Equalities and Human Rights Committee

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

Summary of written submissions

Introduction

The Committee issued a call for views on 14 June 2019, which closed on 30 August 2019. The Committee has received 14 written submissions, from a range of organisations in the public and third sector. Three of the submissions sought the views of women affected by FGM. The Committee received written evidence from:

- Police Scotland
- CEMVO Scotland
- EHRC
- Emmaleena Käkelä (interviewed 12 women affected by FGM)
- General Medical Council
- Scottish Children’s Reports Administration (SCRA)
- Royal College of Paediatrics and Child Health Scotland (RCPCH)
- National Female Genital Mutilation Centre (NFGMC)
- Educational Institute of Scotland (EIS)
- Law Society of Scotland
- Scottish Youth Parliament
- Women’s Support Project (draw on 6 years experience working with FGM survivors, and recent meetings and discussions)
- My Voice Project, Waverley Care – FGM education and awareness raising project. Works to educate women from FGM affected communities. Submission is based on engagement with 20 women about the Bill, all from FGM affected communities, including Nigeria, Sudan, Uganda and Afghanistan
- JustRight Scotland

Overall support for the Bill

Most of the respondents to the call for views support the objectives of the Bill, to strengthen the existing legal protection for those at risk of FGM, through provision for FGMPOs and statutory guidance on FGM and FGMPOs.
Three submissions questioned the need for the Bill, arguing that there are existing legal protections in place that could be used (Law Society of Scotland, SCRA), and that there are information gaps on the prevalence of FGM in Scotland (CEMVO Scotland, Law Society of Scotland).

The Law Society of Scotland said:

“We query exactly how the Bill would be shown to be more effective in preventing FGM and safeguarding those at risk. The Bill is described and should in our view be seen as “complementary” (our emphasis) to the current measures existing in the criminal justice system. In our response to the earlier consultation, we highlighted the failure to identify any specific gap in legislation, the actual need for further legislation and the absence, for instance, of robust data to support how FGM is an issue for Scotland and that how existing measures are not working. That includes the lack to date of any prosecutions in Scotland for FGM under the 2005 Act. Exactly why there have been no criminal prosecutions in Scotland is definitely a complex issue but without that information, it is hard to illustrate its current effectiveness or otherwise at present or provide a comparator for the future.”

FGM Protection Orders (FGMPOs)

Extra protection

Some of the submissions referred to the extra level of protection they perceived would be provided by FGMPOs, in line with the objective of the Bill.

For example:

“We agree that Female Genital Mutilation Protection Orders (FGMPOs) would be a useful and important tool in this area for protection and prevention.” (JustRight Scotland)

“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.” (Police Scotland)

“FGM protection orders will allow agencies to protect children and young people by preventing their departure abroad for FGM when the risk is high. At present this is pursued under a general Child Protection Order, however we support the introduction of a specific FGM order to add further clarity and improve care for children.” (RCPCH)

“The proposed protection orders offer a further layer of protection to suspected victims of FGM by enabling the police to seek an order
preventing their removal from the UK, or into a place of safety.”
(EHRC)

However, SCRA suggested that it may be that the existing system is not clear enough:

“SCRA thinks that a strong and unequivocal message in relation to FGM should be given by the Government; and that this message should focus on recognising FGM and on promoting the unacceptable and abusive nature of FGM practices. It may be that the way in which existing processes can be used is not clear enough. For example, a child protection order and the subsequent involvement of the Children’s Hearing System can respond immediately to a child’s situation and provide protection for them.”

