

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

Equality Impact Assessment Results

January 2022

Equality Impact Assessment Results

Title of policy	Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (the “FMS Act”) ¹
Summary of aims and desired outcomes of policy	To provide a clear statutory basis for Scottish health boards to provide forensic medical services for victims of sexual offences and establish a legal framework for consistent access to “self-referral” so that an individual can access healthcare and request a forensic medical examination without first having to make a report to the police.
Directorate	Directorate for Chief Medical Officer (CMO)

Introduction

1. The CMO for Scotland chairs a Taskforce set up by Scottish Ministers in April 2017 to provide national leadership for the improvement of healthcare and forensic medical services (FMS) for anyone who has experienced rape, sexual assault or child sexual abuse. The Rape and Sexual Assault Taskforce has wide representation from experts across health, justice, social work and the third sector.
2. The FMS Act, which underpins the work of the Taskforce, 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 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.
3. The FMS Act enshrines the principles of consistent, person centred, trauma informed care. This ensures that every individual presenting for an FME is treated equally and in a manner relevant to them.
4. This Equality Impact Assessment (EQIA) supplements the summary² originally published for the introduction of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill in November 2019. Whilst the Scottish Government policy aims have not changed since the introduction of the Bill³ we have chosen to update the EQIA as part of our consideration of equality groups in respect of the secondary legislation that we are producing to support the Act and the operational measures that will be in place when the Act (and the accompanying secondary legislation) comes into force. The secondary legislation will be laid in the Scottish Parliament on 27 January 2022 and, subject to approval, this will come into force on 1 April 2022.

¹ [The FMS Act received Royal Assent on 20 January 2021 : Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021](#)

² [Link to EQIA published in 2019](#)

³ [Link to Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Bill policy memorandum](#)

5. The Act, secondary legislation and the supporting operational measures will impact positively on all communities, irrespective of protected characteristics. The impact covers anyone who presents in Scotland who has experienced rape, sexual assault or child sexual abuse, as well as those close to them. The impact will also affect health board staff who are involved in the provision of healthcare services. No negative impacts have been identified although we recognise that there is limited data in relation to the prevalence of rape and sexual assault in protected characteristics relating to race, religion/belief, gender reassignment, sexual orientation, pregnancy and maternity, and marriage and civil partnership.
6. Following screening of the full range of impact assessments we have also produced an updated Children's Rights and Wellbeing Impact Assessment (CRWIA)⁴ and Island Communities Impact Assessment (ICIA)⁵. 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.

Secondary legislation

7. To support the implementation of the FMS Act secondary legislation is being brought forward to the Scottish Parliament and consists of:
 - The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Commencement Regulations
 - i. This will commence the FMS Act, insofar as not already in force, in its entirety⁶. 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.
 - The Victims and Witnesses (Scotland) Act 2014 Commencement No. 9 Order 2022
 - i. Feedback from survivors consistently tells us that victims prefer to be examined by a female. The commencement 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.
 - The Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022
 - i. These Regulations set a nationally applied length of time that evidence collected during a Forensic Medical Examination (FME) will be retained by health boards.

⁴ <https://www.gov.scot/isbn/9781802019278>

⁵ <https://www.gov.scot/isbn/9781802019261>

⁶ Sections 17,18,19,20 and 21 of the FMS Act came into force on 21 January 2021

- 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 public 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.
 - The Forensic Medical Services (Modification of functions of Healthcare Improvement Scotland and Supplementary Provision) Regulations 2022
 - 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 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 protected characteristic.
8. 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 sexual offences in Scotland.
 - ii. This Scotland Act Order has been developed through targeted consultation with the relevant police forces and respective UK Government departments. Although impact assessments are not required for this Order it is included here for completeness in terms of the secondary legislation being produced.

