawn from best practice across the UK and internationally; clinical guidance; and took account of survivors’ views. The consultation paper set out that the retention period should be proportionate and that it will be nationally applied across Scotland.
7. The consultation closed on 30 April 2021 and received 63 responses from 30 individuals and 33 organisations. Views gathered from the consultation will be used to inform the production of regulations that will set out what the nationally applied retention period will be and which will be approved by the Scottish Parliament.
8. The consultation paper was published in two formats, a full version and an easy read version, produced with People First (Scotland). The questions in each version of the consultation paper varied slightly due to the nature of the papers. Unless stated otherwise, references to the “consultation responses” relates to collated views from both papers.

The full consultation paper contained four questions asking:

- If respondents agreed with the proposed 26 month retention period.
- If respondents thought that the period should be shorter – what should it be?
- If respondents said that the period should be longer – what should it be?
- For views on potential impacts of the proposals which were not sufficiently covered in the previously published impact assessments.

The easy read consultation contained three questions asking:

- If respondents agreed with the proposed 26 month retention period.
- If respondents disagreed with it – what should it be?
- Why they felt that way.

9. Not all of the questions were answered by respondents and some respondents used the free text boxes in order to express views or raise related issues.
10. The responses collated from both versions of the consultation to the key question: “*Do you agree with the proposal that the retention period for evidence collected in the course of self-referral forensic medical services be 26 months (2 years, 2 months)?*” indicated that over 50% of respondents supported the proposed 26 months.

	No. of responses	% of total responses
Yes	32	50.8%
No - Should be shorter	3	4.8%
No - should be longer	23	36.5%
Unsure	1	1.6%
No answer	4	6.3%
Total responses	63	100%

Impact assessments

11. In addition to seeking views on the retention period, respondents were asked in the full consultation paper for views on potential impacts of the proposals which were not sufficiently covered in the impact assessments that had been published in November 2019, to accompany the introduction of the Bill for the FMS Act, on child rights and wellbeing¹, data protection², equality³, socio-economic equality (the Fairer Scotland Duty)⁴ and people in rural or island communities⁵.

¹ [Link to published Child Rights and Welfare Impact Assessment](#)

² [Link to published Data Protection Impact Assessment](#)

³ [Link to published Equality Impact Assessment](#)

⁴ [Link to published Fairer Scotland Duty assessment](#)

⁵ [Link to published Island Communities Impact Assessment](#)

12. There were no new or updated impact assessments suggested by any of the respondents to the full questionnaire. Some respondents expressed concerns about groups covered by the previous impact assessments as part of their wider response and these have been taken into account as part of the analysis.

Profile of respondents

13. A total of 64 responses were received to the consultation from 30⁶ individuals and 33 organisations. Of these responses, one⁷ was a duplicate, therefore there were 63 valid responses in total.
14. A breakdown of the profile of the organisations that took part in the consultation is set out below. A list of the organisations who responded is included at **Annex A**.
 - Sixteen health sector organisations, including 10 NHS health boards, 5 NHS special health boards and the West of Scotland Sexual Assault Service;⁸
 - Five organisations that provide a justice perspective, for example the Law Society of Scotland;
 - Six organisations with a focus on victim support such as Rape Crisis Scotland, Victim Support Scotland and South Lanarkshire Gender-Based Violence Partnership;
 - Four organisations representing specific groups of people such as People First (Scotland) and Centre for Excellence for Children's Care (CELCIS);
 - One education and training provider; and
 - One local authority.

Approach to analysis and reporting

15. A coding framework was developed in order to capture emerging views and group these into relevant themes. This report sets out the range of views expressed.
16. Where respondents gave permission for their responses to be published quotes have been used to provide examples and context.
17. Four organisations did not give permission for publication of their response so, although their responses were included in the analysis, no quotes have been

⁶ Two individual respondents submitted their responses as organisations and later confirmed that they were responding as individuals.

⁷ An individual respondent submitted two almost identical responses and requested that the duplicate was removed.

⁸ The West of Scotland Sexual Assault Service includes the Archway self-referral service in Glasgow

used from them. Where a quote has been taken from an individual's response it has been attributed to an 'individual, anon' and not to a specific person.