**Women affected by FGM**

The three submissions that sought views from women affected by FGM said that the women support the power to make FGMPOs. For example:

“Overall, the women we spoke to felt that the introduction of FGMPOs could help protect women and girls at risk of FGM. They felt that it could help to raise awareness about FGM in their communities, as well as in their home countries when they had discussions with family members about their lives in Scotland. Furthermore, as there are extended categories of people who may apply for an FGMPO, participants thought that this might expand knowledge of FGM across society, helping to educate and raise awareness in different sectors.”
(My Voice Project)

However, several concerns were also raised by the women affected by FGM, including:

- If a family was determined to carry out FGM, then they may well be able to do so in spite of any new legislation. (WSP)
- Some women were of the strong opinion that the existence of a Scottish law would not deter their own family back home, so the only safe option was not to take their daughters to the home country. (WSP)
  This could lead to some families feeling trapped in the UK, afraid to travel to their home country. (My Voice Project)
- What support is available for women and girls who speak out against their families? (WSP)
- Concern about how data on FGM might be shared between agencies, and potentially used in decisions related to FGMPOs. (My Voice Project)
- A worry that once it is known that they are from an FGM practicing country, this may lead to racial profiling from a range of agencies. (My Voice Project)
**Seeking asylum on grounds of FGM**

Some of the submissions referred to the experience of women seeking asylum on grounds of FGM, and how this might interact with FGMPOs.

If a woman or girl sought asylum from fear of FGM, they would need to show their fear was well-founded, that they could not seek protection from the authorities, and that they could not relocate to another area in their country.¹

The submission from Emmaleena Käkelä is based on in-depth interviews with 12 FGM affected women. It explains some of the difficulties in claiming asylum on FGM grounds:

- There is a failure to recognise the limited or lack of state protection available to women in their countries of origin.
- A failure to recognise women’s inability to relocate elsewhere in their countries of origin, which women also need to demonstrate in order to be granted asylum because of fear of FGM.
- A Home Office culture of disbelief, which women had experienced through being accused of lying about their own FGM status or about the pressures from extended family to submit their daughters to FGM.

Emmaleena Käkelä said that as a result of these failures, many women have been waiting on the decisions for their asylum claims for years. However, while immigration is reserved, it is suggested that FGMPOs could still send a clear message that women are believed and listened to.

JustRight Scotland suggested that FGMPOs could have a positive impact on asylum claims for women and girls at risk of FGM. They referred to Home Office guidance², based on the experience of FGMPOs in England and Wales:

> “The fact that a protection order has been made by the Family Court may provide strong evidence of risk of persecution or serious harm. However, the order may not provide evidence about risk on return to their country, so does not in itself mean that refugee status should automatically be granted. The asylum claim must still be considered on its individual merits, taking into account that the Family Court has made an order and the reasons for it doing so. Such orders must be considered in the round and given appropriate weight in reaching your decision on future protection needs.”


²Ibid
JustRight Scotland said that this is an example where measures in the Bill may serve to advance the rights of vulnerable women and girls, “as such, we feel this is yet another reason to support the measures set out in the Bill”.

**Experience in England and Wales**

Some of the submissions referred to the experience of FGMPOs in England and Wales, introduced in the Serious Crime Act 2015.

The RCPCH said, “There is evidence that these orders have worked well in England and we look forward to their introduction in Scotland.”

The National FGM Centre (NFGMC) is a partnership between Barnardo’s and the Local Government Association that has helped secure 35 FGMPOs. The NFGMC states that FGMPOs have been an invaluable resource for protecting women and girls at risk or who have undergone FGM.

Some submissions were more cautious about relying on the experience in England and Wales:

“We note that 321 Orders have been made from 2015 when the English and Welsh legislation commenced. Following the implementation of the Bill, the number of Orders sought and made in Scotland would provide some measurable evidential base for the future. It would not provide a direct comparison as the purpose of such Orders in Scotland seems to differ slightly from the existing similar provisions in England and Wales.” (Law Society of Scotland)

“That’s a low number. If the number of orders/applications is so low, how can we be saying much about their effectiveness?” (CEMVO Scotland)

**Legal aid**

Some of the submissions said that legal aid should be available for women and girls who wish to obtain an FGMPO (Law Society of Scotland, NFGMC, EIS).

