Prohibition of Female Genital Mutilation (Scotland) Bill

Bill Number: SP Bill 29
Introduced on: 29 October 2004
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 26 May 2005
Royal Assent: 1 July 2005

2005 asp 8

Passage of the Bill

The Prohibition of Female Genital Mutilation (Scotland) Bill [SP Bill 29] was introduced in the Parliament on 29 October 2004. Stage 1 commenced on 30 November 2004 and the Equal Opportunities Committee was designated as lead committee. The Stage 1 (general principles) debate took place on 3 March 2005 and the Bill was passed following the Stage 3 parliamentary debate on 26 May 2005.

Purpose and objectives of the Bill

Female Genital Mutilation (FGM) has been unlawful in Scotland since 1985 by virtue of the Prohibition of Female Circumcision Act 1985. Following the re-enactment of this Act in the UK, with new provisions (see below), the intention of the Bill was to ensure that equal legal protection be afforded in Scotland as in the rest of the UK.

Provisions of the Bill

The provisions of the Bill were based on the Female Genital Mutilation Act 2003, which re-enacted and extended the provisions in the Prohibition of Female Circumcision Act 1985 in England and Wales, but not in Scotland.

The Bill proposed to extend protection by giving the offence of FGM extra-territorial effect in order to protect those being sent abroad to have FGM carried out. The Bill also proposed an increase in the penalty on conviction from indictment from 5 to 14 years imprisonment.

Parliamentary consideration

The Committee received evidence from a range of witnesses at Stage 1 including representatives from the fields of midwifery, obstetrics and gynaecology; international organisations and charities; and women with direct experience of FGM.

The Equal Opportunities Committee had concerns that the definition of FGM did not capture the offence accurately and suggested that a definition closer
to the World Health Organisation classification would be more appropriate. At Stage 2 the Minister proposed an amendment to extend the definition to other parts of the female genitalia which was agreed by the Committee along with a similar amendment proposed by the Committee.

In addition, at Stage 3 the Minister proposed an amendment to allow the revision of the offence of FGM by statutory instrument to update the definition in the future.

The Committee was also concerned that certain elective cosmetic surgical procedures, as well as procedures such as genital piercing or genital tattooing may be covered by the provisions of the Bill. In response to amendments lodged at Stage 2, the Minister explained that the Bill covered any procedure which had some mutilating effect, i.e. where it would permanently damage or disfigure the genitalia and that this was not the intention of cosmetic surgery, piercing or tattooing. The Committee accepted this.

A major concern for the Committee was the extra-territorial provisions of the Bill. The provisions are there to ensure that it would be an offence to take a girl abroad for the purpose of FGM, but an offence would only be committed if the person who carries out FGM or the victim is a UK national or a permanent UK resident. The Committee heard strong evidence that asylum seeker children and students from overseas should also be covered by the law. Elaine Smith lodged an amendment at Stage 2 to ensure coverage for this group where the offence was committed by a UK national or permanent UK resident, which was accepted by the Minister.

Another amendment agreed to at Stage 2 came from the Minister. This related to concerns the Committee had about the protection of young girls who would be most at risk from FGM, and how different agencies respond to cases of FGM. The amendment adds offences under the Bill committed against children under the age of 17 to the list of offences in Schedule 1 to the Criminal Procedure (Scotland) Act 1995. This allows a convicting court to refer a child to the children’s panel. The reporter could then refer the child to a children’s hearing which is then able to impose measures to protect the child.

The major amendments to the Bill as passed therefore relate to the protection of non-UK national abroad when offences are committed by UK nationals; the increased protection for children under the age of 17; and the provision to allow revision of the definition of FGM in the future.