18. In the summary of responses in this report (pages 6 to 10), where possible, groupings have been used to provide an indication of the frequency a matter was raised. This approach treats individual responses with the same weight as the response from an organisation or professional body that may have many members. Where there is reference to "few" this denotes up to 3 responses and "several" denotes 4 to 9 responses.

Summary of Responses

19. This summary collates views expressed by respondents to both versions of the consultation paper. A breakdown of the responses given to the two individual papers is available at **Annex B**.

Supportive of the recommended 26 month retention period

Quantitative overview

20. 50.8% (32 out of 63 respondents) supported the 26 month retention period.

Overview of responses

21. Although reasons for supporting the 26 month retention period were not specifically sought, several organisations gave their reasons for supporting the proposed retention period. The comments indicated that 26 months was considered to be proportionate. The proposed timeframe struck the right balance in terms of providing victims with a reasonable amount of time to make a police report whilst considering the capacity of NHS facilities for long term storage.

Disagreed with 26 months, suggesting a shorter retention period

Quantitative overview

22. 4.8% (3 out of 63 respondents) disagreed with the 26 month retention period and suggested a shorter period.

- The periods suggested were:
 - 11 months (1 out of 3 respondents)
 - 1 year (1 out of 3 respondents)
 - 15 months (and certainly no longer than 18 months) (1 out of 3 respondents)

Overview of responses

23. It was pointed out that retaining DNA for longer than was necessary could impinge on an individual's human rights. There could be a long period between an incident taking place and the subsequent report to the police. This could

result in non-forensic evidence being lost (for example CCTV footage and reduced quality of witness recall) which could be detrimental to a successful investigation and/or prosecution.

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

- *“It must be remembered that a retention period of potentially 26 months is not the end point, it is in fact merely the starting point of the police investigation.”* (Faculty of Advocates)

Disagreed with 26 months, suggesting a longer retention period

Quantitative overview

24. 36.5% (23 out of 63 respondents) disagreed with the 26 month retention period and suggested it should be longer, 5 of these respondents did not provide a specific suggested retention period.
 - 18 respondents suggested retention periods longer than 26 months; there was no consensus on what this should be:
 - 2 years 6 months (30 months) (1 out of 18 respondents)
 - 4 years 2 months (for specific groups of people) (1 out of 18 respondents)
 - 4-5 years (1 out of 18 respondents)
 - Around 5 years (3 out of 18 respondents)
 - 5 years 2 months (1 out of 18 respondents)
 - Minimum of 5 years (1 out of 18 respondents)
 - 5-10 years (1 out of 18 respondents)
 - 10 years (2 out of 18 respondents)
 - 10 years 2 months (1 out of 18 respondents)
 - 20 years (1 out of 18 respondents)
 - As long as possible (1 out of 18 respondents)
 - As long as the victim wants it to be (1 out of 18 respondents)
 - Until survivor either reports or requests destruction (1 out of 18 respondents)
 - Indefinitely (1 out of 18 respondents)
 - Forever (1 out of 18 respondents)

Overview of responses

Giving people sufficient time to report

25. Several comments emphasised that victims are individuals and some people often require a longer time period to come to terms with the incident before reporting to the police. It was pointed out that individuals may need time to progress with their recovery before gaining the strength to proceed with the investigation and/or prosecution process. A few individual respondents, who indicated that they had lived experience, concurred with this.

26. A few individual respondents expressed concerns that women in long term abusive relationships with a perpetrator may not report to the police for some time given fears for their own safety and/or that of their children if they did so.
27. A few organisational responses highlighted that people with learning disabilities may not know what services are available to them because of both a lack of accessible information and a lack of education around relationships and safe sex. It was felt that a longer time period would be beneficial to avoid people feeling rushed into decision making.

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

- *“The circumstances and context of each and every sexual assault are unique to the individual ... some of us are outspoken campaigners within months of our attack - others, like me took 5 years to admit I was a rape survivor ...”* (Individual, anon)
- *“Reporting rates of assault are already low and there is a concern a time limit could create added pressure that would push people into making a decision before they are ready.”* (Organisation, People First (Scotland))

Maturity of decision making

28. A few respondents suggested that victims who are under 18 at the time of examination should be granted a 26 month retention period from their 18th birthday to allow the person more time to mature and take the opportunity to remove themselves from situations where they may be being influenced by others.
29. A longer retention period was suggested, following a bespoke needs assessment, for certain groups of people for example those aged 16 to 18, who are in care/continuing care, victims of trafficking, those with complex needs or disabilities and those with mental health issues affecting their day-to-day functioning.

