This document relates to the Prohibition of Female Genital Mutilation (Scotland) Bill (SP Bill 29) as introduced in the Scottish Parliament on 29 October 2004

PROHIBITION OF FEMALE GENITAL MUTILATION (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Prohibition of Female Genital Mutilation (Scotland) Bill introduced in the Scottish Parliament on 29 October 2004. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 29–EN.

POLICY OBJECTIVES OF THE BILL

2. The policy objective of this Bill is to strengthen the existing legal protection against female genital mutilation (FGM) in Scotland. On 20 July 2004 the Minister for Justice said: “The Scottish Executive is committed to working towards the elimination of violence against women in all its forms. Female genital mutilation is a terrible practice that can have devastating physical and psychological repercussions.” The Scottish Executive is committed to doing what it can to ensure that this cruel and unnecessary practice is eradicated.

Background

3. Female genital mutilation is a distressing procedure which involves the removal or alteration of parts of healthy female genitalia for non-therapeutic reasons. There are several types of female genital mutilation including clitorectomy (the removal of the clitoris) and excision (the removal of all or part of the labia). In the extreme version of female genital mutilation, infibulation, the external genitalia are removed and the remaining skin is sewn together over the vagina. A small hole is left to allow urine and menstrual blood to flow out.

4. All forms of female genital mutilation carry serious health consequences including death. There are both immediate risks following the procedure and long-term medical problems, including major complications during childbirth. No religion requires female genital mutilation, and the practice is not limited to any religious group.

5. The World Health Organisation estimates that between 100 and 140 million people have undergone female genital mutilation, and that each year, a further 2 million are at risk of
undergoing FGM\(^1\). Most live in 28 African countries, although some live in Asia and the Middle East. They are also increasingly found in Europe, Australia, Canada and the USA, primarily among immigrants from these countries. There is no evidence that this practice is widespread within communities in Scotland, although evidence is hard to establish because FGM is a private practice which is not reported by the communities that carry it out. There is, however, some anecdotal evidence of FGM amongst the Somali community in Glasgow.

**Effect of Prohibition of Female Genital Mutilation (Scotland) Bill**

6. Since 1985, FGM has been unlawful in Scotland by virtue of the Prohibition of Female Circumcision Act 1985, but it is not currently an offence in Scots law to send a person abroad to have FGM carried out. Therefore in addition to re-enacting the existing offences in the 1985 Act, the proposed Bill offers protection against being sent abroad to have FGM carried out by giving those offences extra-territorial effect.

7. Equivalent provisions are in force in the rest of the UK, following the passing of the Female Genital Mutilation Act 2003. The policy intention is to ensure that equal legal protection is afforded in Scotland as in the rest of the UK.

8. The Bill also increases the penalty on conviction on indictment from 5 to 14 years imprisonment to strengthen the protection available to people in communities in which FGM is practised.

**ALTERNATIVE APPROACHES**

**Extra-territorial provision**

9. Like the Female Genital Mutilation Act 2003 in the rest of the UK, the Prohibition of Female Genital Mutilation (Scotland) Bill creates extra-territorial offences to prevent people being taken abroad for the purposes of FGM. Scotland normally assumes jurisdiction only in relation to acts committed within Scotland or by UK nationals abroad. It was recognised that many in the communities from countries in which FGM is prevalent are not UK nationals, and so it was decided to extend the protection offered to include the activities of permanent UK residents and UK nationals in any part of the world.

10. Communities from countries in which FGM is prevalent may contain a number of people who are not permanent UK residents. However the extra-territorial jurisdiction in the Bill is limited to acts committed by UK nationals or permanent UK residents in order to provide the close connection to the UK that would justify such provision. Furthermore, many people who are not permanent UK residents, such as asylum seekers, are not free to leave and return to the UK at will, and are therefore less likely to be sent out of Scotland than permanent UK residents in order to have FGM performed. It should be noted that all people in Scotland, regardless of nationality, are protected against FGM being carried out in Scotland.

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Age and consent

11. The Bill makes FGM procedures unlawful, regardless of age and whether consent was given. This policy decision was taken for a number of reasons.

12. Permitting FGM if consent were given would have provided less protection against FGM than the Prohibition of Female Circumcision Act 1985. The policy intention was to strengthen, rather than weaken, the protection that Scots law offers against FGM. The Scottish Executive supports the world-wide call to eradicate FGM so the policy decision was not to tolerate FGM, regardless of whether consent was given.

13. Furthermore, the great majority of FGM procedures are carried out on children who are too young to give their own consent - in Britain FGM most commonly occurs between the ages of seven and nine. Parental consent would not offer an adequate safeguard against FGM as it can be parents who arrange FGM.

14. There are cases where adults request procedures such as reinfibulation after childbirth. However there is a danger that undue pressure might be exerted by the family and the community, particularly when the person is a new immigrant who does not speak English and is unemployed, and is therefore dependant upon their family and community. Allowing adults to consent to FGM would undermine the message that the legislation is intended to send - that FGM is extremely harmful and cannot be justified - and the Bill’s deterrent effect.

Alternative to new legislation

15. An alternative option would have been not to bring forward new provisions, leaving the Prohibition of Female Circumcision Act 1985 in force in Scotland. This would not have met the policy objective as the Scottish Executive wished to offer communities in Scotland the same protection as in the rest of the UK.

CONSULTATION

16. The draft Bill was circulated on 20 July 2004 with responses requested by 31 August 2004. It was sent to women’s health, faith and equality groups, in addition to standard justice consultees. 59 responses were received, the vast majority of which welcomed the Bill. No changes were made to the draft Bill as a result of the consultation.

17. A report on the responses to the consultation and those responses will be made available on the Scottish Executive’s website and from the Scottish Executive library.

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EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

18. The Prohibition of Female Genital Mutilation (Scotland) Bill will have greatest effect amongst communities from countries which practice FGM. There are approximately 200 females in Scotland under 18 who were born in countries in which FGM is prevalent, and approximately 1100 adult females, according to the 2001 Census. In addition, a number of refugees from Somalia have settled in Scotland since 2001, many of whom are female. The responses from these groups to the consultation were strongly in favour of further protection against FGM.

19. All victims of FGM are female and consultation responses from women’s groups were strongly supportive of the Bill.

20. The Bill has been drafted in gender-neutral terms so that transgender people with female genitalia will also be protected by the Bill. The exceptions in section 1(2)(a) provide that gender reassignment surgery for necessary for physical or mental health will not be an offence.

21. It is not anticipated that this Bill will have a differential effect on disabled or non-disabled people, on lesbian, bisexual or gay people, or any particular religious group. No religion requires FGM, and the practice is not limited to any religious group.

Human rights

22. The Bill does not give rise to any issues under the European Convention on Human Rights (ECHR).

Island communities

23. The Bill is not anticipated to have a differential impact on island communities.

Local government

24. The majority of communities from countries in which FGM is prevalent would appear to be in Glasgow, so this Bill is expected to have a greater effect there than elsewhere in Scotland. The social work department would already be expected to deal with any reported cases of FGM in respect of the child’s welfare (including if a child had been taken out of Scotland in order to have FGM performed) and to meet the associated costs of social work investigation, child protection measures, care and support. Therefore no significant additional burden to the social work system is anticipated as a result of this Bill.

Sustainable development

25. This Bill is expected to provide social benefits by increasing protection against FGM. FGM has serious health consequences, both in the short and long term. This Bill is expected to
reduce the number of people in Scotland subjected to FGM, and thereby reduce the number of people suffering illnesses or complications as a result. No significant economic or environmental effects are expected.
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