**Statutory Guidance**

The Bill gives Scottish Ministers a power to introduce general guidance on FGM, and a requirement to introduce guidance on FGMPOs.

Most of the submissions welcomed the introduction of statutory guidance, including from those that did not overwhelmingly support the need for FGMPOs.

In summary the submissions said:
• The guidance will need to be clear, with processes in place to ensure consistency of approach across Scotland. (Police Scotland)
• It must be suitable to all professionals, outlining duties, advice and support to those who come into contact with FGM victims/potential victims. (Police Scotland)
• It should promote the existing protections in the Children’s Hearing System. (SCRA)
• It should be developed in consultation with stakeholders. (GMC)

The RCPCH said the guidance would help empower and build confidence in staff:

“Previously, the difficulty has been that statutory guidance does not specifically address FGM risk and FGM 'does not fit' into the conventional models of child abuse. Ensuring that information is shared within and across agencies is challenging. Ensuring that staff are empowered and confident to address such a sensitive subject necessitates detailed direction and responsibility, specific to FGM. Experience shows us that unless this is explicit, professionals fail to appropriately risk assess and protect girls. The introduction of this bill should address these issues.”

On their experience in England and Wales, the NFGMC said:

“Based on our work with on FGM POs across the country, these orders are poorly understood by professionals. For example, social workers are unaware that the threshold to obtain an order is the same as a care order. Therefore instead of it being one of the first things used to protect a child from FGM, it is the last thing that is considered. We have worked with the Home Office to deliver a series of conferences across England and Wales to upskill all professionals on what the orders are and how to obtain one. Therefore, we suggest to the Scottish government that if these orders are implemented resources must be made available to train professionals.”

On the evidence threshold that may be required for an FGMPO, JustRight Scotland said:

“Priority must be given to ensure a robust, independent risk assessment process. We believe that the introduction of statutory guidance – together with a comprehensive programme of training – will serve to increase the effectiveness of FGMPOs and other related safeguarding mechanisms for women and girls at risk of FGM. For example, it is critical to recognise the risk of victim/survivors being pressured to request the removal of such an order or suddenly changing their position in terms of risk. We note that the Bill refers to the need to “have regard” to the views and wishes of an individual at risk “to such extent as the court considers appropriate.”
16-18 year olds

Reference was made to the perceived gap in existing child protection procedures for young people aged 16-18 (although FGMPOs have no age limit).

JustRight Scotland said that their experience with Forced Marriage Protection Orders has shown it to be a useful tool, where child protection orders cannot be used for 16 and 17 year olds. They also state that:

“In our experience, we have yet to see protective orders issued via vulnerable adult protection procedures; we speculate, but this may be because these children are looked after by children and families social work departments.”

JustRight Scotland are keen that this practice is addressed and not replicated in the context of protecting young girls at risk of FGM. It is suggested that the statutory guidance provides “clarity and certainty in terms of the practical frameworks applicable around risk, identification, protection and prevention.”

FGM provisions in the rest of the UK

The Committee sought views on provisions in the rest of the UK that the Scottish Government has not proposed to introduce.

The Women’s Support Project did not support introducing any of these provisions. The NFGMC said that women and girls should have the same level of protection across the UK.

Anonymity

The anonymity provision in the Serious Crime Act 2015 provides lifelong anonymity for the alleged victim.

Several submissions indicated their support for anonymity.

The Law Society of Scotland said, on balance, that it was in favour of anonymity:

“Though there are some current measures within existing Scottish legislation that protect the anonymity of victims, there is not the certainty as in England and Wales where they have specific provisions to deal with the anonymity of the FGM victims.”

Police Scotland said:

“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 be 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.”

However, RCPCH said that existing legislation covers anonymity, and there is unlikely to be a benefit in introducing additional laws, but:

“To strengthen the existing media coverage convention for sexual assault cases, which includes FGM cases, we would recommend that appropriate sanctions, for example a fine, are imposed for websites or newspapers that continue to publish the names of victims of FGM.”

