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CROWN OFFICE & PROCURATOR FISCAL SERVICE
SCOTLAND'S PROSECUTION SERVICE

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

Self-Referral National Protocol

Version Control Sheet

Version Number	Summary of changes
V0.1	Initial version
V0.2	New structure
V0.3	Comments from National Protocol and Retention (NPR) Task and Finish Group and Self-Referral (SR) Subgroup
V0.4	Updates following SR Subgroup, Task & Finish Group and SG comments
V0.5	Version circulated to the National Protocol and Retention Task and Finish Group
V0.6	Updates following National Protocol and Retention Task and Finish Group Meeting 24 March 2021
V0.7	Updates following further review by Taskforce and Subgroup members
V0.8	Updates August 2021
V0.9	Updates following National Protocol and Retention Task and Finish Group Meeting 31 August 2021
V1.0	Updates following Self-Referral Subgroup meeting 9 September 2021
V1.1	Update following CMO Taskforce meeting 23 September 2021
V1.2	Update following Self-Referral Subgroup meeting 28 October 2021
V2.0	Version updated and approved at National Protocol and Retention Task and Finish Group Meeting 16 November 2021
V3.0	Version approved by the Lord Advocate 3 December 2021
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V6.0	Version updated with minor changes approved at the National Protocol and Retention Task and Finish Group Meeting 1 March 2022
V7.0	Version updated with minor changes approved at the Adult Pathways of Care Working Group Meeting 26 May 2023
V8.0	Version approved by the Lord Advocate 16 August 2023

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1. Introduction

A self-referral service allows people who have experienced rape or sexual assault the opportunity to access appropriate support and healthcare services as well as a Forensic Medical Examination ("FME") to collect any potential evidence, at a time when they do not feel ready to report to the police.

This national protocol outlines and provides guidance on the requirements of health boards under the provisions of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021([1]) ("FMS Act") and the Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022 ("Retention Period Regulations")([2]) in relation to self-referral services.

The FMS Act, together with the Retention Period Regulations, provide a statutory basis for health boards to provide FMEs for people who have experienced rape or sexual assault. This legislation underpins the protocol which sets out the operational requirements to ensure a consistent, national model of self-referral that supersedes any previous arrangements.

The FMS Act provides Scotland with dedicated FMS legislation in relation to victims. It is important to emphasise that there is no other legislation in Scotland that specifically regulates self-referral services. The Human Tissue Act 2004 does not apply in Scotland.

This protocol contains references to legislation that is relevant to FMS. This protocol does not supersede or alter any duties or requirements imposed by legislation or legal obligations and principles arising from case law determined by the courts (more applicable to criminal justice matters). Legislation may have been amended before this document is next reviewed. As such, this protocol should not be considered a comprehensive description of the law in this area. Case law may also have changed. If needed, independent advice should be obtained on the accuracy of any references to legislation or reference to any other legal obligations or descriptions of the law. If legal advice is required in relation to the provision of care, this should be sought through the normal health board process.

This protocol was developed by the CMO Taskforce, with key representatives from NHS health boards, the Crown Office and Procurator Fiscal Service (COPFS), Police Scotland, the Scottish Police Authority (SPA) and third sector organisations. Further details on this can be found in chapter 14 of the protocol. Guidance on operational matters relating to the investigation of offences was agreed by COPFS.

This protocol should be read alongside other relevant documentation in relation to FMS including:*

- FMS Act([1])

([1]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (legislation.gov.uk) which can be read in conjunction with the explanatory notes [still to be finalised]

([2]) Links to the Retention Period Regulations together with relevant background information is contained on this webpage https://www.gov.scot/policies/violence-against-women-and-girls/forensic-medical-services-for-rape-victims/.

- Retention Period Regulations
- Sexual Assault Response Coordination Service (SARCS) specification document([3]) – update due 2022
- DNA Decontamination Protocol([4])
- Adult Clinical Pathway([5])
- Children and Young People Clinical Pathway([6])
- National Guidance for Child Protection in Scotland 2021([7])
- Adult Support and Protection (Scotland) Act 2007([8])
- Healthcare Improvement Scotland Standards([9])
- Healthcare Improvement Scotland Quality Indicators([10])
- Relevant FFLM Guidance: SARC Storage of Forensic Samples & the Human Tissue Act, January 2021([11])
- Human trafficking and exploitation: guidance for health workers([12])
- FGM Statutory Guidance([13])
- NES Trauma Training Framework([14])
- Updated 2014 ASP Code of Practice([15])
- Guidance on the use of Cellma
- Forensic Photography for Self-Referral Guidance.

*list is not exhaustive

Throughout this protocol, the word 'person' is used to refer to the person who has experienced rape or sexual assault and who seeks a self-referral FME. The word 'examiner' is used to refer to the person who undertakes the examination e.g. Sexual Offences Examiner (SOE) / Forensic Physician (FP). For further information on the other roles involved before, during and after a FME, see Appendix B in the Adult Clinical Pathway ([16]).

This protocol outlines the specific processes that should be followed for a self-referral case in order to maintain the chain of evidence in accordance with the requirements

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([3]) Sexual Assualt Response Coordination Service (SARCS) specification document - gov.scot (www.gov.scot)
([4]) Forensic medical examinations: DNA decontamination guidelines - October 2019 - gov.scot (www.gov.scot)
([5]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055
([6]) Children and Young People Clinical Pathway https://www.gov.scot/isbn/9781804351062
([7]) National Guidance for Child Protection in Scotland 2021 - gov.scot (www.gov.scot)
([8]) Adult Support and Protection (Scotland) Act 2007 (legislation.gov.uk)
([9]) Healthcare Improvement Scotland Standards, December 2017 (healthcareimprovementscotland.org)
([10]) Healthcare Improvement Scotland Quality Indicators, March 2020 (healthcareimprovementscotland.org)
([11]) SARC-Storage-of-Forensic-Samples-and-the-Human-Tissue-Act-Dr-C-White-Jan-2021.pdf (fflm.ac.uk)
([12]) Human trafficking guidance for health workers - gov.scot (www.gov.scot)
([13]) Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 (legislation.gov.uk)
([14]) https://transformingpsychologicaltrauma.scot/media/x54hw43l/nationaltraumatrainingframework.pdf
([15]) Adult Support and Protection revised Code of Practice - gov.scot (www.gov.scot)
([16]) Supporting adults who present having experienced rape or sexual assault: clinical pathway - gov.scot (www.gov.scot)

of the Scottish criminal justice system, but does not separately cover the specific elements of a FME that are relevant for both a police or self-referral as the examination process itself is the same.

Guidance in relation to the undertaking of the FME specifically, including seeking consent (whether for a self-referral or a police referral case) can be found in the Adult Clinical Pathway([17]). The pathway provides detailed information regarding the health and psychosocial needs assessment, as well as the detailed process for undertaking a FME.

This protocol is specifically relevant for staff working in a Sexual Assault Response Coordination Service (SARCS) e.g. SOEs / FPs and nursing staff. This protocol is also relevant to staff in Police Scotland, COPFS and the SPA.

Specific guidance for SARCS Managers on the SARCS facility requirements, including freezer storage and management as well as security requirements will be included in the 2022 updated SARCS specification document([18]), but has been provided to SARCS for information to support preparations for the implementation of self-referral.

As with police referral cases, the national form for FMEs must be completed on the National FMS IT system, Cellma.

([17]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055
([18]) Sexual Assualt Response Coordination Service (SARCS) specification document - gov.scot (www.gov.scot) [to be updated]

2. Provision of certain forensic medical services

As set out above, under the FMS Act, all NHS health boards in Scotland have a statutory duty to provide forensic medical examination services, to people who self-refer for this service if they have experienced rape or sexual assault (within the definition of "sexual offence" contained in section 2(19) of the FMS Act), or who have been the victim of harmful sexual behaviour from a child under the age of criminal responsibility. All health boards also have to provide a retention service for the storage of any potential evidence collected during a self-referral FME for the period defined in the Retention Period Regulations([20]). Section 2 of the FMS Act defines harmful sexual behaviour. Section 14(21) of the FMS Act allows for health boards to cooperate with each other in the planning and provision of the examination and retention service.

NHS 24 provides national 24/7/365 telephony access for people to request a self-referral FME. In accordance with the Healthcare Improvement Scotland Standard for an FME to commence within three hours of the person making contact with the service to request an examination, the health board should ensure that arrangements are in place to ensure that self-referral services are available to be activated at the appropriate time, while taking cognisance of the health and safety of the person and staff, and putting in place / taking appropriate mitigating action where appropriate, as well as employing professional and clinical judgement. To ensure a person centred, trauma informed service, every endeavour should be made by the SARCS staff to meet the needs of the person regarding the timing of the examination. Further information on the role of NHS 24 is provided in chapter 3.

In accordance with section 2 of the FMS Act, the provision of self-referral services is for people aged 16 or over. See chapter 11 for guidance on cases where the age of a young person is not 16 or over.

The FMS Act requires that all self-referral services are person centred and trauma-informed, including delivering services in a way that seeks to avoid re-traumatisation. Section 3([22]) of the FMS Act also provides that a medical professional does not need to carry out a FME, if they do not think it should proceed in their professional opinion.

The principles of trauma-informed care should be kept in mind during the history and examination, offering people flexibility and choice, ensuring control of all parts of the process the person has consented to. The health and safety of the person should always be the priority and any medical issues dealt with prior to the FME should take precedence over the collection of forensic samples. Further information on the

([19]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 2 (legislation.gov.uk)
([20]) The Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022 (legislation.gov.uk)
([21]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 14 (legislation.gov.uk)
([22]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 3 (legislation.gov.uk)

provision of trauma-informed care can be found in the Adult Clinical Pathway([23]) and the NES Trauma Training Framework([24]).

The FMS Act extends the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) scheme to cover all services provided under the Act. The National Health Service (Scotland) Act 1978 and Patient Rights (Scotland) Act 2011 have also been adapted accordingly.

([23]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055
([24])https://transformingpsychologicaltrauma.scot/media/x54hw43l/nationaltraumatrainingframework.pdf

3. NHS 24 triage / Access to self-referral services

NHS 24 provide national 24/7/365 telephony access for people to request a self-referral FME.

