

## Response ID ANON-9H4B-UCSZ-V

Submitted to **Equally Safe: A consultation on legislation to improve forensic medical services for victims of rape and sexual assault**  
Submitted on 2019-05-06 17:52:29

### Questions

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

Yes

**Please provide reasons for your response in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

We are supportive overall of the move away from the previous Memorandum of Understanding between the Police and health boards / partnerships and feel that improvement and consistency is required. However we feel greater clarity is required on what any legislation would involve or require of health boards, and particularly care to avoid perverse outcomes, for example, where individuals do not wish to have an examination, change their minds or have issues with capacity /consent.

Any legislation should be principle based and reflect human rights, and account should be taken of consent and capacity issues.

Some direction may be beneficial in an accompanying Code of Practice or best practice guidance, alongside any legislation. This should clearly identify who undertakes an examination, where and how. It is important to highlight the complexities around this issue.

Consideration could be given to requiring specific training for doctors in this area similar to the section 22 doctor provisions in the Mental Health (Care and Treatment) (Scotland) Act 2003. This stipulates that only doctors who have completed appropriate training and are certified by the local NHS Board are able to act under the law.

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

No answer

**Please provide reasons for your response in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

The MWC has no specific expertise in this area.

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

No answer

**Please provide reasons for your response in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

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

No answer

**If yes, please outline possible impacts in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider. :**

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

See below

**Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

We would envisage any legislation being principle based, reflecting human rights including the values of the UN Convention on the Rights of the Child (UNCRC) and the UN Convention on the Rights of Persons with Disabilities (UNCPRD). The law should also reflect that victims are generally able to make informed decisions for themselves, and where this is not the case the law should make clear how decisions should be made, drawing on the approach of the UNCPRD – that the will and preferences of adults are included and reflected in decisions, and that there should be support for decision making. Guidance on Supported Decision Making is available in the MWC publication - [https://www.mwscot.org.uk/media/348023/mwc\\_sdm\\_draft\\_gp\\_guide\\_10\\_\\_post\\_board\\_\\_jw\\_final.pdf](https://www.mwscot.org.uk/media/348023/mwc_sdm_draft_gp_guide_10__post_board__jw_final.pdf) Wider issues around dignity and privacy could be added to any best practice guidance or Code of Practice.

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

Yes

**If yes, please outline possible impacts in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider. For example, any particularly relevant general comments, recommendations or other guidance by treaty monitoring bodies on the interpretation and implementation of treaties – and any relevant international obligations not mentioned in this consultation paper.:**

As set out in earlier responses, the implications of the UN Convention on the Rights of Persons with Disabilities, particularly Articles 12 and 16, require specific and detailed consideration in drafting legislation and associated guidance. ECHR Article 8 is also clearly relevant.

We would suggest a statement of principles in the legislation which draws on key human rights obligations would be helpful, drawing on examples such as the current Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003.

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

Yes

**Please provide reasons for your response in the box below and, if Yes, outline what special provisions might be required. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

The position of children and young people with learning disabilities should be considered in more detail. There is a strong body of research indicating high levels of child protection issues in this group.

As with adults with incapacity issues, consideration of support, assessment of capacity, communication and training for professionals would be key.

Any associated guidance should reflect this.

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

No

**If yes, please outline possible impacts in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider. For example, any particularly relevant general comments or other publications by the International Committee on the Rights of the Child.:**

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

Yes

**If yes, please outline possible impacts in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider. :**

We are particularly concerned with the protected characteristic of disability, given our remit in relation to mental disorder.

In relation to those individuals whose ability to consent to a forensic medical examination may be absent or impaired, we would want any law to reflect this and provide safeguards. Again any changes should reflect UNCRPD. The consultation does not recognise this as an issue.

It should also reflect the role of decision making proxies such as welfare Power of Attorneys or welfare guardians.

In particular, there should be consideration of the appropriateness of a guardian's medical powers in relation to a forensic medical examination, and the extent to which a doctor may use the treatment authority provided by section 47 of the Adults with Incapacity Scotland Act 2000 for this type of examination. We have additional guidance to this on our website, the AWI Code of Practice Volume 3 (third edition) should also be referenced.

Further issues such as assessment of capacity, who does this if there is no attached psychiatry input, and the possibility of refusal to an examination by a guardian also need consideration.

Again, it may be helpful to include such topics in guidance.

The nature of a mental health or learning disability also throws up the issue of communication with an adult who lacks capacity. Consideration should be given to language used, knowledge of sexual relationships and discerning the difference between what constitutes a good or bad relationship. Those undertaking any forensic medical examination need to be mindful of these issues and be comfortable with adults with learning disabilities undertaking sexual relationships. They should also be clear on levels of understanding and ensure not to patronise or infantilise the adult. Otherwise these become barriers to the process.

These factors strengthen the argument for relevant training. There is a wide range of research in this area.

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

No

**If yes, please outline possible impacts in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider. :**

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

Yes

**If yes, please outline possible impacts in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider. :**

Aside from the literal distances involved in victims travelling from home to an examination, there may also be a lack of appropriate health sites to conduct examinations and relevant personnel. Could this be audited? This could lead to a requirement to state explicitly where examinations should not take place so that inappropriate venues are not used.

We are aware that recruitment and retention of mental health staff in particular, in rural areas is an issue. Clarification should be sought on this for this area of work.

Out of hours services require to be thought about generally, but in island and rural communities, often dependent on ferry links, this could be more difficult.

These considerations need to link with the proposed pathway.

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

No

**If yes, please outline possible implications in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

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

No

**If yes, please provide comments in the box below. Please be as specific as you can and include any resources or references to evidence on this topic that we should consider.:**

## **About you**

**What is your name?**

**Name:**

Colin McKay

**What is your email address?**

**Email:**

colin.mckay@mwscot.org.uk

**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

Mental Welfare Commission for Scotland

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response only (without name)

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

## **Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**