Consultations

9. The Bill for the FMS Act was informed by a public consultation conducted in 2019⁷, stakeholder views and the impact assessments that were carried out as part of the Bill process.
10. A public consultation⁸, held between 5 February and 30 April 2021, gathered views on how long health boards should retain evidence collected in the course of a self-referral FME. As with the 2019 consultation, a range of equality groups were invited to participate.
11. The 2021 consultation specifically sought views on whether there were potential impacts not sufficiently covered by the previous suite of impact assessments carried out to support the passage of the Bill. No respondents suggested any further impact assessments were needed although there were some responses received highlighting that care would be required to ensure inclusion of people from all the protected characteristic groups. The retention period will be nationally applied thus ensuring consistency of service regardless of which health board provides the individual with support or which of the protected characteristics someone has.
12. The Forensic Medical Services (Functions of Health Bodies) Regulations 2022 regulations 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.

Summary of the operational measures to support the FMS Act

Clinical Pathways

13. In November 2020 the CMO Taskforce published a package of resources to support clinicians who undertake FMS. This included the Adult Clinical Pathway and the Children and Young People Clinical Pathway. The Pathways outline how health boards should provide person-centred, trauma informed care to ensure that every person will be supported according to their individual circumstances and protected characteristics. EQIA's were produced for both Pathways^{9,10}.
14. Throughout autumn 2021 the Children and Young People Clinical pathway was revised to update it for the implementation of self-referral services, as well as to take account of developments in other policy areas including: updated National Guidance for Child Protection in Scotland¹¹; Bairns' Hoose¹²; plans to incorporate

⁷ [A consultation on legislation to improve forensic medical services for victims of rape and sexual assault](#)

⁸ [Self-referral FMS - retention period for evidence: consultation - Citizen Space](#)

⁹ [EQIA for Adult Clinical Pathway](#)

¹⁰ [EQIA for Children and Young People Clinical Pathway](#)

¹¹ [National guidance for child protection in Scotland 2021 - gov.scot \(www.gov.scot\)](#)

¹² [Bairns' Hoose - Scottish Barnahus: vision, values and approach - gov.scot \(www.gov.scot\)](#)

the United Nations Convention on the Rights of the Child into Scots law¹³; Getting it Right for Every Child¹⁴ and The Promise¹⁵.

15. The Adult Clinical Pathway has also been updated to reflect the implementation of self-referral and to take account of the revised National Guidance for Child Protection in Scotland (which now defines a 'child' as someone up to the age of 18 years, for the purposes of protection measures under certain circumstances).
16. The revised Pathways will be launched in 2022, to coincide with the commencement of the FMS Act.

Self-Referral Protocol

17. The National Self-Referral Protocol ("The Protocol") outlines and provides guidance on the requirements of health boards under the provisions of the FMS Act in relation to self-referral services. This augments the Clinical Pathways by providing guidance to health boards on how to maintain the chain of evidence in a way that meets the requirements of the Scottish criminal justice system.

Telephony Service

18. The national telephony service will provide a single telephone number for people in Scotland aged 16 or over to call who wish to self-refer following a rape or sexual assault, without first making a police report. This will give them the opportunity to access timely healthcare and support and access to a FME. This number will be available 24 x 7 x 365. This service will be provided by NHS 24 and will offer the same access as people who access the 111 service. This includes access to translation services.

Information sharing

19. NHS Inform web content will be published to provide national information and signposting that covers all aspects of the FMS Act. A national awareness campaign is being developed to inform people that they have the option to self-refer for a FME following a rape or sexual assault, without first reporting to the police. Detailed marketing research and insights from a wide range of representative organisations are informing the themes and objectives of the campaign ensuring the campaign is accessible and inclusive of all protected characteristic groups.

Workforce training

20. The feedback received from survivors tells us that victims, regardless of protected characteristic, generally prefer to be examined by a female sexual offence examiner. We are commencing Section 9 of the Victims and Witnesses (Scotland) Act 2014 at the same time as the FMS Act. This will give victims the right to request an examiner of a preferred sex. This aims to help advance

¹³ [Human rights: Children's rights - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹⁴ [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹⁵ [Home - The Promise](http://www.gov.scot)

equality of opportunity by allowing all people, regardless of their protected characteristic, to state their preference. There is some evidence from SARCs in England that 'most service users prefer to be seen by a female clinician'¹⁶.