This ensures that regardless of the location or time of day, anyone aged 16 or over in Scotland who has been raped or sexually assaulted, is able to contact a national number and access the most appropriate health care and support for them, which may include a referral for a telephone consultation with a doctor / nurse at the relevant SARCS, to arrange a FME without involving the police (see chapter 11 for circumstances when this may not be able to happen).

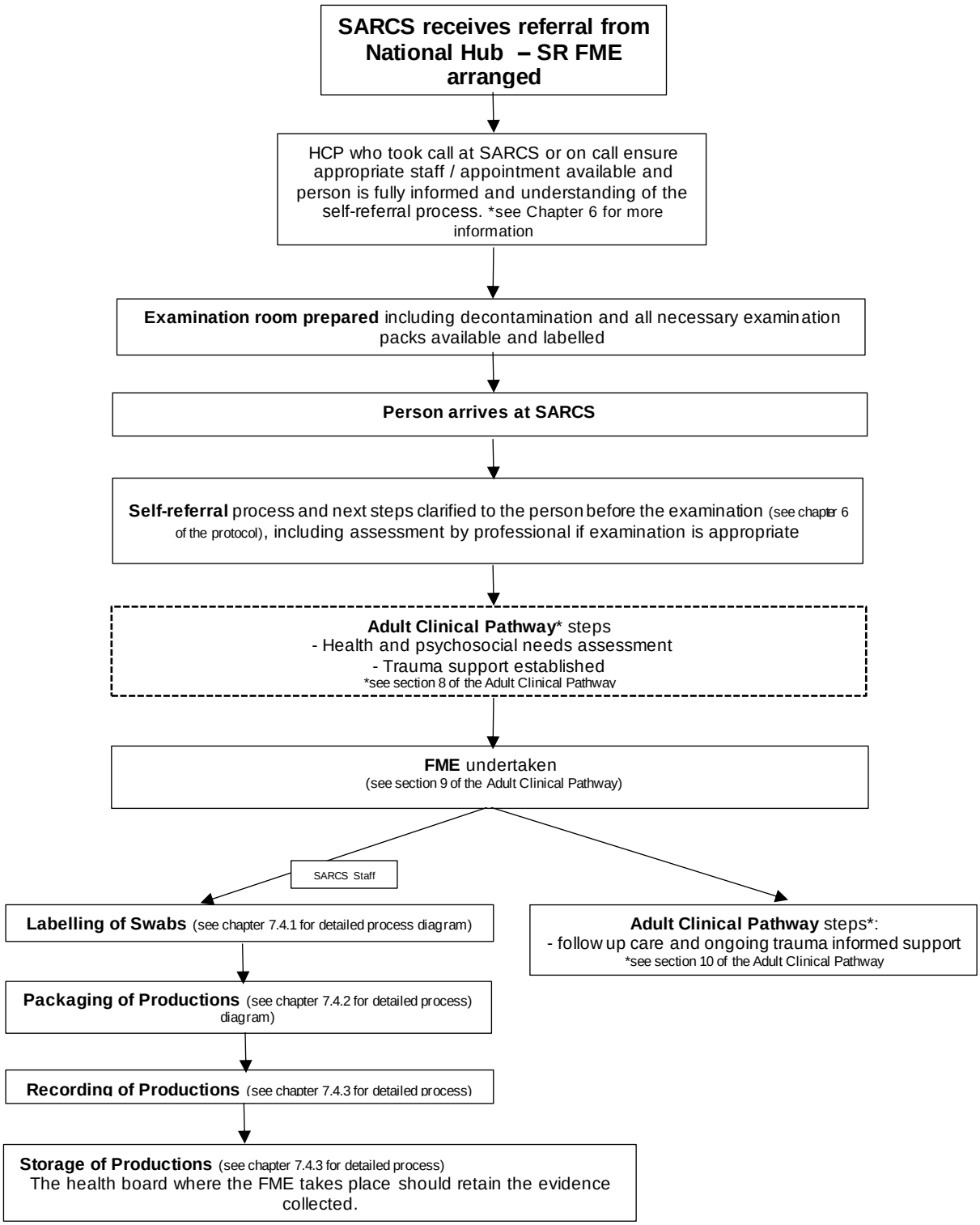
When someone contacts the service, the call responder will complete an appropriate triage and agree the outcome and next steps with the person, which may include a phone call consultation with the local SARCS staff, for access to healthcare and a FME.

Triage will include:

- Initial safeguarding assessments including if there is an ongoing risk / threat to the person, children, or wider public and take appropriate action;
- Assessing any healthcare needs that require immediate medical attention;
- Determining if the person is aged 16 or over;
- Asking if the rape or sexual assault took place in the previous 7 days to determine the appropriate pathway.

NHS 24 will then send the referral to the National Hub, who will contact the receiving local SARCS to send on the referral. The SARCS staff will then contact the person for a telephone consultation ensuring clear directions are provided to the person on how to locate the SARCS to avoid the person having to make any additional calls to NHS 24. SARCS staff should call the person back a minimum of 2 times, with a third call back during normal working hours in the morning if they do not answer for anyone who calls NHS 24 after 10pm. Circumstances will determine whether further call backs would be required based on the information presented within the referral.

4. Self-Referral process flow chart



Following the FME, the examination room must be decontaminated. For decontamination guidelines, please refer to the DNA Decontamination Protocol for FME facilities ([25]).

([25]) Forensic medical examinations: DNA decontamination guidelines - October 2019 - gov.scot (www.gov.scot)

5. Additional evidence taking

In police referral cases, the police will often arrange for evidence to be taken ahead of a full FME, such as urine or blood. Toxicology analysis of such evidence might demonstrate that a person was so intoxicated they could not have consented to sexual activity – which may be particularly important to any future criminal investigation.

In self-referral cases, this evidence will be obtained as part of the FME. Further detail on this is provided in the Adult Clinical Pathway under Section 9.1.1.([26]) All types of evidence should be secured and handled in line with this protocol.

During the phone call between the person and the SARCS staff to arrange an appointment for a FME, the SARCS staff should proactively provide appropriate guidance to the person on what they should do / try to avoid doing before arriving at the SARCS e.g. where possible, try to avoid brushing teeth or showering; as well as what to bring / what not to bring with them to the appointment e.g. SARCS staff will advise the person to bring their toothbrush, underwear and sanitary wear with them as additional evidence, where appropriate.

If the person notes that they need to urinate before arriving at the SARCS, the SARCS staff can advise that the person also bring along the toilet tissue as this could provide additional evidence. See chapter 7.3 for the detailed list of evidence to be taken as part of a FME.

([26]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055

6. Information to be provided before the examination

Key Points

- ✓ The person's health and wellbeing should be prioritised.
- ✓ The person should be told what a FME involves, what the recommended samples are to provide the best forensic information, and where and for how long they will be stored (i.e. the retention period).
- ✓ Other evidence which may be gathered as part of a police investigation (such as CCTV footage, crime scene evidence, material on the person's mobile phone, bedding) will not be obtained under a self-referral examination.
- ✓ No forensic testing of samples obtained will take place unless and until the person chooses to make a report to the police.
- ✓ When making a report to the police, it would be helpful if the person informed the police that they previously self-referred for a FME to assist with the investigation.
- ✓ Section 9 of the Victims and Witnesses (Scotland) Act 2014([27]) gives people the right to request the sex of examiner of their choice. If the person makes such a request, the health board should try to accommodate this request as far as is possible.
- ✓ Health boards should provide the person with a victim care card, containing information around victim support services.

Section 4 of the FMS Act([28]) places a requirement on health boards to provide specific information to people, before any evidence is collected, including*:

- The circumstances in which any evidence collected during a FME may be transferred to a police officer;
- The purposes for which any evidence may be used;
- They can request the destruction of evidence at any point during the retention period (see chapter 9 of this protocol);
- The person's right to request the return of certain items (under section 7([29])) and the right to request destruction of evidence (under section 8 (1) (a)([30]);
- The destruction of evidence (under section 8 (1) (b).

*Failure to comply with the requirements set out above does not by itself render any evidence collected during the examination inadmissible in any proceedings in relation to the incident which gave rise to the need for the examination.

([27]) Victims and Witnesses (Scotland) Act 2014 Section 9 (legislation.gov.uk)
([28]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 4 (legislation.gov.uk)
([29]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 7 (legislation.gov.uk)
([30]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 8 (legislation.gov.uk)

Under Section 5 of the FMS Act([31]), health boards must take such steps as are reasonably practicable to ensure that, where a person is referred for or requests a FME, any health care needs of the person arising from the incident which gave rise to the need for the examination are identified and addressed by the health board.

Section 9 of the Victims and Witnesses (Scotland) Act 2014([32]) gives people the right to request the sex of examiner of their choice. If the person makes such a request, the health board should try to accommodate this request as far as is possible.

The following information should be provided to the person, and further explanation should be given where appropriate:

- Their health and well-being will be prioritised.
- Their identified health care needs must be met by the health board, to the extent that it is for the health board to provide health care to that person, including, where relevant, emergency contraception, post exposure prophylaxis and referral to sexual health or psychological services - whether or not a FME takes place.
- They will be asked for basic information about the assault / rape and informed that this information will be passed to the police should they choose to report to the police. This will count as "evidence" but will not constitute a police statement, and it and all other personal data mentioned will be held securely in line with any UK GDPR and data protection requirements.
- They will be asked to provide details about their health and medical history. This will form part of the Medical Record that will be retained by the health board and will be subject to the health board's Medical Records Policy. This will not count as evidence.
- Health information may be shared with other healthcare professionals as required / appropriate in line with any UK GDPR and data protection requirements and existing practice.
- There is a difference between a police referral and a self-referral. Other evidence which may be gathered as part of a police investigation (such as CCTV footage, crime scene evidence, bedding, material on the person's mobile phone e.g. self-taken photos) will not be obtained under a self-referral examination. If the person advises the examining clinician that they have captured a self-taken photo on their personal mobile phone and the person is willing to show the clinician the photograph, advice should be provided to the person for them to retain the photograph should they wish to report to the police at a later date. The clinician should record in the report what they have observed and that advice was given to the person to retain the photograph. If it is considered that there is other potential evidence out with what the health board is able to collect, the person should be provided with the relevant information about how to make a police referral in case they want to opt for this route, as this may be more appropriate.