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

- *“...The vulnerability of some older children or young people can be increased due to a contrast between their chronological age, (which triggers a change in their statutory rights and entitlement to services) and their stage of development, which may not correspond to their chronological age, especially where that child has experienced trauma or adversity.”* (Organisation, CELCIS)

Historic abuse

30. A few respondents raised the subject of historic abuse and that a longer retention period would be beneficial to allow individuals sufficient time to process what has happened and decide whether to report.

Advances in forensic science

31. A few responses highlighted that a longer retention period would allow for advances in forensic science: responses pointed out that such developments have led to offenders being identified years after an assault.

Impact assessments

32. Although no respondents suggested there was a need for further impact assessments some responses pointed to:
 - the need for clear and accessible communication when explaining what the self-referral process involves and what the retention period is.
 - the need to ensure inclusion in the self-referral process across all protected characteristic groups.
 - the importance of people with learning disabilities being able to understand what these services mean for them to avoid exclusion.
 - difficulties experienced by island communities when accessing healthcare and barriers faced by minority groups.

Points raised regardless of retention period suggested

33. This section brings together a range of points that were raised by a variety of respondents, irrespective of their views on the length of the retention period.

Anniversary dates

34. A few respondents noted that the anniversary of assaults can be sensitive for victims and welcomed that consideration had been given to avoiding the end of the retention period falling on the anniversary of an incident.

Clarity of communication with victims

35. Several organisational responses highlighted the need for consistent, accurate, clear and accessible information to be disseminated about the self-referral process and the retention period.

Review of retention period

36. A few respondents welcomed the fact that the retention period was not prescribed within the FMS Act and that there was flexibility in setting this in regulations.
37. Several respondents suggested that the retention period should be reviewed in the future and be adjusted if emerging evidence suggested there was a need to do so. A few respondents suggested that survivor feedback should be considered if the period was reviewed once self-referral services were operational.

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

- *The retention period agreed nationally should be under review on the basis of evidence and practises ongoing which will be gained in the years ahead. (Organisation, NHS Greater Glasgow and Clyde)*

Contact with victims before the end of the retention period

38. A few respondents suggested that individuals should be contacted before the end of the retention period to end to check what they wanted to do with their evidence. There were a few suggestions that individuals should be given the option to be contacted before the end of the retention period when they presented for a self-referral FME and that sexual violence advocacy workers might act as the contact point in this regard.

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

- *“I would also want people to have the ability to renew or at least be told that samples were due to be destroyed as time creeps on.” (Individual, anon)*

Flexible Retention Periods

39. A few respondents suggested that individuals should be allowed to extend the length of time their evidence was held based on their readiness to report or changes to their individual circumstances.

Storage of evidence

40. A few respondents expressed concerns about health boards being responsible for retaining evidence under self-referral and questioned if forensic medical services would be delivered to an acceptable standard.

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

- *“where a person self-refers no constable will be present for the examination. The practical implications for the integrity and security of samples collected during the examination are obvious.” (Individual, anon)*

Criminal injuries compensation claims

41. A few respondents mentioned criminal injuries compensation claims. They highlighted the need for individuals to be clear about the implications of the retention period for if they wished to pursue a compensation claim.

Conclusions

42. A range of informed organisational and individual respondents participated in the consultation. Many of the respondents had been closely engaged with the development of the FMS Act.
43. Just over half of respondents (32) agreed that the retention period should be 26 months. Although 26 of the 63 respondents disagreed with this timeframe there was no consensus as to what a longer or shorter retention period should be.
44. Respondents shared their views and suggestions about what should be taken into account when setting the retention period and the care and clarity needed when informing people what this will be. Although no respondents suggested that further impact assessments were required to be published views were expressed about the need for inclusive services and accessible information.
45. The findings from the consultation provide a useful evidence base for the Scottish Government to draw upon. Responses will be used in the production of regulations to set the national retention period (which will be approved by the Scottish Parliament). The views expressed are also relevant to the development of information materials that the CMO Taskforce is producing to ensure that individuals know what the retention period means for them.
46. The Scottish Government would like to thank all those who took the time to respond to the consultation and share their views, insights and experiences on this important matter.

