



Law Society
of Scotland

Stage 3 Briefing

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

17 March 2020



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 Call for Evidence on the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (the Bill).¹

We have the following comments to put forward for consideration at the Stage 3 debate scheduled to take place on Thursday 19 March 2020:

- Practical support for the Bill
- Legal advice/access to justice
- Anonymity
- Education and training

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

General

It is important to remember that the purpose of the Bill is to strengthen the existing law² on Female Genital Mutilation (FGM). It does not start from scratch. It seeks:

¹ <https://www.lawscot.org.uk/media/363773/2019-08-30-crim-call-for-evidence-female-genital-mutilation-protection-and-guidance-scotland-bill.pdf>

² Female Genital Mutilation (Scotland) Act 2005

For further information, please contact:

Gillian Mawdsley
Policy Executive
Law Society of Scotland
DD: 01314768206
gillianmawdsley@lawscot.org.uk

- to extend protection to those at risk by introducing female genital mutilation protection orders (the orders) and
- to provide statutory guidance in relation to such orders.

FGM is an international issue which is an “illegal and unacceptable practice.”³ It involves harm and discriminatory practices that violate the human rights of women and girls. The Bill builds on the existing measures by focusing on linked areas of prevention, protecting those at risk and by providing support and sensitive services. It follows Scotland’s commitment in the National Action Plan to Prevent and Eradicate Female Genital Mutilation⁴ (FGM) published in 2016 where that recognises there are:

“no quick fixes to tackling FGM and [having it eradicated from Scottish society]; it is a complex and hidden issue, and there is no single solution to ending it.”⁵

Our only concern regarding the Bill is just how to measure and therefore to ensure its effectiveness once the Bill is implemented. It is hard to identify obvious gaps existing within the existing Scottish legislation on how to eliminate FGM though the introduction of the orders will increase the raft of provisions which are available.

What is vitally important is not only about the message that the Bill sends. The number of the orders that may be created (which provisions currently exist albeit in a similar but slightly different form in England and Wales) may be small as was recognised by the Bill’s Financial Memorandum where it anticipated that there may be only nine of these orders sought in any year. We would suggest that though that seems relatively few, it still means protection of a victim. The significance of the Bill and these new provisions of course lie in the impact of obtaining even one of these orders and enhancing the victim’s protection. But it is about the importance being given to helping eliminate FGM which cannot be achieved by the Bill alone so our focus is on some key points which will help stress the need to ensure that impact and support for the Bill is as strong as it can be.

Practical Support

³ <https://www.gov.scot/publications/scotlands-national-action-plan-prevent-eradicate-female-genital-mutilation-fgm-year-three-progress-report/>

⁴ <https://www.gov.scot/publications/scotlands-national-action-plan-prevent-eradicate-female-genital-mutilation-fgm-year-three-progress-report/published> 8 November 2019

⁵ <https://www.gov.scot/publications/scotlands-national-action-plan-prevent-eradicate-female-genital-mutilation-fgm-year-three-progress-report/published> 8 November 2019

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Concerns from communities were informed from the experience of visits to Multi-cultural Family Base, where a number of people wanted to ascertain “what teeth the protection orders will have.”⁶

Women and children at current or future risk need support and access to achieve the Bill’s objectives of achieving a person -centric approach. There is guidance to be published under sections 2 and 3 of the Bill that is intended to provide a framework which will help in setting out the practical support which organisations can give.

However, we welcome the amendment proposed by the Minister at Stage 3 that an order:

“may....require a Scottish public authority to consider what support and assistance the authority may be able, in exercise of its functions, to provide to the protected person” (our emphasis)

This measure will ensure that

- (a) consideration is given to the issue of support and
- (b) may be included as a requirement at the courts’ discretion.

Input will be needed from the professional support organisations on the precise form that the support would and should take. This supplements the guidance. It then allows the court too to assess the need for the relevant Scottish public authority so far as reasonably practical to provide such support and assistance as the authority considers appropriate.

Confirmation that consultation will take place before guidance is published would be useful. It needs to have regard to the outcomes set in the Scottish Government’s policy of Getting it Right for Every Child (GIRFEC)⁷ and under current child protection procedures.

Access to justice/ provision of legal aid

We are pleased to recognise that substantial progress has been made since our response to the Call for Evidence that “legal aid will be required to cover these new processes and procedures to ensure all legal advice and assistance will be properly funded.”⁸

⁶ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12476&mode=pdf>

⁷ <https://www.gov.scot/policies/girfec/>

⁸ ⁸ <https://www.lawscot.org.uk/media/363773/2019-08-30-crim-call-for-evidence-female-genital-mutilation-protection-and-guidance-scotland-bill.pdf>

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The commitment made at Stage 2 of the Bill to ensure that the necessary legal aid regulations will be brought forward to be timed with the commencement of the Bill is welcomed. All who require access to legal advice and assistance and especially, in cases of emergency matters, must be able to secure this. Providing an automatic of legal aid would achieve just that.

Anonymity

Since the Bill was introduced, we have supported the introduction of specific provisions to include anonymity. As part of the Bill is about increasing protections, we felt that making it clear to those affected by FGM who come forward about the fundamental respect for their anonymity and not left to any chance or misinterpretation was appropriate. Substantial amendments at Stage 3 include introducing provisions concerning anonymity in the Bill in relation to proceedings making an order (Section 5FA) or in any other proceedings (Section 5FB) relating to an order (Section 5FB) which we fully support.

These amendments have the effect of clarity and precision for all which are much welcomed with the reference to the court as the independent decision-making authority. It can weigh up the need for anonymity as opposed to publicity in terms of the Section 5FA (3) of

“...having regard to all the circumstances, including the need to protect the health, safety and well-being of any person who would be a protected person were the [order] made”

Considering anonymity in every case in relation to orders ensures that it is not left to chance. Just how far that anonymity provision extends will be for the court to consider under section 5FA (1):

“where civil proceedings are being undertaken relating to the making of an [order], the court must consider whether to make such an order

which may be made to withhold the name of the protected person or any other person or information from the public.....”

Sanctions for breach of any such anonymity ensure the means for effective enforcement is provided.

Education and training

There are significant implications arising from the Bill for the communities most affected by FGM.

For further information, please contact:

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The Scottish Refugee Council published a Report in 2014 highlighting that “*work with communities is vital to all areas of intervention. For without a genuine and effective commitment to the participation of affected communities in work on this issue, not only will we fail to understand the true levels of potential risk faced by women and girls in Scotland today, we will run the risk of further marginalising the community voices that are the most effective advocates for change.*”⁹”

We have highlighted the role of education and training plays in the measures being taken to eliminate FGM and in strengthening legal protection for those at risk.

Exactly how the Scottish Government intends to undertake a proactive role as well as commencing the measures in the Bill in raising and ensuring cross-cultural awareness of the FGM practices that may be acceptable elsewhere but not in Scotland would be welcomed. It must ensure that information regarding the enforcement provisions in the Bill are known to all who may be involved in or with those at risk of FGM.

Some of that information may lie within the scope of the guidance to be issued but an indication of timescales too and consultations regarding the scope of the guidance would be of relevance too at this stage.

⁹ Tackling Female Genital Mutilation in Scotland A Scottish model of intervention <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/Tackling-Female-Genital-Mutilation-in-Scotland-A-Scottish-model-of-intervention.pdf>

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