([31]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 5 (legislation.gov.uk)
([32]) Victims and Witnesses (Scotland) Act 2014 Section 9 (legislation.gov.uk)

- What the FME involves, what the recommended samples are to provide the best forensic information, and where and for how long they will be stored (i.e. the retention period).
- Their samples and any additional potential evidence will be collected, logged and stored securely in line with this protocol to ensure that the chain of evidence is maintained in accordance with the requirements of the Scottish criminal justice system.
- Photographs of external injuries may be taken and stored securely as appropriate.
- Colposcopy images may be recorded and stored securely as appropriate.
- No forensic testing of samples obtained will take place unless and until the person chooses to make a report to the police.
- The disposal / destruction process and that the destruction of evidence, either when requested by the person or, if not, at the end of the retention period, will not affect their right to make a police report at a later date should they so wish. While health board staff cannot advise on this, there may be a chance that there is not sufficient evidence for a case to proceed if evidence is destroyed before the person reports to the police.
- If a police report is made, they will no longer be able to request from the health board the destruction / return of their property.
- They can make a request for the return of an item which was worn or otherwise present during the incident, stored by the health board, within the retention period and the process to follow.
- If the evidence is returned to the person on request, it is very unlikely that this can be used for the purposes of any future criminal investigation, as there may a risk of contamination. For more information, refer to chapter 8.
- They will not be contacted on the lead up to the end of the retention period, before the evidence is destroyed.
- They will be able to make a police report at any time within the retention period and should disclose to the police when making a police report that they previously self-referred for a FME to assist with any police investigation. They can also make a police report at any time, even after the retention period has expired. It will just be that the evidence collected from an FME will not be available to support a police report. If they choose to do so, they can either contact the police directly or ask their Rape Crisis Scotland Advocacy worker / SARCS nurse coordinator for their support to do so. See chapter 10 for further details.
- They can withdraw their consent at any time during the examination process. Further information on consent and capacity can be found in the Adult Clinical Pathway([33]).
- They will be asked if they understand the information they have been given about what is going to happen as they must be able to provide informed consent to undergo an examination. If they do not understand, or do not consent, the examination will not proceed.

Information should be provided to the person in the most accessible format / language.

([33]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055

Local pathways should be in place for use of interpreters including British Sign Language interpreters to provide support for those who are deaf or hard of hearing and those with additional communication needs or those whose first language is not English. See section 7.1 in the Adult Clinical Pathway([34]) for further information.

6.1 Victim support information and referrals

Where a person accesses police referral services, a constable must provide them with certain information listed under sections 3C([35]) and 3D([36]) of the Victims and Witnesses (Scotland) Act 2014 ("2014 Act"). Section 12([37]) of the FMS Act replicates these requirements for people accessing self-referral services who have been raped or sexually assaulted and places a duty on health boards to provide the person with certain information.

Health boards must ensure compliance with the requirements of section 12 of the FMS Act, by:

- Informing the person that they may:
    - Request a copy of the Victims' Code for Scotland and information relating to the rights of victims from the health board*;
    - Request the health board to refer them to providers of victim support services; and;
    - Contact providers of victim support services directly without needing to be referred by the health board.
- As soon as reasonably practicable after receiving such a request from the person, provide the person a copy of the Victims' Code for Scotland, or advice on where the person can obtain a copy.
- As soon as is reasonably practicable after receiving a request for information on victims' rights, provide the person with:
    - information held by, or is accessible to, the health board which the health board considers relevant to the request, and;
    - Contact details of other bodies which the health board considers may be able to provide relevant information relating to their rights.
- Referring the person to victim support services (if requested), disclosing the person's details to these service providers as is deemed appropriate to the person's needs or provide the person with the name, address and telephone number of victim support service providers, subject to the views of the person.

*Health boards should provide the person with information around victim support services and where they can obtain a copy of the victims' code. This information can be found on the statutory information leaflet that should be offered after a self-referral FME.

The following information should be provided to the person if requested:

([34]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055
([35]) Victims and Witnesses (Scotland) Act 2014 Section 3C (legislation.gov.uk)
([36]) Victims and Witnesses (Scotland) Act 2014 Section 3D (legislation.gov.uk)
([37]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 12 (legislation.gov.uk)

- Victim Support Scotland provides free and confidential emotional and practical assistance and information to all victims and witnesses of crime. They are an independent charity.
- There is a Victim Support office in every local authority area.
- Victim Support Scotland can be contacted on 0800 160 1985 or through their website www.victimsupportsco.org.uk.

Section 12 of the FMS Act([38]) ensures that victims who do not understand English, can request that the health board provides a copy of the Victims' Code for Scotland in a language which the person will understand. If asked to do so, health boards should request a translated copy of the victims code, from the Scottish Government, via the Victim Policy team (VictimsPolicy@gov.scot).

([38]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 12 (legislation.gov.uk)

7. The retention service

Key points

- ✓ As per the Retention Period Regulations[39], evidence (as described in section 17([40]) of the FMS Act) retained from a self-referral examination will be stored by the health board:
  - for a period of 26 months (2 years, 2 months) from the day the examination starts, or;
- ✓ Ahead of the end of the retention period, evidence will be stored by the health board until such time a request for the destruction of evidence is made by the person or a police report is made and the evidence is transferred to the police – see chapters 9.2 and 10 for further detail.
- ✓ The majority of items being stored for self-referral cases will be 'wet' samples, which require frozen storage.
- ✓ Items requiring frozen storage should be placed into tamper evident bags.
- ✓ 'Dry' items should be packaged in paper window production bags. Bags must be sealed and labels signed as soon as the examination is complete.
- ✓ If for any reason, the examiner undertaking a self-referral FME has a specific query regarding the samples or items to be collected (which is not covered in this protocol), they should obtain advice from a SPA Scientist.
- ✓ Each SARCS facility should have a Police Scotland Production Book, which is used to log all evidence that is stored within the facility (wet and dry). Further details on the use of this can be found in chapter 7.4.3.

7.1 Evidence to be retained from a self-referral forensic medical examination

Health boards should ensure that all evidence collected and stored for self-referral is securely managed and stored. The chain of evidence should be maintained, with the appropriate security in place to ensure that samples cannot be tampered with. Systems for logging samples, storage, retrieval and transfer to the police as appropriate must be in place and can be found in chapter 7.4 and chapter 10.

The definition of evidence can be found in section 17 of the FMS Act([41]). The FMS Act does not prescribe what evidence is to be taken during a FME. This is a matter for professional judgement. Guidance is provided under this protocol in chapter 7.3.

Evidence may be stored even in the event that a person does not decide to proceed with a full FME thus allowing the health board to store initial samples like blood and urine.

If for any reason the examiner undertaking a self-referral FME has a specific query

([39]) The Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022 (legislation.gov.uk)
([40]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 17 (legislation.gov.uk)
([41]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 17 (legislation.gov.uk)

regarding the samples or items to be collected (which is not covered in this protocol), they should obtain advice from a SPA Scientist, by contacting the nearest SPA Forensic Science laboratory (available in hours and out of hours). Daytime numbers will be the local lab contact number. The local lab number and an out of hours number will be provided to health boards.

As products of conception would not be evident at the point of an FME, there is no requirement for health boards to store this. If following an FME a person refers back to a SARCS at a later date regarding pregnancy as a result of a rape, SARCS staff should refer the person to local obstetrics and gynaecology services and consult local guidance.

7.2 Colposcopy, forensic photography and medical illustration

7.2.1 Colposcopy

Digital colposcopy may be utilised during the examination if indicated. Further information on the use of colposcopy can be found in section 9.3 in the Adult Clinical Pathway([42]).

7.2.2 Forensic photography in self-referral

Photography of injuries is a useful addition to body map documentation and the description of findings from a FME. Injuries observed during a FME should be photographed as a matter of routine. Photographs of injuries are particularly useful in presenting criminal cases to juries.

Further guidance on forensic photography in self-referral, including a training video developed by Medical Illustration Services within NHS Greater Glasgow and Clyde can be found in the Forensic Photography for Self-Referral Guidance.

When seeking consent, it should be made clear that photography is an important part of the investigation and prosecution process and may be used in any subsequent court proceedings.

In police referral cases, SPA photographers are requested to take photographs of external injuries observed during a FME of an adult or a Joint Paediatric Forensic Examination of a child or young person. However, if in exceptional circumstances, a SPA photographer is not available to take the photographs; it is acceptable for the examining clinician to perform that role. The examining clinician should not use their own device to capture any images. More information on forensic photography can be found in section 9.3.2 in the Adult Clinical Pathway and in the forensic photography for self-referral guidance.

In the case of self-referral for adults, it is also acceptable for the examining clinician to perform that role, or they can request a medical illustrator to take photographs of non-genital injuries if deemed appropriate.

([42]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055

If a medical illustrator is not available, the result being that photographs would otherwise not be taken, photographs should be taken by the clinician. The reason why the photographs were not taken by a trained forensic photographer should be recorded in the national form.

The requirements for photographs taken as part of a self-referral FME, include:

- clear, high-resolution, colour photographs of all injuries observed
- a close up view (so that the detail of the injury can be analysed) and;
- a general (wide) view to offer a degree of perspective about the location and size of the injury of each injury is needed.

All photographs must be stored securely and in a way that ensures that they are available when requested by Police Scotland or COPFS.

As mentioned in chapter 6, other evidence which may be gathered as part of a police investigation (such as material on the person's mobile phone e.g. self-taken photos) will not be obtained under a self-referral examination, however, if the person advises the examining clinician that they have captured a self-taken photo on their personal mobile phone and the person is willing to show the clinician the photograph, advice should be provided to the person for them to retain the photograph should they wish to report to the police at a later date. The clinician should record in the report what they have observed and that advice was given to the person to retain the photograph.