21. The Scottish Government is funding specific sexual offence examination training for doctors with the aim of increasing the number of females available to undertake this work and since 2017, the proportion of sexual offence examiners who are female has doubled to around 60%.

Key findings for each of the protected characteristics

22. This impact assessment has identified potential positive impacts across all of the protected characteristics because of the person-centred approach taken by the FMS Act and the operational measures that support it.

23. The scope of this impact assessment is based on the requirement of public authorities to:

- i. Advance equality of opportunity
- ii. Eliminate discrimination, harassment and victimisation
- iii. Foster good community relations

24. It is acknowledged that most serious sexual assaults are not reported meaning that the group of people which could be best served by the FMS Act are those not known to services, the unreported group, so inevitably data is limited. The Scottish Crime and Justice Survey 2019/20¹⁷ reports that most incidents of serious sexual assault are not reported to the police, often because victims want to avoid making things worse or because it is perceived as a private matter that they dealt with themselves.

Age

25. The Scottish Crime and Justice Survey (SCJS) 2019/20²⁰ suggests that the prevalence of sexual assault varies by age. The survey suggests most victims are aged between 16 and 59 based on self-reporting. Younger people may be more likely to identify what constitutes sexual assault if they are influenced by social media activity, for instance the #MeToo movement.
26. Comments received in response to the 2021 consultation on the retention period indicated that, in relation to self-referral, 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. The Self-Referral Protocol includes indicators of vulnerability for 16 and 17 year olds which should be considered by clinicians before proceeding with a self-referral examination.
27. The Act does not discriminate and allows anyone to receive medical care following a sexual offence, regardless of age. Self-referral, however is only

¹⁶ [serv-spec-sexual-assault-referral-centres.pdf \(england.nhs.uk\)](#)

¹⁷ [Scottish Crime and Justice Survey 2019/20: main findings - gov.scot \(www.gov.scot\)](#)

available to people aged 16 and over, subject to professional judgement. Section 3 of the Act allows for professional judgement to be used to determine if an examination should be carried out.

28. Further consideration of children and young people is contained in the updated CRWIA: this includes the delegated power for Scottish Ministers to change the age of self-referral and the requirement to produce an annual report on this matter.
29. The SCJS reports that respondents aged 60 or over are less likely to report having experienced serious sexual assault than all other age groups. Elderly people in care may be more vulnerable to sexual abuse, but feel unable to self-refer due to mobility constraints or cognitive decline.
30. No evidence has been found to suggest that the FMS Act and secondary legislation will have a disproportionate impact on the basis of age. Accordingly, there is no need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity or promote good relations among and between different age groups.

Disability

31. Although no evidence specific to Scotland has been found, in the three years to March 2018, it is reported¹⁸ that 3.7% of disabled adults in the UK aged 16 to 59 years experienced sexual assault (including attempts), compared with 1.9% of non-disabled adults. During this time disabled women were almost twice as likely to have experienced any sexual assault in the last year (5.7%) than non-disabled women (3.0%).
32. No evidence has been found relating to the prevalence of sexual assault specifically against learning disabled people. It is known though that learning disabled people experience significant health inequalities compared with other people^{19,20} and have inequalities in accessing health care and services. Learning disabled people may be less likely to understand their rights²¹.
33. Responses to the 2021 consultation from organisations including People First and Victim Support Scotland highlighted the importance of accessible communication when explaining what the self-referral process involves, and what the retention period is. It is recognised that it is important for people with learning disabilities to be able to understand what these services mean for them: consideration is being given to providing information in accessible formats.

¹⁸ [Disability and crime, UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk)

¹⁹ [Health inequalities experienced by people with learning disabilities - Health & Social Care Alliance Scotland](#)

²⁰ [Health | Census 2011 Information | Scottish Learning Disabilities Observatory](#)

²¹ [enable_abusebooklet_handbook.pdf \(bava.org.uk\)](#)

34. Easy read versions were produced for both the FMS Bill²² and the 2021 consultation²³: 35% of responses were submitted using this format. An easy read leaflet has also been published²⁴, setting out what people can expect during and following a FME. These leaflets will be updated to reflect the self-referral service.
35. No evidence has been found to suggest that the provisions of the FMS Act and secondary legislation will have a disproportionate impact on the basis of disability. Accordingly, there is no need to promote good relations between disabled and non-disabled people, or eliminate harassment and victimisation.

