

NHS Orkney – Forensic Medical Service
Data Protection Notice

Data Protection Notice

This data protection notice relates to the Forensic Medical Service(FMS). It applies to personal information of individuals aged 16 or over who are referred by Police Scotland or who self-refer for a forensic medical examination (FME) following a rape or sexual assault.

Specifically, this notice applies to personal information processed as part of an FME to support your health and wellbeing and identify your healthcare needs. It also applies to your personal information being used to support any criminal investigations and/or future prosecutions for Police Scotland referrals, or self-referrals (should you wish to report the incident to Police Scotland at a later date).

Data Controllers

For personal information processed in order to support your health and wellbeing and identify your healthcare needs, NHS Orkney is the data controller:

NHS Orkney
The Balfour
Foreland Road
Kirkwall
Orkney
KW15 1N

For personal information collected in order to support any criminal investigation and future prosecution (should you wish to later report the incident to Police Scotland if you have not already done so), NHS Orkney is the data controller. Where the incident has been reported to Police Scotland, the information will be passed to Police Scotland and at that point NHS Orkney will no longer be the data controller – it will instead be Police Scotland:

The Chief Constable of the Police Service of Scotland
Tulliallan Castle
Kincardine
Fife
FK19 4BE

What types of personal information do we process?

NHS Orkney will process your personal information, including sensitive information as part of the FME. For example - name, address, date of birth, postcode and information about your health such as risk of pregnancy and details of onward healthcare referrals made.

Only forensic information collected as part of the FME will be used to support any criminal investigation and future prosecution (for self-referral should you wish to report the incident to Police Scotland at a later date). Forensic information includes details of any injuries or health complications you suffer as a result of the assault which is gathered as part the FME. We will not otherwise share your health information unless legally required to do so. This information will be kept separately from your master health record.

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Our purposes for processing your personal information

NHS Orkney will process your personal information for the following purposes:

- To support your health and wellbeing and identify your healthcare needs
- To collect evidence that would support any criminal investigation and future prosecution (for self-referral should you wish to report the incident to Police Scotland at a later date)

Our lawful basis for processing personal information

NHS Orkney will only process your personal information where data protection law allows us to. Under data protection law, we have responsibilities as a 'data controller'. A data controller decides why and how we use personal information. This means that we need to have a legal basis when using personal information.

Our legal basis for using personal information is that the information is needed for performing a task we're carrying out in the public interest, or exercising official authority vested in us.

Our legal basis when we are using more sensitive types of personal information, including health information, is that the information is necessary for the purposes of medical diagnosis and the provision and management of health care and treatment.

Where we collect evidence that would support any criminal investigation and future prosecution (should you wish to report the incident to Police Scotland at a later date), we process your personal information on the basis that it is necessary for us to perform obligations on us to carry out this activity which have been allocated to us in legislation. Our legal basis when we are using more sensitive types of personal information for this activity is that it is again necessary for performing these obligations under legislation and it is for law enforcement purposes.

Who provides the personal information?

Personal information will be provided either:

- directly by you when you self-refer to the service or where you are referred to us by Police Scotland; and
- on occasions where you are referred to us by Police Scotland, they will share information which is necessary to support you and Police Scotland's ongoing investigation.

Sharing of personal information

NHS Orkney will only share your information where there is a clear legal basis to do so:

- We will share limited anonymous information with Public Health Scotland for the purpose of reporting on the operation of the Forensic Medical Service;
- We may share information with relevant services/agencies as part of onward health related referrals;
- Information provided by you will not be shared with Police Scotland unless you decide to report the incident to Police Scotland. The exceptions to this are if you are:
 - under 16 years of age;
 - aged 17 or 18 years old and under the care of social work;
 - thought to be in imminent danger.

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- originally referred to the service by the police.

We may also share information when there is a perceived threat to life to someone other than yourself. All health professionals are bound by the duty of confidentiality and their own professional regulatory body.

Security of your personal information

NHS Orkney takes care to ensure your personal information is only accessible to authorised individuals. Our staff have a legal and contractual duty to keep personal health information secure and confidential. Set out below are some example security measures:

- Access to your personal information is restricted to those who have a need to access it in order to carry out their legitimate duties.
- All staff undertake mandatory training in Data Protection and IT Security.
- Organisational policy and procedures on the safe handling of personal information.

Retaining personal information

NHS Orkney will retain personal information collected to support your health and wellbeing and identify your healthcare needs in line with the Scottish Government Records Management Code of Practice (Scotland) 2020.

NHS Orkney will retain personal information collected to support any criminal investigation and future prosecution until this is passed to Police Scotland (where the incident has been reported to Police Scotland). In the case of self-referrals, we will retain it for 26 months should you wish to report the incident to Police Scotland at a later date n (unless, as described below, you request that it be destroyed before then).

Your rights

You have a number of rights under the forensic medical service along with data protection law rights. Specifically:

FMS Rights

- **The right to be informed:** we will explain fully what may happen to evidence collected during a forensic medical examination.
- **The right to return of evidence:** you have the right to request that any evidence gathered during the forensic medical examination is returned to you (that is, items which were worn or otherwise present during the incident which gave rise to the examination, but does not include for example, samples)
- **The right to destruction:** you have the right to request that evidence is destroyed and will be allowed a 30 day cooling off period to allow you to change your mind.

Data Protection Rights

- **The right to be informed:** we explain how and why we use your personal information;
- **The right of access:** you have the right to access your personal information;
- **The right to rectification:** if the personal information we hold about you is inaccurate or incomplete, you have the right to have this corrected;
- **The right to restrict processing:** you have the right to request that further processing of your personal information is restricted;

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- **The right to erasure:** you have the right to request that your personal information is erased.

Some rights are not absolute and only apply in certain circumstances. For more information on your information rights please see: www.ico.org.uk. If you would like to exercise your rights, you can contact the below team:

Data Protection Officer
NHS Orkney
The Balfour
Foreland Road
Kirkwall
Orkney
KW15 1NZ
Ork.dp@nhs.scot

Complaints about how we process your personal information

If you are unhappy about how NHS Orkney processed your personal information you can also contact the Patient Experience Officer:

Patient Experience Officer
NHS Orkney
The Balfour
Foreland Road
Kirkwall
Orkney
KW15 1NZ
Ork.feedback@nhs.scot
Tel. 01856 888100

You have the right to make a complaint to the Information Commissioner's Office:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113
<https://ico.org.uk/make-a-complaint/>