7.3 What evidence is stored?

The examiner should adhere to the following parameters when determining what evidence should be kept. The health board for the area where the FME takes place should retain the evidence collected.

What to take?
• Samples including blood, urine or hair and samples taken by swabbing a person's genitals or bodily orifices collected; • Underwear worn at the time of the rape or sexual assault or shortly after. Even if laundered, underwear should still be taken as potential evidence. Underwear should be stored frozen with the intimate samples; • Any notes or other records created; • Forensic photography of external injuries, if present; • Colposcopy images; • Any additional evidence that has been agreed between the person and the SARCS staff prior to attending the appointment e.g. toothbrush, as per chapter 5 of the protocol.
What not to take?
• Large or bulky 'dry' items e.g. bulky clothing and bedding;

- Items of clothing that are wet (with the exception of underwear that will be stored frozen with intimate samples) will not be collected for self-referral cases as they would require to be forensically dried prior to storage;
- Material from the person's mobile phone e.g. self-taken photos;
- Example exceptions are specified below under when to seek SPA advice.

When to seek SPA advice

- Dictated by the specifics of the rape or sexual assault, for example, the person states there was external ejaculation onto an item of outer clothing or the item of clothing was torn;
- If for any reason, the examiner undertaking a self-referral FME has a specific query regarding the samples or items to be collected (which is not covered in the agreed national protocol).

Where there is no sample evidence taken whatsoever, dry evidence should only be retained when, as an absolute minimum, some forensic notes are also taken. A person does not have the right to insist that any particular evidence is taken.

7.4 How to bag and store evidence

A unique identifying number will be generated on Cellma, for each self-referral case. This number is essential to record and track all items related to the case, ultimately providing a chain of evidence, if the case becomes a police referral.

The majority of items being stored for self-referral cases will be 'wet' samples, which require frozen storage. This includes intimate swabs, skin swabs, underwear, condoms and sanitary wear. These items will be taken in accordance with current Faculty of Forensic and Legal Medicine (FFLM) guidance([43]).

Items requiring frozen storage should be placed into tamper evident bags. 'Dry' items should be packaged in paper window production bags. Bags must be sealed and labels signed as soon as the examination is complete.

SARCS staff should ensure that the facility has a sufficient stock of tamper evident bags and window production bags and should contact Police Scotland via 101 to request more stock when necessary.

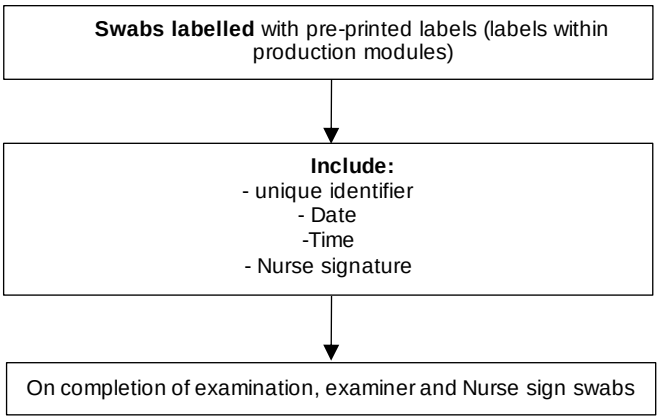
Each SARCS facility should have a Police Scotland Production Book which is used to log all evidence that is stored within the facility (wet and dry, including the forensic section of the national form and any images of external injuries taken). The Police Scotland Production Book should be stored securely, out with the examination room when a person is undergoing a FME. Further details on the use of this can be found in chapter 7.4.3.

([43]) SARC-Storage-of-Forensic-Samples-and-the-Human-Tissue-Act-Dr-C-White-Jan-2021.pdf (fflm.ac.uk)

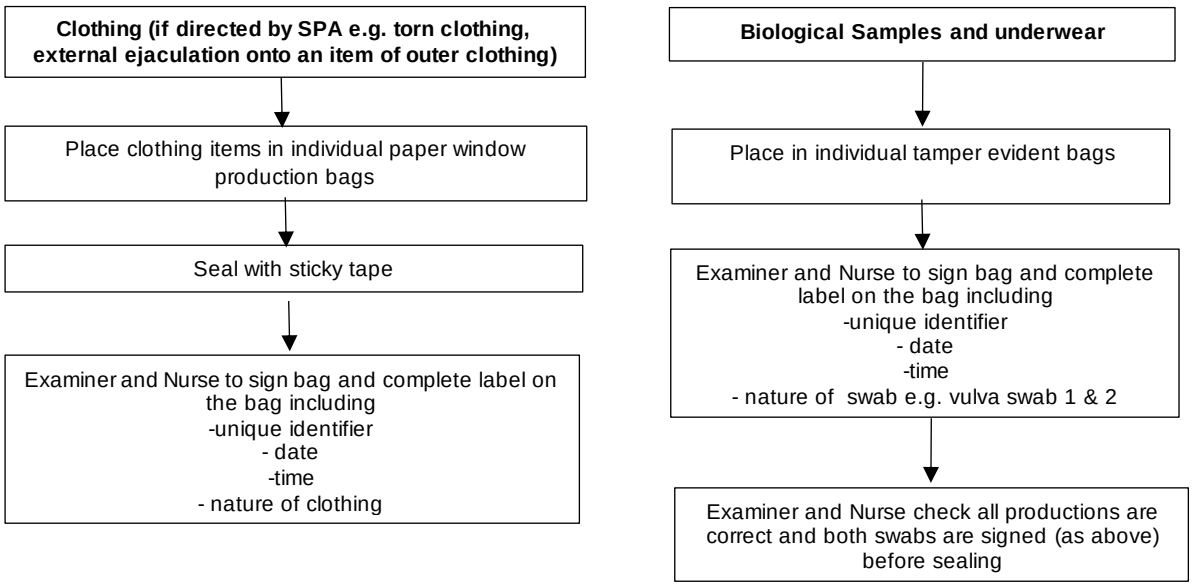
The unique identifying number should be written on the tamper evident bag / paper window production bag of each item collected. This number must also be annotated on the national form in Cellma.

The below process flow charts should be followed when labelling swabs and bagging and storing evidence.

7.4.1 Labelling of swabs – process map



7.4.2 Packaging of evidence – process map

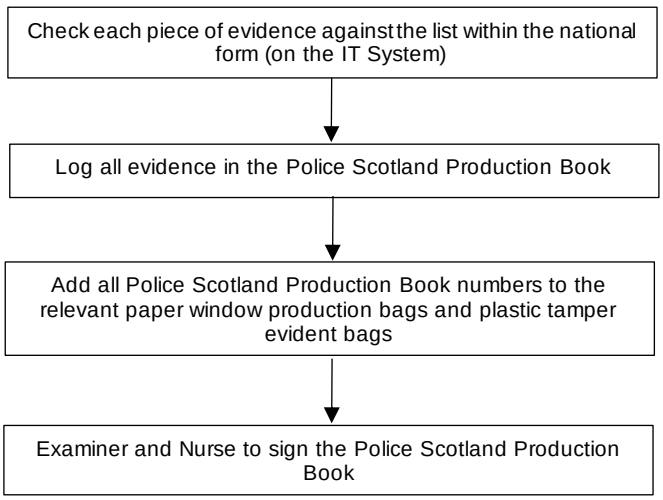


7.4.3 Recording and storing evidence

- Each piece of evidence should be checked against the list within the national form on the IT system, Cellma.
- The forensic section of the national form should be completed on Cellma, printed off, signed by the examiner and the Forensically Trained Nurse (FTN) and stored securely in a locked filing cabinet within a locked room.

- All evidence, including the forensic section of the national form and any photographs of external injuries should be logged in the Police Scotland Production Book.
- All evidence should be logged consistently in the Police Scotland Production Book, including where there is a regional workforce, ensuring this is consistent across those health boards. Police Scotland suggest that health boards use the first four letters of their health board name, followed by a number sequence which will change for every piece of evidence captured and then the year the sample was taken. Example for NHS Dumfries and Galloway – DUMF/0001/22.
- Police Scotland Production Book numbers should be added to the relevant paper window production bag / tamper evident bag / filing cabinet.
- The examiner and FTN must sign the Police Scotland Production Book.

Recording of evidence – process map



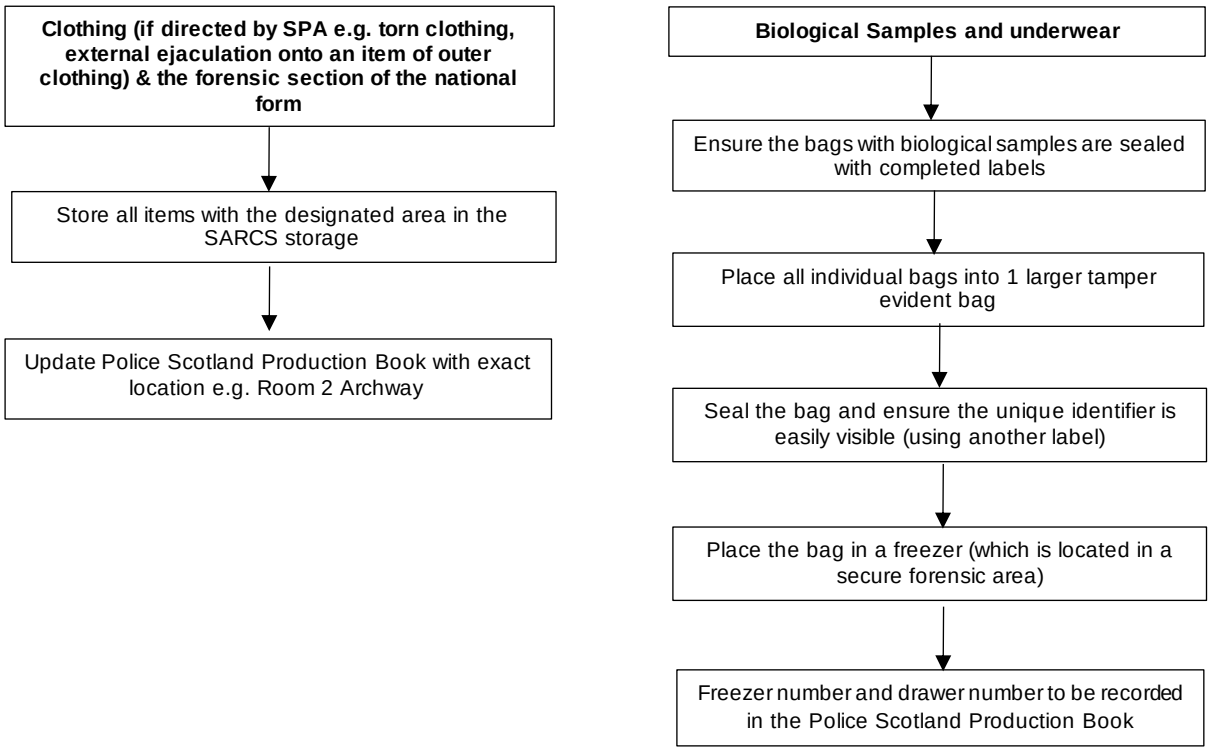
Wet evidence

- Samples should be logged in the Police Scotland Production Book.
- Samples should be stored according to the Police Scotland Production Book, using the unique identifier number so they can be easily located.
- The date the items were placed in the freezer / removed from the freezer should also be noted on the Police Scotland Production Book along with the initials of the person responsible.