Gender Reassignment

36. No statistical evidence has been found indicating the prevalence of sexual offences against transgender victims. Although there is limited research into trans women's experiences of sexual violence²⁵ it is known that trans people in Scotland can have poor experiences of the healthcare and justice systems²⁶, with particular offence being taken at instances of mis-gendering (referring to a person by a sex other than the one they identify with) and dead-naming (using a person's birth name and not the name they use). This community experience could discourage trans victims from accessing their rights under the Act.
37. Access to healthcare and recovery is a key principle of the FMS Act, irrespective of gender identity. In order to advance equality of opportunity and eliminate unlawful discrimination for all people, including those who are transgender, the FMS Act is drafted in gender neutral language and is a platform for trans people accessing support in their identified gender, in line with the Gender Recognition Act 2004 and the Equality Act 2010.
38. No evidence has been found to suggest that the provisions of the Act, or secondary legislation, will have a disproportionate impact on the basis of gender reassignment. Accordingly, there is no need to eliminate harassment and victimisation.

Pregnancy and Maternity

39. No evidence has been found about the prevalence of sexual violence in this group but research highlights an increase in physical abuse, and particularly domestic violence, during pregnancy and early maternity²⁷. The holistic healthcare envisaged by the Act includes appropriate access to person centred, trauma informed care and, where appropriate, emergency contraception and abortion services.

²² [Forensic Medical Services Bill: easy read summary - gov.scot](#)

²³ [Forensic medical services - evidence collected: consultation - easy read - gov.scot](#)

²⁴ [FME following a rape or sexual assault: information - easy read summary - gov.scot](#)

²⁵ [stonewall and nfpsynergy report.pdf](#)

²⁶ [LGBT in Scotland Health Report \(stonewallscotland.org.uk\)](#)

²⁷ Humphreys, C., and Mullender, A. (2000) „Children and domestic violence: a research overview of the impact on children“. *Research in Practice* [www.rip.org.uk](#)

40. There is no evidence to suggest that the FMS Act and secondary legislation will have a disproportionate impact on the basis of pregnancy and maternity. Accordingly, there is no need to eliminate discrimination, harassment, victimisation, foster good community relations and advance equality on the basis of pregnancy and maternity.

Race

41. Rape and sexual assault in ethnic minorities is known to be underreported and stigmatised²⁸. In refugee and asylum seeker communities there is often a concern about how they will be treated and concern about their immigration status when accessing health care²⁹. Other ethnic groups, such as the gypsy/traveller community have experienced historic negative interactions with police, have cultural normal behaviours or closed communities which make them more reluctant to engage with authorities³⁰.

42. The FMS Act ensures that services are available to everyone in Scotland, regardless of their race or ethnicity. Section 12 of the Act ensures that individuals can request a translated copy of the Victims' Code for Scotland in another language from a health board, advancing equality of opportunity. All 14 territorial health boards, including NHS 24, have access to a range of translation services. A health board can ask the Scottish Ministers to provide them with a copy of the Code in a requested language. (Scottish Ministers must comply with such requests)

43. There is no evidence available at this time to suggest that the FMS Act will have a disproportionate impact on the basis of race.

Religion or Belief

44. No evidence has been found about the prevalence of sexual assault according to religion or belief.

45. We know from the 2019 consultation and equalities round table discussions that in minority religious communities a female victim may find it difficult to access health services since the family culture can seek to monitor women and girls' movement. Information sharing (via the NHS Inform web content and national awareness campaign) and the confidential telephony service will have an important role in providing support.

46. There has been no evidence found to suggest that the FMS Act and secondary legislation will have a disproportionate impact on the basis of religion or belief. Accordingly, there is no need to eliminate discrimination, harassment, victimisation or foster good community relations and advance equality on the basis of race.