JustRight Scotland do not favour a provision on anonymity, as it was not persuaded of the merit of creating a lifelong exception for FGM specifically. It is in favour of greater clarity on the provisions of anonymity for all survivors of gender-based violence.

“An alternative option to a specific provision for anonymity for those at risk of FGM could be a COPFS policy to the effect that there is a presumption to seeking anonymity and other special measures such as closed courts with guidance/instructions on how this could be applied.”

**Failure to protect**

There were mixed views on the offence of failure to protect a girl from FGM. Under the Serious Crime Act 2015, a person is liable if they are responsible for the girl, for example a parent or guardian. The maximum penalty is seven years’ imprisonment, a fine, or both.

Police Scotland suggest it would be difficult to gather enough evidence to substantiate the offence, and there is also 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”.

The RCPCH cautiously support the offence of failure to protect a girl at risk of FGM, viewing it as child abuse, but that the priority should be focused on those committing FGM:

“The introduction of an offence of failure to protect a girl at risk of FGM might provide further deterrent for perpetrators of FGM, which would be
welcome. Paediatricians have experience of cases where families had stated ‘it will be out of their hands when they return home’, which is an unacceptable excuse. This scenario should be viewed as a parent or carer failing to protect a child from child sexual abuse or physical abuse. However, proving this would remain a challenge for the Courts. The current legislation states it is an offence for a person to ‘aid, abet, counsel, procure or incite’ but we propose that it should include ‘failure to protect’.

“Although we support the introduction of this offence, it is important to note that we should continue to prioritise pursuing the people who are actively committing or facilitating the FGM, and not focus too heavily on the family members, who are probably less powerful within the family.”

The Law Society of Scotland suggested that this provision could be considered if the Bill is passed, and where there is evidence to show it is needed:

“We understand that framing an offence of failure to protect a girl from FGM may have challenges. If seeking to create any new criminal offences, it must be clear exactly what the mischief is that is required to be addressed and that the sanctions for failure should be criminal. This highlights the difference between active and passive actions in criminal prosecutions. Perhaps the creation or need for such offences will be easier to identify once the Bill comes into force where evidence can be produced to demonstrate any requirement for such additional criminal offences. “

The NFGMC drew on its experience in England and Wales:

“The NFGMC believes that a ‘failure to protect’ provision in the law sends a strong message to all, including families and communities, that either direct or indirect involvement in the cutting of a girl could have serious criminal ramifications, and enforces the message that FGM is a form of child abuse. The NFGMC does however take into account the difficulties active vs non-participative involvement in the cutting of a girl can present in court, which was recently seen in a landmark conviction at the Old Bailey in England. Nonetheless, the NFGMC sees the ‘failure to protect’ provision as an essential part of English and Welsh FGM law.”

**Duty to notify the police**

The Serious Crime Act 2015 requires regulated professionals to notify the police, when, in the course of their work, they discover an act of FGM has been carried out on a girl who is under 18.

The submissions showed little support for such a duty in Scotland.
Police Scotland said that there are already well embedded multi-agency child protection procedures in place:

“...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.”

The GMC welcomed the decision not to introduce this, to avoid deterring girls and parents from engaging with services:

"...we advocate that any approach must allow for doctors to use their professional judgment. The introduction of a mandatory duty leaves no scope for this or the consideration of the best interest of the child.

...

“...there would have been a risk in placing this mandatory reporting duty on doctors that vulnerable children, young people and their parents or carers would have been discouraged from engaging with healthcare services.”

