



Law Society
of Scotland



Stage 1 Briefing

Female Genital Mutilation (Protection and Guidance) (Scotland) Bill

16 December 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We previously responded to the Scottish Parliament's Equalities and Human Rights Committee's (the Committee) Call for Evidence on the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (the Bill).¹ The Committee published its Stage 1 Report² on the Bill on 5 December 2019.

We have the following comments to put forward for consideration at the Stage 1 debate which is scheduled to take place on Wednesday 18 December 2019.

While supporting the Bill, we highlight two specific aspects of the Bill which include:

- a fundamental need to develop planning on how to raise awareness of the Bill's provisions. That has implications for education and training which is wider than merely informing those potentially affected by Female Genital Mutilation (FGM). It includes those working within public sector who may become aware of those affected or are at risk of FGM.
- Considering the implications of legal aid and the availability of solicitors to support those involved with the new orders being created by the Bill.

If you would like to discuss this paper, or if you would like more information on the points we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

General Comments

We welcome and support the aims of the Bill that seek to:

¹ https://www.parliament.scot/S5_Equal_Opps/FGMPG_8_LAW_SOCIETY_SCOTLAND_SUB.pdf

² <https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2019/12/5/Female-Genital-Mutilation--Protection-and-Guidance---Scotland--Bill---Stage-1-Report#Background>

- strengthen the available protections in Scotland by introducing Female Genital Mutilation Protections Orders (FGM protection orders) that include conditions to protect girls and women at risk from FGM and which can be designed to suit the affected individual
- provide for the publication of Statutory Guidance by Scottish Ministers on FGM to those exercising public functions.³

FGM is an international issue involving harmful and discriminatory practices that violate the human rights of women and girls with significant effects on their physical, sexual and mental health and wellbeing. It is an “illegal and unacceptable practice.”⁴

Given its complex and substantially hidden nature, solutions are required to address such harms to prevent them arising and to support those already affected from continuing harm.

The Bill is not the first step taken by the Scottish Parliament on FGM. We suggest that the Bill should be complementary to other measures, not necessarily FGM specific, currently existing within the Scottish criminal justice system. The Bill builds on the Prohibition of Female Genital Mutilation (Scotland) Act 2005⁵ and implements Scotland’s commitment in the National Action Plan to Prevent and Eradicate FGM (published in 2016 and running to 2020).⁶

“to foster an environment of prevention in Scotland and to improve the welfare and quality of life of FGM survivors, with a focus on the linked areas of prevention, protecting girls at risk of FGM; and provision of appropriate support and sensitive services for survivors of FGM.”

It may be challenging to demonstrate exactly how effective the Bill will be in due course, especially as it has been hard to identify any gaps within the existing Scottish legislation that fully justify its introduction. However, if the Bill’s introduction of the FGM protection orders is coupled with planning for education and training, it will do much to demonstrate an ongoing commitment to deal with FGM practices and help support those at risk. That is despite the Bill’s Financial Memorandum estimating that there may only be approximately nine orders sought and obtained annually.⁷

Education and Training regarding FGM

There are significant implications arising from the Bill for the communities most affected by FGM in respect of communication.

³ Adopting the approach of England and Wales Paragraph 11 of the Stage 1 Report

⁴ Paragraph 4 of the Bill’s Policy Memorandum

⁵ <http://www.legislation.gov.uk/asp/2005/8/contents>

⁶ <https://www.gov.scot/publications/scotlands-national-action-plan-prevent-eradicate-female-genital-mutilation-fgm/>

⁷ Paragraph 29 of the Stage 1 Report

These difficulties are illustrated by the “acknowledged” lack of available data for Scotland as to the actual incidence of FGM. The Stage 1 Report acknowledged that the Scottish Refugee Council had published a report in 2014 estimating the location and number of Scottish communities affected by FGM to number around 24,000 people who had been born in a country where FGM was practised to some extent.⁸ That may provide some indication as to the scale of the issue.

What that does mean is the importance of advance strategic planning by Scottish Government. That needs to raise awareness of the Bill with its creation of these FGM protection orders within the relevant cultures and communities. Just how challenging that will be is compounded by how best to achieve actual and effective communication that reaches out to those most at risk. For many, their first language may not be English, and they may have limited, if any, engagement with the relevant Scottish authorities such as the NHS or police. How is that communication to be addressed?

Considering too what communities and audiences should be targeted is vital with appropriate long-term funding⁹ made available to support the programmes specifically directed at awareness raising, the location and availability of information on public forum and identification of the organisations which can assist. Seeking to work together with the relevant communities and involving them directly may indeed be the best way to achieve the desired results.

Looking to the school curriculum as one means of communication and information provision regarding the Bill will target our young people which should form part of the Scottish Government’s policy of Getting it Right for Every Child (GIRFEC) and should include all those involved with the present child protection procedures. That will include education dealing with “relationships, sexual health and parenthood”¹⁰ demonstrating how FGM is not acceptable.

Providing information of the Bill’s provisions is not enough as there needs to be clear guidance as to whom, how or where to report plus seeking how best to build those affected’ s confidence when they seek to take any relevant action in relation to a FGM protection order. Sensitivity and care are required to ensure that the development of relevant guidance and training from whatever source “minimises the risk of racialisation and stigmatisation” recognising the need for campaigns to target the communities most at risk.¹¹

Anonymity is not specifically provided for in the Bill for such victims which is in contrast to the position for victims in England and Wales. There is much merit in including specific provisions in the Bill on anonymity that would set out clarity and certainly for victims as to the legal protection that will be provided. We support the Committee’s view in the Stage 1 Report to ensure that “the views and wishes of victims and

⁸ Paragraph 146 of the Stage 1 Report

⁹ Paragraph 77 of the Stage 1 Report

¹⁰ Paragraph 95 of the Stage 1 Report

¹¹ Paragraph 26 of the Stage 1 Report

survivors [are held as] paramount andanonymity on request is a reasonable expectation for victims of FGM.”¹²

Specific legislation on anonymity would fully meet this need.

Legal aid

Provision of and access to legal aid is important if the aims of the Bill are to be achieved. Exactly what the demand for legal aid arising under the Bill is unknown. However, there is a need, as we stated in our evidence, “to have the lawyers to provide the legal aid in order to ensure that people can access justice wherever in the country advice and assistance might be required.”¹³ This may well form part of results of the recent Scottish Government review of legal aid¹⁴.

Statutory Guidance

We welcome the commitment in the Bill to issue statutory guidance since it focuses on addressing the responsibilities of those that the guidance will affect in due course. It should then clarify for different organisations exactly what their responsibilities regarding the sharing of information will comprise on and in raising awareness of FGM.

There should be a commitment to consult in advance with all relevant organisations before such guidance is published. Outlining how the Scottish Government plans and intends to conduct that consultation would be helpful even at this stage.

¹² Paragraph 118 of the Stage 1 Report

¹³ Paragraph 100 of the Stage 1 report

¹⁴ <https://consult.gov.scot/justice/legal-aid-reform-in-scotland/>



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