Dry evidence

- Dry evidence must be stored securely in a locked cupboard with controlled access with a log book to track who has accessed the room.
- Shelving used for dry item storage should have location markers so items can be easily tracked.
- The exact location of any dry items within the room should be recorded on the Police Scotland Production Book.
- Any paper logs should be duplicated and backed up electronically.

Storage of evidence – process map



7.5 Retention period

As per the Retention Period Regulations[44], evidence (as described in section 17([45]) of the FMS Act) retained from a self-referral examination will be stored by the health board for a period of 26 months (2 years, 2 months) from the day the examination starts. Day in this context means the 24 hour period running from midnight to midnight.

Ahead of the end of the retention period, evidence will be stored by the health board until such time a request for the destruction of evidence is made by the person or a police report is made and the evidence is transferred to the police – see chapters 9.2 and 10 for further detail. See section 8 of the FMS Act on destruction of evidence for further information.

The person should be told that if a police report is made before the end of the retention period, any evidence which the health board retains will be transferred to the police.

Health boards must clearly explain the retention period and destruction policy to the person as part of the process of obtaining consent for a self-referral FME. It should also be explained that they will not be contacted at the end of the retention period,

([44]) The Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022 (legislation.gov.uk)
([45]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 17 (legislation.gov.uk)

before the evidence is destroyed, to remind them this date is approaching. NHS Inform web material on the retention period should be provided as a reference for the person, their families and organisations supporting them, to help remind them of when their individual retention period is coming to an end.

7.6 Records and sample management

Health boards are responsible for ensuring that they are storing evidence in compliance with the requirements of the FMS Act, any regulations made under the FMS Act and any other legal obligations that may apply in relation to the retention of evidence or the retention of this kind of sensitive information. Regular checks should be undertaken of the evidence retained by the health board. If it is assessed that the retention period has expired, health board staff must ensure that all evidence, including the forensic record is destroyed (see chapter 9.1 of this protocol for guidance on the destruction of evidence.)

Health boards should ensure that processes are in place to undertake these regular checks.

8. Returning evidence

Key points

- ✓ The person may request that items worn or otherwise present during the incident be returned to them following the examination.
- ✓ If a police report has been made, items cannot be returned to the person by the health board and the reason must be explained to the person.
- ✓ There is no right of return under section 7 of the FMS Act of biological samples or other evidence to the person but they may ask that they be destroyed under section 8([46]) of the FMS Act (see chapter 9).

Under section 7 of the FMS Act([47]), where evidence has been collected during the examination and stored by the health board, provided the retention period has not expired, the person may request that items worn or otherwise present during the incident be returned to them following the examination.

If a police report has been made, items cannot be returned to the person by the health board and the reason must be explained to the person. The person's rights to return of property under the Victims and Witnesses (Scotland) Act 2014([48]) are unaffected – the nuance is that they must request the return of the property from the police, and not the health board.

For self-referral, before returning evidence under section 7 of the FMS Act, health professionals must consider if:

- The item requested to be returned belongs to the person who made the request. The health board should ensure it is satisfied that the request has come from the person whom the items belong to and not from anyone else prior to returning items. If it is not satisfied, the health board must refuse the request and explain to the person why the item of evidence will not be returned to them.
- The item is safe to return to the person. There could be exceptional circumstances where an item has become biologically hazardous and it would be unsafe for it to be returned to the person. For example, if there were remnants or traces of a "date rape" drug on the item. If it established that the item is not safe to return, the health board must refuse the request and explain to the person why the item of evidence is not being returned to them.

If the decision is made that the requested item/s can be returned to the person, this should be undertaken as soon as reasonably practicable.

A decision to refuse the return of requested items must be communicated to the person as soon as reasonably practicable and the reasons for not returning items must be explained.

([46]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 8 (legislation.gov.uk)
([47]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 7 (legislation.gov.uk)
([48]) Victims and Witnesses (Scotland) Act 2014 (legislation.gov.uk)

Questions of ownership should be an extremely rare occurrence given the guidance in chapter 7 to only take limited items from the person – usually only samples and underwear.

There is no right of return under section 7 of the FMS Act of biological samples or other evidence to the person but they may ask that they be destroyed under section 8([49]) of the FMS Act (see chapter 9).

([49]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 8 (legislation.gov.uk)

9. Destruction of evidence

This chapter gives guidance on section 8([50]) of the FMS Act.

Key points

- ✓ Section 8 of the FMS Act states that evidence should be destroyed 'as soon as reasonably practicable' at the expiry of the retention period.
- ✓ A person can request the health board destroy any evidence provided by them at any time before the end of the retention period. A 30 day cooling off period will apply to this request and health boards must therefore ensure that evidence is destroyed only after the expiry of the 30 day period.
- ✓ "Evidence" does not include the healthcare record which is created for the person in relation to treating the healthcare needs of the person when they attend for an examination.

9.1 Disposal / destruction at end of retention period (if a police report / a request to return has not been made)

Section 8 of the FMS Act provides that any evidence (as described in section 17 of the FMS Act([51])) retained from a self-referral examination will be destroyed by the health board as soon as is reasonably practicable, after whichever is the earliest:

- a request for the destruction of evidence is made by the person (and 30 days have elapsed from the date of that request), or;
- where no request to destroy the evidence is received and the evidence has not transferred to the police, the expiry of the retention period 26 months (2 years, 2 months) from the day the examination starts.

This means all forensic evidence captured or taken must be destroyed with no distinction made between different types. Disposal / destruction of any biometric data taken as evidence should be carried out in accordance with the health board destruction policy on biological material disposal. All evidence should be destroyed in a secure and confidential way. Swabs and clothing should be destroyed via incineration.

Section 8 of the FMS Act states that evidence should be destroyed 'as soon as reasonably practicable' at the expiry of the retention period. Whilst the Act does not specify a timeframe for this, subject to any UK GDPR or Data Protection obligations, health boards should ensure that this happens within at least 5 working days of the end of the retention period, to ensure consistency in practice across the country. See chapter 7.6 on records and sample management.

As noted in chapter 6, at the time of the initial contact with the SARCS, the person must be provided with information about the retention period of any evidence which is

([50]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 8 (legislation.gov.uk)
([51]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 17 (legislation.gov.uk)

taken, the disposal / destruction process and how to request return of any evidence (e.g. clothing / jewellery).

Section 17 of the FMS Act makes it clear that "evidence" does not include the healthcare record which is created for the person in relation to treating the healthcare needs of the person when they attend for an examination. This healthcare record must not be destroyed at the point that evidence taken in connection with an examination is destroyed. These records should be stored, retained and ultimately destroyed in line with any legal obligations regulating the retention of such records (where applicable) and with health board policy.

9.2 Disposal / destruction before end of retention period if the person instructs

Should the person decide that following the examination they will not, at any time, be reporting to the police, they can request the health board destroy any evidence provided by them at any time before the end of the retention period. A 30 day cooling off period will apply to this request and health boards must therefore ensure that evidence is destroyed only after the expiry of the 30 day period. The exception is if the request is made in the last 30 days of the retention period, in which case any evidence must be destroyed as soon as is reasonably practicable after the expiry of the retention period (unless the person decides to report the matter to the police before the expiry of the retention period). The health board should ensure they are satisfied that the request has come from the person whose evidence is being requested to be destroyed, and not from anyone else, prior to the destruction of any evidence.

The person may also withdraw the request for the destruction / disposal of evidence before the end of the 30 day period and therefore health boards must continue to store the evidence in line with the retention period.

9.3 Deletion of forensic elements of national form from electronic record, whilst preserving NHS Scotland patient record

At the end of the retention period or the 30 day cooling off period following the request of the person for the destruction of evidence (unless a police report has been made by the person), all documentation in relation to the forensic examination, including photographs and colposcopy images, will be securely disposed of in accordance with any UK GDPR or data protection obligations and health board policy with the exception of the health care section of the national form, which will be retained as part of the person's medical record.

Since "evidence" does not include the healthcare record, if a person specifically requests the destruction of patient records, this falls outside the FMS Act and relevant health board policies should be followed.

9.4 Request for destruction after police report made

Section 8 of the FMS Act([52]) provides for situations where the person requests the destruction of evidence, or where evidence is due to be destroyed at the end of the retention period, but a police request for the evidence to be transferred to them is made around the same time. The health board must ensure the evidence is not destroyed and is transferred to the police unless it is not possible to stop the destruction of the evidence. All reasonable efforts must be made to prevent destruction of any evidence when the health board is made aware of the person having reported the matter to the police.

