

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

## **Child Rights and Welfare Impact Assessment (CRWIA)**

January 2022

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<b>CRWIA title: Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021</b>	
<b>Date of publication: 27 January 2022</b>	
<b>Executive summary</b>	<p>This is an update of the Child Rights and Wellbeing Impact Assessment<sup>1</sup> (CRWIA), which was published in 2019 to accompany the introduction of the Bill for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021<sup>2</sup> (the “FMS Act”). It considers any anticipated impact of the Act on children's human rights and wellbeing in Scotland.</p> <p>The FMS Act received Royal Assent on 20 January 2021 and, subject to Parliamentary approval, will be commenced on 1 April 2022. The Act places a statutory duty on all territorial health boards in Scotland to provide forensic medical services (FMS) for victims of rape or sexual assault to nationally agreed standards. The Act will establish a legal framework for consistent access to “self-referral” where a person can access healthcare and request a forensic medical examination (FME) without first having to make a report to the police. Self-referral will be available to those who are 16 and over, subject to professional judgement.</p> <p>Following screening of the full range of impact assessments an updated Equality Impact Assessment (EQIA)<sup>3</sup> and Island Communities Impact Assessment (ICIA)<sup>4</sup> have also been produced. The EQIA, ICIA and CRWIA are the most relevant impact assessments to the secondary legislation being brought forward and changes made during the Bill process.</p> <p>The Act aims to help realise the rights of child victims enshrined in the UN Convention on the Rights of the Child (UNCRC)<sup>5</sup>. In particular rights under Article 19 (protection from violence, abuse and neglect) and Article 39 (recovery from trauma and reintegration). The key findings section of this document considers any anticipated impact of each individual section of the FMS Act on children under the age of 18 and identifies UNCRC Article compliance.</p> <p>This update outlines:</p> <ul style="list-style-type: none"><li>• the changes made during the passage of the Bill for the Act which impact on the rights and wellbeing of children;</li><li>• the secondary legislation which will come into force on 1 April 2022; and</li><li>• the wider work underway to support implementation of the Act that relates to children.</li></ul>

<sup>1</sup> [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Bill: CRWIA](#)

<sup>2</sup> [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](#)

<sup>3</sup> <https://www.gov.scot/isbn/9781802019254>

<sup>4</sup> <https://www.gov.scot/isbn/9781802019261>

<sup>5</sup> [Convention on the Rights of the Child | UNICEF](#)

<p><b>Background</b></p>	<p><b>The FMS Act<sup>6</sup></b></p> <p>The Act prioritises the healthcare needs of people who have experienced rape or sexual assault, or child sexual abuse, and provides a legal right for individuals to receive a trauma-informed healthcare response regardless of age.</p> <p>In cases of child sexual abuse, the offending is often not disclosed within the 7 day DNA capture window. This means that FME are often not relevant to many victims of child sexual abuse. Access to healthcare and support for recovery will of course be vital irrespective of when child sexual abuse is disclosed to health boards.</p> <p><b>Amendments made during the Parliamentary passage of the FMS Bill</b></p> <p>Whilst the Scottish Government policy aim has not altered since publication of the original CRWIA, amendments were made during the Parliamentary passage of the Bill that impact on children and young people. The Act includes provisions for:</p> <ul style="list-style-type: none"> <li>• Scottish Ministers to vary the age of self-referral (by regulations). Scottish Ministers are required to make a statement to the Scottish Parliament every year to set out the reasons the age is being changed or not. The statement must give details of the support given to under 16s who are referred for a FME by Police Scotland and set out the considerations given to support those choosing to self-refer if the age limit is being changed.</li> <li>• Circumstances whereby a health board discovers that an individual who had been provided with a self-referral examination was under the age of self-referral at the time of, or otherwise should not have been offered a self-referral examination.</li> </ul> <p>These measures are anticipated to have a positive impact by ensuring that consideration is given to the needs of children and any support required.</p> <p><b>Secondary legislation</b></p> <p>The secondary legislation being brought forward to the Scottish Parliament consists of:</p> <ul style="list-style-type: none"> <li>• <u>The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Commencement Regulations</u></li> </ul>
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<sup>4</sup> [The legislative background to the Act: Forensic medical services for victims of sexual offences](#)