List of Organisational Respondents by Sector

- **Health Sector**
 - NHS Grampian
 - NHS Lanarkshire
 - NHS Highland
 - NHS Tayside
 - NHS Lothian
 - NHS Ayrshire and Arran
 - NHS Borders
 - NHS Orkney
 - NHS Fife
 - NHS Greater Glasgow & Clyde
 - NHS Education for Scotland (NES)
 - National Services Scotland (NSS)
 - NHS24
 - Scottish Ambulance Service
 - Health Improvement Scotland (HIS)
 - West of Scotland Sexual Assault Service

- **Victim support**
 - Rape Crisis Scotland
 - Victim Support Scotland
 - Women's Rape & Sexual Abuse Centre (WRASAC) Dundee and Angus
 - Rape and Sexual Abuse Centre, Perth & Kinross (RASAC P&K)
 - South Lanarkshire Gender-Based Violence Partnership
 - Scottish Borders Rape Crisis Centre

- **Justice/legal sector**
 - Scottish Police Authority (SPA)
 - Law Society of Scotland
 - Faculty of Advocates
 - Criminal Injuries Compensation Authority
 - Risk Management Authority

- **Local authority**
 - Stirling Council

- **Education and training**
 - Resilience Learning Partnership

- **Organisations representing specific groups of people/equalities**
 - People First (Scotland)
 - The South Indian Cultural Centre/the Hindu Temple of Scotland
 - Centre for Excellence for Children's Care (CELCIS)
 - MJReid Ltd (inclusive communications)

Full summary of responses

Full consultation paper: (41 responses)

Analysis of the individual question responses to the full consultation paper.

Question 1: *“Do you agree with the proposal that the retention period for evidence collected in the course of self-referral forensic medical services be 26 months (2 years, 2 months)?”*

Response	Number of Responses
Yes	25
No – the period should be longer	11
No – the period should be shorter	1
Don't know	0
No Answer	4
	41

Question 2: *“If you indicated in your response to question 1 that the retention period should be shorter than 26 months, what should it be?”*

Suggested Retention Period	Number of Responses
15 months (and certainly no longer than 18 months)	1
	1

Question 3: *“If you indicated in your response to question 1 that the retention period should be longer than 26 months, what should it be?”*

Suggested Retention Period	Number of Responses
2 years 6 months (30 months)	1
4 years 2 months (for specific groups of people)	1
4-5 years	1
5 years	2
Minimum of 5 years	1
5 years 2 months	1
10 years	1
Until survivor either decides to report or request destruction	1
As long as possible	1
No suggested retention period	1
	11

Question 4: *“Do you have any views on potential impacts of the proposals in this paper, not sufficiently covered in the existing impact assessments, on child rights and wellbeing, data protection, equality, socio-economic equality (the Fairer Scotland Duty), people in rural or island communities, or human rights?”*

- Of the 42 responses to the full questionnaire there were no new or updated impact assessments suggested.
- 27 respondents to this question said they had no concerns relating to impact assessments, 3 responses stating they considered the existing impact assessments to be sufficient and covered all points.
- 11 respondents to this question indicated they had concerns, however none of the concerns related to the content of the existing impact assessments or a requirement for additional impact assessments: concerns expressed related to the retention period and how the self-referral service would operate.

Easy read consultation paper: (22 responses)

48. Analysis of the individual question responses to the easy read consultation paper.

Question 1: *“Do you agree that this evidence should be destroyed after 2 years and 2 months?”*

Response	Number of Responses
Agreed with the 26 months	7
Disagreed with 26 months	14
Unsure	1
	22

Question 2: *“If you do not agree that evidence should be destroyed after 2 years and 2 months, how long do you think it should be kept for?”*

Suggested Retention Period	Number of Responses
11 months	1
1 year	1
Around 5 years	1
5-10 years	1
10 years	1
10 years 2 months	1
20 years	1

As long as the victim wants it to be	1
Indefinitely	1
Lifetime	1
Forever	1
Unable to suggest a retention period	3
	14

Question 3: *“Why do you feel that way?”*

- The points raised are covered within the “Summary of Responses” (pages 6 to 10).



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