([52]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 8 (legislation.gov.uk)

10. Transfer of evidence to the police

Key points

- ✓ Information about how to make a police report should be provided to the person prior to the FME.
- ✓ The appointed Sexual Offences Liaison Officer (SOLO) will contact the SARCS directly to arrange the uplift of evidence, statements and forensic medical reports and to ensure their integrity and onward transfer to SPA / COPFS as required.
- ✓ The responsibility for the transfer of evidence to another police force out with Scotland will rest with the police force in which the crime is reported to have occurred, in consultation with the relevant SARCS.
- ✓ Each "special" police force takes the place of Police Scotland where they are the force that investigates the alleged offence when reported.

Following a self-referral FME, the person has the right to make a police report. This is recognised in section 9 of the FMS Act([53]). As set out at chapter 6, information about how to make a police report should be provided to the person prior to the FME, including a disclosure to the police that they previously self-referred for a FME. The person can contact the police directly via 101 or through the online reporting facility on Police Scotland's website, but may wish to seek help to do so from a relevant support service. Once contact with the police has been made by the person, a SOLO will be appointed who will engage with the SARCS as necessary to progress the investigation.

Once a police report has been made and evidence has been passed to Police Scotland, it is now a police matter and therefore evidence cannot be returned to the health board under any circumstances.

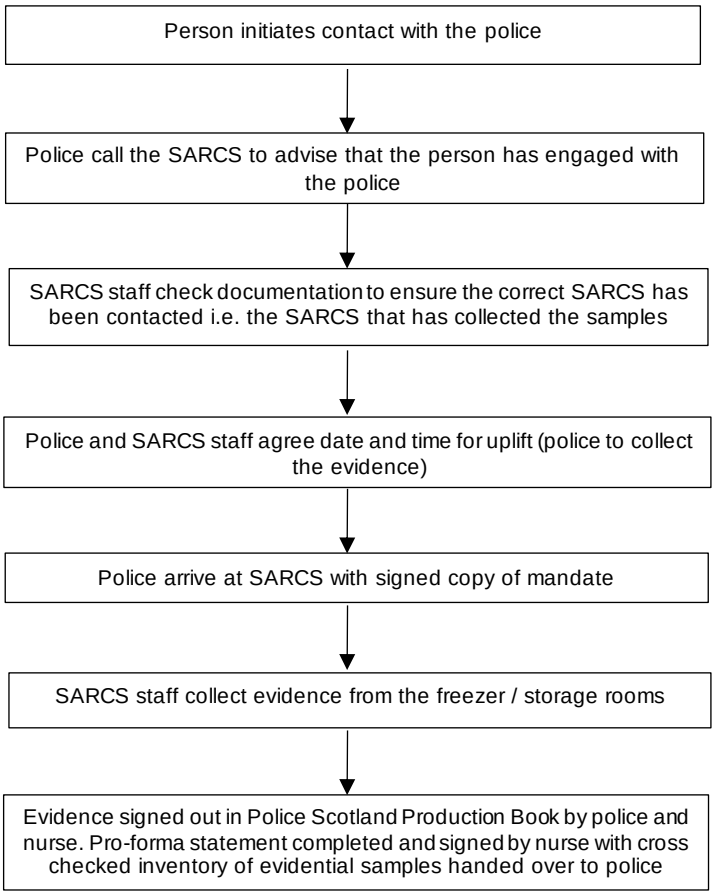
The time frame for the retention of a copy of the Sexual Offences Against Adults Forensic Form is 5 years from the date the forensic form is provided to the police, when a self-referral converts to a police referral. This will ensure that clinicians are able to prepare fully for giving evidence in court without requiring to request a copy of such form from the COPFS. This time frame does not impact the 26 month retention period for self-referral evidence when no police report is made.

10.1 Transfer of evidence to Police Scotland

The appointed SOLO will contact the SARCS directly to arrange the uplift of evidence, statements and forensic medical reports and to ensure their integrity and onward transfer to SPA / COPFS as required. The police should bring a signed copy of the mandate for forensic documentation to the SARCS facility, which will then be stored with the health record.

([53]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 9 (legislation.gov.uk)

10.1.1 Detailed process map for the transfer of evidence from SARCS to the police



10.2 Transfer of evidence to another police force out with Scotland

The responsibility for the transfer of evidence to another police force out with Scotland will rest with the police force in which the crime is reported to have occurred, in consultation with the relevant SARCS. Police Scotland have a limited remit in relation to crimes committed out with its force area in Scotland, however will deploy a SOLO if requested by the originating force or where it is in the best interest of the person to do so. This provision does not include the transfer of evidence from the FME in order to maintain the integrity of the evidence by reducing unnecessary contact or handling.

10.3 Transfer of evidence to a special police force (Ministry of Defence Police, Royal Navy Police, Royal Military Police, Royal Air Force Police and British Transport Police)

The “special” police forces mentioned have a sexual offences jurisdiction in Scotland and are therefore different from English or other police forces operating wholly out with Scotland.

Each special force takes the place of Police Scotland where they are the force that investigates the alleged offence when reported. Evidence should be transferred to the appropriate force following the processes and procedures outlined in this protocol.

11. When to report a self-referral to the police

Key points

- ✓ If, following a FME, it is established by the health professional that the person was under the age of 16, they have a professional responsibility to report to the police as soon as possible (in accordance with the National Guidance for Child Protection in Scotland 2021) ([54]).
- ✓ The professional judgement of the examiner may determine that it is not appropriate to carry out an examination on a self-referral basis and that, in exceptional cases, healthcare professionals may have to report the sexual offending to the police.
- ✓ Where information disclosed by the person before, during or after the examination at the SARCS suggests there is an immediate risk to their safety or the safety of another person (whether adult or child) or member of the public, the welfare and safety of the person and wider public must be the primary concern and overrides the self-referral process.

11.1 Examination of someone under the age of 16

Section 11 of the FMS Act([55]) sets out the arrangements where a person was offered self-referral in good faith but it later transpires that they were under 16 at the point of examination. All efforts should be made to ensure that self-referral is only offered to persons aged 16 or over. Very often, it will be swift and straightforward for a health board to determine the age of a young person seeking to self-refer, from their NHS Scotland records. If someone is not registered with a GP in Scotland, a temporary record is created by NHS 24 to allow onward referral. Any safeguarding issues identified by NHS 24 would be raised in a public protection referral. NHS 24 should highlight any concerns in their clinical summary and follow up.

As noted in chapter 3 of this protocol, NHS 24 will undertake the initial assessment of the person who is self-referring to determine their age to ensure they are referred to the correct service. Should there be any dubiety over the age of the young person once they refer to the SARCS, proof of age should be requested before a FME is undertaken. Professional judgement should apply and if unable to ascertain the age of the young person, they should be offered health services and advice but no forensic examination should be carried out until their age is confirmed, in line with local health board practice.

If, following a FME, it is established by the health professional that the person was under the age of 16, they have a professional responsibility to report to the police as soon as possible (in accordance with the National Guidance for Child Protection in Scotland 2021), as potentially there could be a child at risk. The police will then make

([54]) National Guidance for Child Protection in Scotland 2021 - gov.scot (www.gov.scot)
([55]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 11 (legislation.gov.uk)

a request for evidence to be transferred to them and arrangements should be made for this, in line with chapter 10 of this protocol.

It should be noted that even if the person was under the age of 16 when the examination was undertaken, the examination itself, the storage of evidence and anything that was undertaken by the health board in relation to any evidence collected during the examination is still valid.

In the circumstance where evidence has not been collected by the police (at the expected time), but they have been notified that an examination was undertaken for someone under the age of 16, local escalation between the health board and the police is required. Health boards should not destroy or return to the person any self-referral evidence before it is collected by the police. Notification should be sent to the relevant child protection leads within the health board, who will be responsible for calling an Interagency Referral Discussion (IRD) as outlined below.

Section 11 of the FMS Act provides that a person under the age of 16 incorrectly provided with self-referral, where the evidence has not already been destroyed prior to the discovery the person is under the age of 16, should not have the right to instruct return or destruction of evidence. Similarly, the requirement for evidence to be destroyed at the end of the retention period does not apply, should the rare scenario arise where the age issue is only identified close to the end of what would have been the retention period.

11.1.1 Convening an Interagency Referral Discussion (IRD) for someone under the age of 16

Following the understanding that a self-referral examination has been undertaken for someone under the age of 16, an IRD should be convened between health, social work and the police.

The National Guidance for Child Protection in Scotland 2021([56]), section 6.2 of the Children and Young People Clinical Pathway([57]) as well as local guidance, should be referred to for further information on IRDs.

11.2 Indicators of vulnerability for 16 & 17 year olds who self-refer

It is important, when a young person aged 16 or 17 self-refers, to carefully listen to their story. Every circumstance is unique. However, particular consideration should be given to their presentation and the verbal and non-verbal cues they provide. The National Guidance for Child Protection in Scotland 2021 should be referred to for further information on the context for child protection and 16 - 17 year olds.

The following list, whilst in no way exhaustive, provides examples of potential indicators of vulnerability that should be considered for further discussion with partners, and based on professional judgement, could indicate the need for referral to child or adult protection procedures, including an IRD.

([56]) National Guidance for Child Protection in Scotland 2021 - gov.scot (www.gov.scot)
([57]) Children and Young People Clinical Pathway https://www.gov.scot/isbn/9781804351062

The young person self-referring:

- Lacks capacity to consent to the medical;
- Is defined as a child for the purposes of the Children's Hearings System;
- Is a Looked After Child or has experience of care;
- Self-referred previously;
- Was under the influence of drugs or alcohol at the time of the offence;
- Intimate that they may have been drugged;
- Has other injuries such as bruising, which may indicate a violent assault;
- Provides an address in a different area or locality, which may indicate they have been trafficked;
- Notes any indicators of trafficking, Child Sexual Exploitation or Child Criminal Exploitation([58]);
- Any indicators of Honour Based Violence or FGM([59]).

In addition, if a young person provides information about a perpetrator and these indicators are present then Police Scotland should be contacted immediately:

- If the perpetrator is an adult family member with potential continued access to the young person and / or other children;
- If the perpetrator is a sibling of the young person;
- If the perpetrator holds a position of trust such as Teacher, Police Officer, Medical Professional, Social Worker, Youth Worker, Foster Parent, runs / involved in a club or organisation that other children attend.