	<ul style="list-style-type: none"> <li>i. This will commence the FMS Act, insofar as not already in force, in its entirety<sup>7</sup>. Upon commencement all health boards will be under a duty to provide FME services, and to retain evidence collected during that examination. An annual report on the operation of the Act will be produced by Public Health Scotland.</li> </ul> <ul style="list-style-type: none"> <li>• <u>The Victims and Witnesses (Scotland) Act 2014 Commencement No. 9 Order 2022</u> <ul style="list-style-type: none"> <li>i. Feedback from survivors consistently tells us that victims prefer to be examined by a female. The enactment of Section 9 of the Victims and Witnesses Scotland Act (2014) gives victims the right to be able to request the sex of examiner of their choice.</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• <u>The Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022</u> <ul style="list-style-type: none"> <li>i. These Regulations set the length of time that evidence collected during a self-referral FME will be retained by health boards. This will be nationally applied thus ensuring consistency of service, regardless of which health board provides someone with support.</li> <li>ii. The Scottish Government proposes to set a retention period of 26 months under these regulations, which will be subject to approval by the Scottish Parliament. The 26 month period was set following a consultation, and having taken on board the various responses aims to strike the right balance between ensuring that evidence is held for a reasonable timescale, should an individual decide to report to the police, and the practical considerations on health boards if required to retain evidence for lengthy periods of time. If emerging evidence shows that a 26 month retention period is not working future consideration can be given to amending the time period</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• <u>The Forensic Medical Services (Modification of functions of Healthcare Improvement Scotland and Supplementary Provision) Regulations 2022</u> <ul style="list-style-type: none"> <li>i. These Regulations are largely technical and make amendments to the National Health Service (Scotland) Act 1978 to ensure that relevant Healthcare Improvement Scotland (HIS) functions apply to the FMS Act. The Regulations give HIS functions in relation to</li> </ul> </li> </ul>
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<sup>7</sup> Sections 17,18,19,20 and 21 of the FMS Act came into force on 21 January 2021

services provided under the FMS Act similar to those which it currently has in relation to the health service. The new functions include a general duty of furthering the improvement in the quality of services provided under that Act. The Regulations also extend the inspection power of HIS to any service provided under the FMS Act and require that HIS carry out an inspection if Scottish Ministers request it to do so. The impact of the inspection provisions would only be felt if the powers are exercised: they would positively impact on all users regardless of whether they are over, or under the age of 18.

The secondary legislation being brought forward to the UK Parliament consists of:

- The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Provisions) Order 2022 [Section 104 order].
  - i. This gives the reserved police forces of the MOD, the Armed Forces and British Transport Police the same legal parity as Police Scotland in respect of investigating rape and sexual offences in Scotland.

### **Consultations**

The Bill for the FMS Act was informed by a public consultation conducted in 2019<sup>8</sup>, stakeholder views and the impact assessments that were carried out as part of the Bill process.

A public consultation<sup>9</sup>, held between 5 February and 30 April 2021, gathered views on how long health boards should retain evidence collected in the course of self-referral FMS. The retention period will be nationally applied. A range of equality groups, including ones representing the interests of children, were invited to respond to both consultations.

The 2021 consultation specifically sought views on whether there were potential impacts not sufficiently covered by the previous suite of impact assessments previously carried out to support the passage of the Bill. No respondents suggested any further impact assessments were needed although there were responses received outlined that children and young people could be negatively impacted due to their lack of maturity or increased vulnerability when deciding whether to report an assault to the police before the retention period expires.

<sup>8</sup> [A consultation on legislation to improve forensic medical services for victims of rape and sexual assault](#)

<sup>9</sup> [Self-referral FMS - retention period for evidence: consultation - Citizen Space](#)

The Forensic Medical Services (Functions of Health Bodies) Regulations 2022 were subject to targeted consultation with Healthcare Improvement Scotland and health boards in respect of the functions to be conferred to them. No concerns were raised in response to this engagement.

### **CMO Rape and Sexual Assault Taskforce**

The Chief Medical Officer (CMO) for Scotland chairs a Taskforce set up by Scottish Ministers in April 2017 to provide national leadership for the improvement of healthcare and FMS for anyone who has experienced rape, sexual assault or child sexual abuse. The Taskforce has wide representation from experts across health, justice, social work and the third sector.

