EQUALITIES AND HUMAN RIGHTS COMMITTEE

FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) (SCOTLAND) BILL

SUBMISSION FROM POLICE SCOTLAND

Will protection orders and statutory guidance be more effective in preventing FGM and safeguarding those at risk of FGM than the current approach? Please explain your reasons.

Yes.

Female Genital Mutilation Protection Order’s (FGMPO) will provide a civil legal means of creating certain conditions that if breached would enable a criminal offence to be utilised which could carry custodial and/or financial penalty. It should be acknowledged that there requires to be in place the correct statutory guidance and mechanisms to ensure consistent process for application is in place.

Given the suggestion that a broad spectrum of individuals or organisations would be able to apply, it imperative that clear guidance and processes must be put in place to ensure the existence of the order is known to the relevant organisations in order that any potential breach of the conditions is effectively policed.

The FGMPO would further enhance current statutory child protection procedures which can be invoked, including powers under the Children's Hearings (Scotland) Act 2011 and, in addition, provide protection for 16 / 17 year olds who are not under supervision as per the Children’s Hearings (Scotland) Act 2011 when information suggest they may be at risk of harm.

The Scottish Governments National Guidance for Child Protection in Scotland is currently being refreshed, perhaps this would be an appropriate setting for providing clear statutory guidance to professionals.

It is important to ensure all professionals fulfil their role in providing a consistent approach across Scotland. Suitable guidance will provide professionals with a comprehensive framework which outlines duties, advice and support to those who come into contact with victims and potential victims.

What more could the Scottish Government and public services do to strengthen FGM prevention and protection, for example on:

Anonymity of victims

It is acknowledged that there are provisions within current legislation for children under 18 years of age and for those who seek an anonymity order. It should also be acknowledged that the difficulty in evidencing incidents of FGM due to an inherent fear that there will be repercussions means that without protection of automatic anonymity through the legislation may be a barrier to reporting.
A possible mitigation around this would the inclusion of FGM in the Vulnerable Witnesses (Criminal Evidence) Scotland Bill which would see all victims of FGM being afforded an increase in access to non-standard special measures including use of prior statement / or providing evidence on commission.

**Failure to protect a girl at risk of FGM**

It is acknowledged that difficulty may lie with gathering a sufficiency of evidence to substantiate the offence. In addition there is the matter of underlying fear or coercion in an abusive relationship may be a factor resulting in a parent being unable to do anything to prevent a child being subjected to FGM. This would appear to be demonstrated by the lack of prosecutions elsewhere in the UK where this offence is contained in current legislation.

As FGM is a form of child abuse consideration and on such occasions the essential elements of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 cannot be proved consideration of a contravention of Section 12 of the Children and Young Persons (Scotland) Act 1937 could be considered where there is evidence of failing to protect a girl at risk of FGM. Notwithstanding, this still may still pose challenging in terms of gathering a sufficiency of evidence and whether such legislation would allow for ‘attempts’ to be libelled.

**Duty to notify the police of FGM**

There are well embedded Multi Agency Child Protection Procedures in place across Scotland and it is envisaged that the planned refresh of the National Guidance for Child Protection in Scotland will provide a further opportunity to strengthen regulated health and social care professionals and teachers response to FGM through Interagency Referral Discussion with Police Scotland.

**Additional protections**

**Vaginal Elongation**

Currently the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (Section 1) legislates for the mutilation of “…the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of another person”, which could be utilised in instances concerning vaginal elongation.

**Breast Ironing**

Breast Ironing’ as a harmful, cultural practice which would always result in Police Scotland investigating the criminality involved – such as assault to severe injury and permanent disfigurement – in addition to instigating multi agency child protection procedures.
Genital Piercings

Consideration should be given to differentiating between those consenting to the practice of cosmetic genital piercings for the purposes of decoration or for enhancement of sexual gratification and those performed as a result of coercion, duress or force. Further clarification surrounding the terms ‘otherwise mutilating’ and ‘cosmetic genital piercings’ are required in order to provide clear and concise guidance to all agencies.

Preventative Offences

It has recently been highlighted that a potential gap in the legislation exists with regards to additional “preventative offences” in circumstances where persons have in their possessions items indicative of intending to carry out FGM. For example, when a person is found in possession of items that would give reasonable cause to believe said items were to be used to carry out FGM there is limited legislative power at present or within the Bill to cover such eventualities. Therefore it is suggested that an addition is made to the Bill to include a “preventative offence” around intent or being in possession of items for the purposes of FGM.

3. How will the Bill impact on you, your community or organisation?

The implementation of the Bill will provide Police Scotland with an additional tool and legislation to work with partners to ensure that children are protected from FGM.