11.2.1 Convening an Interagency Referral Discussion (IRD) for someone aged 16-17

In relation to risk of significant harm, if the person is aged 16-17 then an IRD would be required, and would consider whether child or adult protection and support measures were required. Where a young person aged 16-17 requires support and protection, services will need to consider which legal framework best fits each persons' needs and circumstances. It is best practice to invite someone from Adult Support and Protection to the IRD to help inform appropriate next steps as per the legal obligations under section 5(3) of the 2007 Act. Child protection procedures should be considered for those who may be victims of sexual offences aged 16-17 and who are at risk of significant harm and must be applied when there is concern about sexual exploitation or trafficking.

11.3 Exceptional cases where the police must be involved irrespective of the person's wishes (i.e. public interest)

The professional judgement of the examiner may determine that it is not appropriate to carry out an examination on a self-referral basis and that, in exceptional cases, healthcare professionals may have to report the sexual offending to the police.

([58]) Part 4 - National Guidance for Child Protection in Scotland 2021 - gov.scot (www.gov.scot)
([59]) Part 1 - National Guidance for Child Protection in Scotland 2021 - gov.scot (www.gov.scot)

As noted in chapter 3, NHS 24 will undertake an initial triage of those who are seeking to self-refer, to assess any immediate risks at the point of the initial call and appropriate involvement of the police will be initiated.

However, where information disclosed by the person before, during or after the examination at the SARCS suggests there is an immediate risk to their safety or the safety of another person (whether adult or child) or member of the public, the welfare and safety of the person and wider public must be the primary concern and overrides the self-referral process (such cases might relate to a threat to life, threats of serious harm by use of weapons or firearms([60]), abuse or further abuse and / or the exploitation of a child or any other tangible threat, risk or harm that would in any other circumstance merit an immediate response by police).

There should be full and ongoing transparency with the person (adult or child), so that they always know the circumstances in which information could be shared, what that could be, with whom, and for what purpose. The reasons for information sharing should be explained to the person with care, supporting them to understand and deal with the emotional and practical consequences of the professional duties for sharing information and may help retain a trusting professional relationship with the person.

In any event, an analysis of the proportionality of any particular information sharing which may be in contemplation should always be carried out prior to any sharing. Information should be appropriately shared with the police. Ideally, this collaboration with the person will retain safety and leave a trusting relationship undamaged.

In the situation of an immediate and imminent risk – 999 should be used in an emergency. When an immediate response is not required, 101 should be used.

11.3.1 Adult support and protection – "Adults at risk"

Where information is disclosed during, or after, the self-referral process that suggests an adult is at risk of harm (as defined in section 3 of the Adult Support and Protection (Scotland) Act 2007)([61]) (ASP Act), it is incumbent on those professionals involved to immediately instigate adult protection procedures by making a referral to the relevant Local Authority (LA), as per section 5 (3) of the 2007 Act and this should be tactfully explained to the person who has self-referred.

It should be noted that even after the examination has taken place, if the person is considered vulnerable, the examination itself, the storage of evidence and anything that was undertaken by the health board in relation to any evidence collected during the examination is still valid. Further information can be found at section 6.1 of the Adult Clinical Pathway([62]).

The three point criteria to determine if an adult is at risk is:

Point 1 - Unable to safeguard their rights, wellbeing, property or other interests;
Point 2 - At risk of harm (including self-harm);

([60]) Confidentiality - reporting gunshot and knife wounds - GMC (gmc-uk.org)
([61]) Adult Support and Protection (Scotland) Act 2007 (legislation.gov.uk)
([62]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055

Point 3 - Affected by a disability, mental disorder, illness or physical or mental infirmity, which results in them being more vulnerable to being harmed than adults who are not so affected.

For some people affected by trauma and adverse childhood experiences, the complexity, severity and persistence of post traumatic reactions may impact their ability to safeguard themselves. This requires careful consideration by practitioners when applying the three point criteria. Further information can be found in the ASP Act Code of Practice([63]).

A brief summary of the duties an LA has under the ASP Act and how they will seek to gather information is outlined below.

Section 4 of the ASP Act places a duty on LAs to make inquiries about a person's well-being, property or financial affairs if it knows or believes an adult is at risk of harm. In doing this, they may seek information from relevant bodies and agencies. Section 5 places a duty on named public bodies and office-holders to cooperate with the LA (making inquiries under section 4) and each other as required. Data sharing forms part of that co-operation.

The ASP Code of Practice states there will be services and agencies that may become involved with adults whom they know or believe as being at risk, and may therefore have cause to refer people to the LA, and as such have a direct part to play in protecting people from risk of harm. Good practice is that all relevant stakeholders will co-operate with making referrals and assisting with inquiries, not only those who have a duty to do so under the Act. Such services and agencies should be expected to cooperate with assisting inquiries and to provide services to assist adults at risk of harm. However, as they are not specifically named in the ASP Act([64]), these services / agencies should satisfy themselves of their legal powers to share such information, and the lawful basis on which they are sharing the information requested.

Section 10 of the ASP Act states a LA officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk to give the records, or copies of them, to the LA officer. In their day to day function health boards will handle and hold large amounts of information about people and LAs may use a Section 10 request to facilitate the gathering of information to support their inquiry, to determine if further action is required to protect the adult of concern. It is worth noting here that section 49(2) of the ASP Act makes refusal or failure to comply with a section 10 requirement, without reasonable excuse, an offence.

A multi-agency discussion may be held after referral to discuss the circumstances and take any decisions regarding investigation and the safety of the individual concerned.

Further information on adult support and protection can be found in section 6.1 of the Adult Clinical Pathway([65]).

([63]) Adult Support and Protection (Scotland) Act 2007: Code of Practice (www.gov.scot)
([64]) Adult Support and Protection (Scotland) Act 2007 (legislation.gov.uk)
([65]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055

Vulnerable adults

In cases where a self-referring adult is considered to be vulnerable, consideration must be given to the most effective way to minimise risk to the adult while fulfilling statutory requirements of safeguarding legislation including the Adult Support and Protection (Scotland) Act 2007 and Adults With Incapacity (Scotland) Act 2000([66]).

In cases where it is assessed that the self-referring adult lacks capacity to consent to a FME and there is no proxy with welfare authority to consent, a Medical Treatment Certificate authorising certain treatment under section 47, of the Adults with Incapacity (Scotland) Act 2000, must be completed.

Further information on vulnerable adults can be found in section 6.1 of the Adult Clinical Pathway.

Other vulnerabilities

There may be domestic violence cases where the offence which has led to the self-referral for FME is part of recurrent harm experienced by the adult. In such cases and where ASP criteria is not met, support to access relevant services should be offered and local risk management procedures followed.

In all cases, the person has the right to not engage with the police in relation to the sexual offence that led them to self-refer and this should be sensitively explained in a manner that maintains their confidence in the self-referral process and provides reassurances in the anonymity of the self-referral process before, during or after any exceptional circumstance leading to a police disclosure.

In exceptional cases where a person's wish to self-refer has to be overridden, the police must obtain a warrant (outside of the FMS Act framework) to obtain samples and other evidence, from the health board. The health board should only transfer self-referral evidence to the police where the person instructs this or where the police have a court order.

11.4 Special guidance applies e.g. female genital mutilation (FGM), suspicion of human trafficking, or child sexual exploitation re. 16 or 17 year old

For those aged 16-17 who may have experienced rape or sexual assault, child protection procedures should be considered; and must be applied following an IRD, when there is concern regarding sexual exploitation or trafficking. Further information can be found in section 2.4 of the Adult Clinical Pathway([67]) and section 4 of the Children and Young People Clinical Pathway([68]). Further advice on child sexual exploitation can be found in the National Guidance for Child Protection in Scotland 2021([69]).

([66]) Adults with Incapacity (Scotland) Act 2000 (legislation.gov.uk)
([67]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055
([68]) Children and Young People Clinical Pathway https://www.gov.scot/isbn/9781804351062
([69]) National Guidance for Child Protection in Scotland 2021 - gov.scot (www.gov.scot)

Additional information on human trafficking can be found in the Human trafficking guidance for health workers([70]) including advice to help frontline health professionals know what action to take if they have concerns.

Information on FGM can be found in section 2.1 of the Adult Clinical Pathway([71]) and the FGM Statutory Guidance([72]).

If there are circumstances that cause concern about other individuals at risk this would require to be shared with the police under public interests.

11.5 Person wishes to engage police mid-way through self-referral process

While the person is in attendance at the SARCS and wishes to engage with the police at that point, they should be supported to do so.

Engagement with the police can be made by the SARCS staff and the process should continue as per the Adult Clinical Pathway([73]). If samples have already been taken, the transfer of these to the police should be undertaken in line with chapter 10 of this protocol.

11.6 Management of persons who recurrently self-refer but does not want police involvement

Staff are required to flag concerns to their senior clinical team regarding persons who they are aware repeatedly present to the SARCS.

It should be explained that there are concerns for the person's safety and that the police may need to be involved in recognition that information sharing between agencies may be in the persons best interests.

On rare occasions it may be agreed to conduct the FME and to involve the police afterwards.

11.7 Destruction of evidence for an incorrect self-referral

As mentioned above in chapter 11.1, where it has been identified a person has incorrectly self-referred, there is no requirement on health boards under the FMS Act to destroy evidence captured in an incorrect self-referral. After being notified of the incident, the criminal justice authorities may determine that evidence is not needed so it is imperative that it is transferred to the police expeditiously, and any question of destroying evidence would be for them in line with standard criminal justice practices.