A Clinical Pathways subgroup and a Children and Young People Expert Group (CYPEG) were established to: provide guidance; develop national clinical pathways for adults and for children and young people; and to make recommendations on where improvements to the pathways of care for individuals could be supported by the work of the CMO Taskforce. Both pathways have had detailed input from third sector organisations to represent the views of people with lived experience.

A Self-Referral subgroup was also established to develop the necessary resources to ensure expeditious implementation of the provisions of the FMS Act as they relate to self-referral.

A wide range of multi-agency professionals are members of these groups including the NHS Child Protection Managed Clinical Network (MCN) managers, paediatricians, Police Scotland, third sector and members of the Scottish Government child protection team.

### **Operational measures to support the FMS Act**

#### **Self-Referral**

A Self-Referral Protocol has been developed to support health boards in the delivery of this service and to provide guidance on how the chain of evidence should be maintained to meet the requirements of the Scottish criminal justice system. A specific section has been included to provide health boards with guidance in relation to children and young people and the indicators that should be considered when a 16 / 17 year old self-refers before progressing with an examination. The protocol also gives guidance in relation to the FMS Act, to cover the circumstance if someone under the age of 16 self-refers and undergoes a FME, before it is understood that they are not over 16. In this circumstance, the evidence taken is still valid for any potential criminal proceeding.

A national awareness raising campaign will direct people to NHS Inform where they can find information about the self-referral service, including the applicable age for self-referral services.

A national self-referral telephony service will be available for people to refer into the service for a self-referral FME. For those under 16 who call the national number specific safe guards will be put in place to ensure that the child or young person receives the care they need, specifically in relation to child protection.

### **Clinical Pathway for Children and Young People**

Where a FME is required, it is important this is provided in a child centred way which puts their needs first. The Children and Young People Expert Group has reviewed and updated the Clinical Pathway for Children and Young People who have disclosed sexual abuse<sup>10</sup>. The pathway is relevant for children under 16 years of age or up to 18 years of age for young people with vulnerabilities and additional support needs. The pathway outlines the types of medical examination that may be undertaken and the purpose of those. The finalised updated Children and Young People Clinical Pathway (CYP Pathway) will be published on 1 April 2022.

The Children and Young People Clinical Pathway reflects the position of the FMS Act in that self-referral is only an option for those aged 16 or over, subject to professional judgement. The Pathway does include information on decision-making for 16 and 17 year olds, both relating to access to self-referral and also to whether a paediatrician is required to be available at an examination for a 16 or 17 year old if there are certain vulnerabilities.

The CYP Pathway integrates developments in other policy areas including: updated National Guidance for Child Protection in Scotland<sup>11</sup>; Bairns' Hoose<sup>12</sup>; plans to incorporate the United Nations Convention on the Rights of the Child into Scots law<sup>13</sup>; Getting it Right for Every Child<sup>14</sup> and The Promise<sup>15</sup>. It sets out responsibilities and expectations of everyone who works with children, young people and their families in Scotland and describes how agencies should work together to protect children from abuse, neglect, exploitation and violence.

The CYP Pathway builds on evidence and well established single and multi-agency practice, however, there are key changes of note:

<sup>10</sup> <https://www.gov.scot/publications/clinical-pathway-healthcare-professionals-working-support-children-young-people-experienced-child-sexual-abuse/pages/1/>

<sup>11</sup> [National guidance for child protection in Scotland 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-guidance-for-child-protection-in-scotland-2021/pages/1/)

<sup>12</sup> [Bairns' Hoose - Scottish Barnahus: vision, values and approach - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/bairns-hoose-scottish-barnahus-vision-values-and-approach/pages/1/)

<sup>13</sup> [Human rights: Children's rights - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/human-rights-childrens-rights/pages/1/)

<sup>14</sup> [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/getting-it-right-for-every-child-girfec/pages/1/)

<sup>15</sup> [Home - The Promise](https://www.gov.scot/publications/home-the-promise/pages/1/)