²⁸ [Prevalence of Rape and Sexual assault](#)

²⁹ [Hostile environment leaves people too afraid to seek health care - Scottish Refugee Council](#)

³⁰ [Tackling inequalities faced by Gypsy, Roma and Traveller communities \(parliament.uk\)](#)

Sex

47. Evidence highlights that a higher proportion of women than men reported having experienced rape or sexual assault. The Scottish Crime and Justice Survey³¹ states that ‘A greater proportion of women than men have experienced serious sexual assault both since the age of 16 (6.1% compared with 0.8%) and in the 12 months prior to interview (0.4% compared with 0.1%)’.
48. The provisions in the FMS Act and secondary legislation apply equally to everyone in Scotland regardless of their sex. As most individuals who have reported sexual crimes are women and girls³², the provisions of the Act will affect them the most.
49. Anecdotal evidence tells us that there is likely to be underreporting of sexual violence against men. Whilst evidence will need to be built up it may be that the provision of services without the need to first report to the police may encourage more men to seek healthcare following a sexual assault. In order to be all inclusive and help eliminate discrimination on the grounds of sex the Act is drafted in gender neutral language.
50. No evidence has been found to suggest that the FMS Act or secondary legislation will have a disproportionate impact on the basis of sex. Accordingly, there is no need to eliminate harassment, victimisation on the basis of sex, or promote good relations between men and women.

Sexual Orientation

51. The Galop Hate Crime Report 2021³³ tells us that 17% of respondents reporting they had experienced anti-LGBT+ violence and abuse had experienced sexual violence. Homophobic and transphobic attitudes can influence any decision about disclosure or reporting.
52. Respondents to the Stonewall Scotland Health Report³⁴ reported inequalities when accessing health care with 23% reporting having witnessed discriminatory or negative remarks against LGBT people by healthcare staff.
53. No other statistics have been found, however some responses from LGBT groups to the FMS Bill 2019 consultation said that LGBT people are at particular risk of rape and sexual assault. The Act recognises that access to healthcare and recovery is vital irrespective of sex and sexual orientation.
54. No evidence has been found at this time to suggest that services provided under the Act will have a disproportionate impact on the basis of sexuality. Accordingly, there is no need to eliminate, harassment and victimisation and advance equality on the basis of sexual orientation.

³¹ [Scottish Crime and Justice Survey 2019/20 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

³² [Scottish Crime and Justice Survey 2017/18: Main Findings \(www.gov.scot\)](http://www.gov.scot)

³³ [Galop-Hate-Crime-Report-2021-1.pdf](#)

³⁴ [lgbt in britain health.pdf \(stonewall.org.uk\)](http://stonewall.org.uk)

Marriage and Civil Partnership

55. No evidence has been found indicating whether married people are at greater or lesser risk of rape and sexual assault than unmarried people.
56. As with all other protected characteristic groups people who are married or in a civil partnership will have access to the services being delivered by FMS Act.
57. The need does not arise to eliminate discrimination, harassment, victimisation, advance equality and foster good community relations on the basis of marriage and civil partnership.

Conclusion

58. No part of the FMS Act, the secondary legislation or the wider work of the CMO Taskforce has been identified to have a disproportionate, or negative impact, on any of the protected characteristics.
59. The commitment to a consistent, person-centred, trauma-informed approach and the gender neutral language of the Act ensures that all victims (irrespective of protected characteristic) will have equal access to consistent, high quality services.
60. The operation of the FMS Act will be kept under regular scrutiny. We will consider any newly identified evidence in relation to the impacts of this Act and its operation, relating to each of the protected characteristics and make adjustments where appropriate.

Declaration and Publication

I am satisfied with the equality impact assessment that has been undertaken for the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Greig Chalmers

Position: Head of Chief Medical Officer Policy Division

Authorisation date: 17 December 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2022

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-925-4 (web only)

Published by The Scottish Government, January 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1007379 (01/22)

W W W . g o v . s c o t