11.8 Intelligence sharing with the police

Intelligence sharing with the police must be carefully considered by health care professionals to ensure the integrity of the self-referral process is not compromised by

([70]) Human trafficking guidance for health workers - gov.scot (www.gov.scot)
([71]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055
([72]) Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 (legislation.gov.uk)
([73]) Adult Clinical Pathway https://www.gov.scot/isbn/9781804351055

inadvertently providing intelligence that directly leads to the identification of the person who has self-referred and wishes to remain anonymous. It is equally important to ensure that healthcare professionals do not provide what would essentially be deemed by police as a third party report of a crime that would necessitate an investigation and contact with the person who has self-referred. Professional judgement should apply and if the healthcare professional thinks that information the person has disclosed may provide intelligence which could be provided to Police Scotland, views should be sought from the individual through a conversation with them about the sharing of any intelligence, and the views of the individual recorded as part of the conversation between them and the healthcare professional.

Police Scotland provide training on intelligence sharing including how to use the Partners Intelligence Portal system to share relevant intelligence.

For further information please contact Police Scotland at SCDPPURapeandSexualCrime@scotland.police.uk.

12. Non-standard scenarios

Key points

- ✓ Section 1(2) of the FMS Act ([74]) allows a resident of one health board area to access self-referral from another health board.
- ✓ The FMS Act allows for self-referral to be provided to a person who is not ordinarily resident in Scotland.
- ✓ Someone who has experienced sexual offending may seek to bring non-criminal (civil) legal proceedings against the alleged offender. Legal advice should be taken if evidence is formally requested for use in civil proceedings.
- ✓ If a person presents at a SARCS without an appointment, provided there is no one being seen within the facility at this time, the person should be welcomed into a quiet space where basic details are taken around whether they can undergo a FME.

12.1 Self-referral examination takes place at a different health board from the person's host health board

Section 1(2) of the FMS Act ([75]) allows a resident of one health board area to access self-referral from another health board. This might be because they are temporarily in the other area (for example on holiday), someone chooses to access the service from another area to avoid local sensitivities or because the home health board is unable to provide self-referral services at a particular time. NHS 24 will refer a person to the most appropriate examination facility and it is imperative that nobody is made to feel that they are accessing immediate support from the "wrong" facility. Section 14 of the FMS Act([76]) requires health boards and national bodies to cooperate with each other.

The handling of immediate needs by the best placed health board to offer support is in line with existing duties that health boards have to provide accident and emergency treatment to people regardless of their residence status. It is however appropriate that long term health care needs (such as access to on-going psychological therapy or support) are addressed by the health board where the person is ordinarily resident. The FMS Act nonetheless allows a person to return, at their request or on the recommendation of the health board that has provided self-referral services, for follow-up care. This might be for example to check up on any injuries.

As this is a national service, the person should receive the same high standard of service regardless of where they present or where the incident took place. For example, if a student attends university in a different health board area and returns to the family home after having been raped or sexually assaulted, they will be able to access the service in their home area.

([74]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 1 (legislation.gov.uk)
([75]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 1 (legislation.gov.uk)
([76]) Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Section 14 (legislation.gov.uk)

It is the role of the NHS staff to look after the health and well-being of the person. If there are concerns regarding the person's safety, processes as per chapter 11.3 of this protocol should be followed. Support and onward referral to the appropriate NHS services such as mental health, sexual health or the person's GP should be made.

12.2 Offering self-referral in respect of crimes committed outside Scotland

The FMS Act allows for self-referral to be provided to a person who is not ordinarily resident in Scotland. There is no requirement for the alleged sexual offence to have taken place in a particular health board area or in Scotland.

As per the guidance above, immediate needs are for the best placed health board to address but long term health care needs are for the healthcare system of the place where the person is ordinarily resident.

Processes are in place for the transfer of samples to police forces outside Scotland as per chapter 10.2.

12.3 Civil action for rape or sexual assault

Someone who has experienced sexual offending may seek to bring non-criminal (civil) legal proceedings against the alleged offender. Self-referral evidence should only be released to parties to such legal proceedings pursuant to a binding legal requirement. Legal advice should be taken if evidence is formally requested for use in civil proceedings.

12.4 Sexually Transmitted Infection (STI) results following examination that may be of potential forensic significance

If following the receipt of STI results, which provide further evidence of criminal behaviour, the examiner should create a continuation sheet, as part of the forensic documentation and update accordingly with any additional information which may be pertinent to a criminal case, if a police report is subsequently made. The continuation sheet should be kept with the principal forensic section of the national form stored securely in the designated area.

12.5 Person attends SARCS without an appointment

In the majority of cases, the person will have made an appointment with SARCS staff to attend the facility at an agreed time for the FME.

A person presenting at a SARCS without an appointment should be rare. In the event that this occurs, if there is no one being seen within the SARCS facility at this time, the person should be welcomed into a quiet space where basic details are taken. If it is ascertained that they meet the criteria to undergo a FME then a discussion around whether they wish to be seen as a self-referral or to report to the police should be had.

If they wish to have a FME as a self-referral then this will be arranged as soon as practicable. If after discussion they wish sexual health input and / or support only, this

will be facilitated. If they do not meet the criteria to undergo a FME, ongoing care and appropriate support will be discussed.

If the SARCS is unable to provide a FME at the time the person presents, an alternative appointment should be offered as soon as possible and the person should be supported to return to a place of safety in the meantime. It should also be explained that one of the clinical team will contact them to explore their choices and ensure their safety and wellbeing.

12.6 Person self-refers for an examination but a family member / friend reports the incident to the police

This is considered as third party reporting and therefore once the police are made aware of a crime, they have a duty to approach the person who the incident happened to and ask if they want to make a police report or if they have any information regarding the incident that would have a wider public impact. The person has a right to decline making a police report at this stage and the principles of the self-referral process are maintained.

13. Glossary

ASP	Adult Support and Protection
CCTV	Closed Circuit Television
CMO	Chief Medical Officer
CNORIS	Clinical Negligence and Other Risks Indemnity Scheme
COPFS	Crown Office and Procurator Fiscal Service
FFLM	Faculty of Forensic and Legal Medicine
FGM	Female Genital Mutilation
FME	Forensic Medical Examination
FMS	Forensic Medical Services
FTN	Forensically Trained Nurse
FP	Forensic Physician
GP	General Practitioner
IRD	Interagency Referral Discussion
LA	Local Authority
NHS	National Health Service
SARCS	Sexual Assault Response Coordination Service
SOE	Sexual Offence Examiner
SOLO	Sexual Offences Liaison Officer
SPA	Scottish Police Authority
SR	Self-Referral
STI	Sexually Transmitted Infection

14. Who has developed the guidance

This guidance was developed by the National Protocol and Retention Period Task and Finish Group and Self-Referral Subgroup, and approved by the Chief Medical Officer's Taskforce for the Improvement of Healthcare and Forensic Medical Services for Victims of Rape and Sexual Assault.([77])

14.1 National Protocol and Retention Period Task and Finish Group Membership

Name	Role and Organisation
Jillian Galloway	Chair of the Self-Referral Subgroup, Head of Health and Community Care Services, Angus Health and Social Care Partnership
Carol Rogers	Member of the Self-Referral Subgroup, Lead Forensic Scientist, Scottish Police Authority
Lucy Dexter	Member of the Self-Referral Subgroup, Deputy Unit Head, CMO Taskforce, Scottish Government
Stefani Dinwoodie	Member of the Self-Referral Subgroup, Policy Officer, CMO Taskforce, Scottish Government
Carole Robinson	Member of the Self-Referral Subgroup, Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Implementation Team Leader, CMO Taskforce, Scottish Government
Stephen Morris	Member of the Self-Referral Subgroup, Detective Inspector, Police Scotland Specialist Crime Division National Rape Task Force
Angela Cunningham	Member of the Self-Referral Subgroup, Justice Healthcare Manager, NHS Tayside
Gaynor Steele	Member of the Self-Referral Subgroup, Lead Nurse, Sexual Assault Service, NHS Greater Glasgow & Clyde
Dr David Carson	Member of the Self-Referral Subgroup, Lead Clinician, National Police Care Network and Clinical Lead, Forensic Physician Service, NHS Lothian
Alisdair MacLeod	Member of the Self-Referral Subgroup, Procurator Fiscal Depute, Policy Division, Crown Office and Procurator Fiscal Service

([77]) Taskforce for the improvement of services for adults and children who have experienced rape and sexual assault - gov.scot (www.gov.scot)

Gaby Coia	Specialist Nurse, Archway, NHS Greater Glasgow and Clyde

14.2 Self-Referral Subgroup Membership

Name	Role and Organisation
Tansy Main	Unit Head, CMO Taskforce, Scottish Government
Vicky Carmichael	Acting Unit Head, CMO Taskforce, Scottish Government
Adam Bircham	Policy Officer, CMO Taskforce, Scottish Government
Rod Finan	Social Work Adviser, Scottish Government
Sandy Brindley	Chief Executive, Rape Crisis Scotland
Lesley Swanson	Team Leader, Child Protection Team, Scottish Government
Wendy Copeland	Self-Referral Policy and Project Manager, CMO Taskforce, Scottish Government
Debbie Ambridge	Service Manager for the West of Scotland Sexual Assault Service & Greater Glasgow & Clyde Police Custody
Dr Deborah Wardle	Clinical Lead for Archway, NHS Greater Glasgow & Clyde
Janice Houston	Associate Nurse Director, NHS 24
Ann McArthur	Adult Support & Protection Adviser, Acute Services, NHS Ayrshire and Arran
Lynne Campbell	Associate Director of Nursing (Acute), NHS Fife
Julia Penn	Sexual Health Nurse, Team Leader, NHS Grampian
Lindsay MacDougall	Acting Head of Child Protection Unit, Scottish Government
Liz Murdoch	Youth Justice, Team Leader, Scottish Government
Dr Alfarah Kunwar	Forensic Physician, NHS Tayside and Lead Clinician, North of Scotland Alliance Custody Healthcare and Forensic Sciences

Dzidzai Chipuriro	Clinical Nurse Manager, South East Healthcare and Forensic Medical Services for People in Police Care, NHS Lothian
Hazel Somerville	Gender Based Violence and Sexual Assault Service Lead, NHS Forth Valley
Ann McArthur	Adult Support and Protection Lead, NHS Ayrshire and Arran

15. Review of the protocol

The protocol will be kept under close review and will be updated to reflect any changes that are relevant to the guidance / legislation included in this document.