- Updated references to and from the National Guidance for Child Protection in Scotland (2021), underlining the multi-agency nature of child protection and setting out considerations to be made regarding 16 and 17 year olds, now that child protection extends to those aged up to 18 years;
- Further clarification of the role, function and contribution of health boards, professionals, designated staff and services for child protection to support discharging their responsibilities safely, both individually and collectively;
- A 'child' defined as being a child or young person up to the age of 18 years, where appropriate, in line with UNCRC. The legal situation with regard to young people aged 16 and 17 years is summarised; the criticality of multi-agency collaboration and Interagency Referral Discussions (IRDs) is outlined where there is risk of significant harm; and the importance of continuity and consistency across organisational and sector boundaries is emphasised;
- Inclusion of a new single Learning Review model to replace the current two tier system of Initial Case Reviews and Significant Case Reviews. This outlines a proportionate, timely approach to case reviews and fosters a learning culture, moving away from an emphasis on blame.

### **Accountability framework**

Work is also underway to develop an accountability framework for health boards to support NHS Chief Executives in assuring themselves with regard to their individual agency responsibilities for child and adult protection, together with potential for enhancing shared multi-agency governance.

### **Training**

NHS Education for Scotland has been commissioned to develop and provide public protection training for healthcare practitioners. Currently, individual health boards are required to develop and deliver public protection training for their staff and this national approach aims to reduce demand on health board resource, together with improving accessibility to learning and consistency in practice across Scotland.

### **Bairns' Hoose (Scottish Barnahus model)**

The FMS Act supports multi-agency working and supports the Scottish Government's wider moves towards developing a Scottish version of the European Barnahus concept. The Act has a specific focus on victims of child sexual abuse and does not legislate for wider types of medical examination that may be carried out on victims of non-sexual child abuse (physical abuse or neglect). This does not



	prevent the specific services under the Act and wider services being provided in a coherent and coordinated way for child victims.
<b>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</b>	As set out in the CRWIA published in 2019 to support the passage of the FMS Bill, there were 190 children on a child protection register or subject to a child protection plan in Scotland in 2017-18 <sup>16</sup> due to concerns about sexual abuse, and possibly an additional 45 due to concerns about child sexual exploitation, this figure remained constant in 2019-20 <sup>17</sup> . While not all of these will be affected by the Act, this gives an idea of how many children may experience abuse.
<b>Children and young people's views and experiences</b>	<p>The original CRWIA highlighted the sensitive nature of this subject and the reasoning behind no direct engagement being had with child victims in the context of the Bill or Act.</p> <p>Children 1<sup>st</sup> continue to be a key stakeholder of the CMO Taskforce and is a member of the CYPEG. There have been opportunities for the CMO Taskforce to hear feedback from stakeholders at the CYPEG and where appropriate, for this to influence the direction of work.</p>
<b>Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing</b>	<p>As detailed in the original CRWIA the Act contributes to local duties to safeguard, support and promote child wellbeing by working in tandem with wider child wellbeing duties.</p> <p>The UNCRC articles supported by the sections of the Act are set out below:</p> <p><b>Section 1 of the FMS Act</b> (provision of certain forensic medical services)</p> <ul style="list-style-type: none"> <li>• Overview of the Act.</li> <li>• Gives child and other victims a legal right to forensic medical services.</li> <li>• Articles: 2, 19, 24 and 34.</li> </ul> <p><b>Section 2 of the FMS Act</b> (the examination service)</p> <ul style="list-style-type: none"> <li>• Provides that self-referral is not available to under 16s. Ensures that victims of harmful sexual behaviour by children under the new age of criminal responsibility (12) is covered.</li> <li>• Gives child and other victims a legal right to the examination service.</li> <li>• Articles: 2, 3, 19, 24 and 34.</li> </ul>

<sup>16</sup> [Children's social work statistics 2017-2018 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>17</sup> [Children's social work statistics: 2019 to 2020 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

- Provides that the age for self-referral can be changed by Scottish Ministers and sets out the requirements for annual statement to the Scottish Parliament.
- Keeps children's legal rights and their best interests under annual review.
- Articles: 2, 3, 19, 24 and 34.

**Section 3 of the FMS Act (limitation on provision of forensic medical examinations)**

- Protects professional judgement and thus clinicians' assessment of a child's best interests.
- Protects children where it is not in their best interests to undergo forensic medical examination.
- Article: 3.

**Section 4 of the FMS Act (information to be provided before examination)**

- Ensures child victims are informed of their position, including why a police report may have to be made in their case.
- Gives children an opportunity to discuss their position with professionals.
- Articles: 3, 24 and 39.

**Section 5 of the FMS Act (health care needs)**

- Ensures a focus on health care needs.
- Ensures child victims' wider holistic needs are provided for.
- Articles: 3, 24 and 39.

**Section 6 of the FMS Act (the retention service)**

- Gives those who are 16 and over a right to have evidence stored – usually because they have not made a report to the police ("self-referral")
- Children under 16 may not access self-referral, and this would be explained to the child under section 4.
- Article: 12.

**Section 7 of the FMS Act (return of certain items of evidence)**

- Gives over 16s who self-refer a right to have their property returned to them.
- Children under 16 may not access self-referral, and this would be explained to the child under section 4.
- Articles: 12 and 14.

**Section 8 of the FMS Act (destruction of evidence)**

- Gives over 16s who self-refer a right to have their samples and property destroyed. Destruction would also happen at the end of the statutory retention period that must be communicated to the victim.

	<ul style="list-style-type: none"> <li>• Children under 16 may not access self-referral, and this would be explained to the child under section 4.</li> <li>• Articles: 12 and 14.</li> </ul> <p><b>Section 9 of the FMS Act (transfer of evidence to the police)</b></p> <ul style="list-style-type: none"> <li>• Provides a legal basis for the transfer of evidence to the police, in the case of a police report.</li> <li>• In the case of a child under 16, or an older child who wishes to report to the police, there would be a report to the police.</li> <li>• Article: 19.</li> </ul> <p><b>Section 11 of the FMS Act (examination of under-age persons)</b></p> <ul style="list-style-type: none"> <li>• Ensures evidence is still valid if the health board discovers the individual is under the age of self-referral.</li> <li>• Ensures the case proceeds as a police referral/follows child protection procedures.</li> <li>• Articles: 2, 3, 19, 24, 34 and 39.</li> </ul> <p>In the case of article 12 (respect for the views of the child) the self-referral protocol that has been developed should be followed in conjunction with the clinical pathway for Children and Young People.</p> <p>The remaining provisions of the Act are technical in nature and support the earlier sections discussed above.</p>
<p><b>Monitoring and review</b></p>	<p>The FMS Act places a duty upon Scottish Ministers to lay an annual statement on whether they will be exercising the delegated power to vary the minimum age for accessing self-referral. This will ensure a continuing review of how children’s rights would be impacted and will provide continuing opportunities for representative groups to provide views on behalf of children and young people.</p> <p>The FMS Act requires Public Health Scotland to produce a report on the operation of the Act. Given the small numbers of FME undertaken on under-18s, it is unlikely the early reports will be able to provide much depth on how the Act is operating with regards to children and young people. However, qualitative data from those with lived experience will be used to augment the report so experiences are better understood.</p> <p>The retention period for evidence collected during self-referral medical services can be varied by regulations should evidence demonstrate that this is desirable or necessary. The annual report on the operation of the Act will include data that will help inform any review of the retention period.</p> <p>When the FMS Bill was passed by the Scottish Parliament the Cabinet Secretary for Health and Sport committed to providing funding towards the development of Child and Family Support Workers, who would provide advocacy and support in finding</p>

	<p>appropriate therapeutic services to help the child’s recovery and of their family. The development of these roles is in its early stages and over time should provide valuable support to children and families as well as another route through which children’s voices can be fed back to policy leads.</p>
<p>The remaining provisions of the Act are technical in nature and support the earlier sections discussed above.</p>	
<p><b>CRWIA Declaration</b></p>	
<p><b>Authorisation</b></p>	
<p>Vicky Carmichael Acting Unit Head CMO Taskforce Unit CMO Policy Division Directorate for Chief Medical Officer Scottish Government</p>	<p><b>Date</b>  13 December 2021</p>
<p>Greig Chalmers Head of CMO Policy Division Directorate for Chief Medical Officer Scottish Government</p>	<p><b>Date</b>  17 December 2021</p>



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