The RCPCH said the focus should be on child protection procedures:

“We do not recommend a duty to report to the police of FGM in all circumstances. Instead there should be an overall duty on all professionals to follow child protection procedures where a girl is considered at risk of FGM, and an appropriate response should be in place locally”

The NFGMC said that anecdotal evidence suggested the duty to report had not been a success in England and Wales:

“The National FGM Centre supported a young woman, who was cut in England and only reported as an adult as she was aware of mandatory reporting and did not want her parents to be arrested. Therefore, the Scottish Government should consider whether or not mandatory reporting will result in young people failing to report.”

However, CEMVO Scotland showed their support for the duty to report:

“In 2014, the UK Government committed to working to eliminate FGM making it compulsory for doctors, teachers and other regulated professionals to report directly to the police when anyone aged under 18 makes a first-hand disclosure of FGM or FGM is found on examination, and for English NHS health organisations to submit data to NHS Digital about women and girls they have seen who have experienced FGM. It is not clear if this is or will be the case in Scotland. CEMVO Scotland’s position is that this should be the case.”

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Other issues raised

Breast ironing, vaginal elongation and genital piercing

The Scottish Government’s consultation sought views on additional protections for breast ironing and vaginal elongation, and where genital piercings are done in an abusive context.

Two submissions commented that breast ironing and vaginal elongation would be covered by existing legislation (Police Scotland and RCPCH). The Women’s Support Project said that it had not seen evidence of the need for specific protection for vaginal elongation or breast ironing.

It was suggested that perhaps there needs to be greater clarity in guidance regarding consensual cosmetic genital piercings (Police Scotland and RCPCH)

Awareness raising and prevention work

A number of the submissions said that more needs to be done on awareness raising and prevention work, and that this must involve FGM affected communities.

The Women’s Support Project said:

“The main point we would like to stress, and this was strongly voiced by all who took part in discussions, is that any protective legislation will only be effective so long as people know about the law and how to use it. This applies to community members, practitioners in education, health and social work, and those within the justice system.”

The My Voice Project said that there needs to be:

- Information in different languages so FGM affected communities can take these to their home countries and show family members. (It was noted that the consultation was only available in English, despite requests for information in other languages).
- There should be investment in peer-led education.
- People with lived experience should be involved in raising awareness in schools.
- The Scottish Government should engage with governments of practicing countries to combat FGM.

There were also suggestions that training needs to be made available to professionals (eg, Law Society of Scotland, JustRight Scotland, EIS).

The NFGMC suggested that teaching FGM in schools should be mandatory, as it is in England, “Educating children and young people is key to prevention, and also their empowerment in ending FGM”.
Support for women and girls

A number of the submissions highlighted the need for more specialist support for women and girls (eg EHRC, Emmaleena Käkelä). The Women’s Support Project said:

“A further point which came up in discussion is the need for improved treatment for women survivors, and for survivors to be better informed about where to access health treatment. Reports from women indicate the need for ongoing training for key health professionals, such as GP’s, Sexual Health nurses and Practice Nurses. A question on FGM is included in the national maternity assessment but figures are not collated nationally so there is no means of telling whether this opportunity to engage with women is being used effectively.”

The Women’s Support Project also suggested a specific clinic for FGM, even if this was only occasional.

Further research

A range of further research on FGM was suggested, including:

- The long-term effectiveness of FGMPOs (NFGMC).
- Prevalence of FGM in Scotland (CEMVO Scotland, NFGMC, Law Society of Scotland).
- A needs analysis to understand the gaps which need addressing in order to support women and girls (NFGMC).

Alternative approaches

A few submissions suggested alternative approaches to combatting FGM:

The Law Society of Scotland suggested amending the powers of the Children’s Hearing panel to allow it to make relevant orders.

“Although this is an issue predominantly affecting young children, the proposals may not well targeted at that group. We suggest that it would be more effective to introduce a ground of referral to the children’s hearings system and amend the powers of the panel to ensure that it was able to make relevant orders. The ground of referral would be similar to that which exists for forced marriage under the Children’s Hearings (Scotland) Act 2011. This approach would be simpler, provide better support to those affected, and make it easier to protect others associated with the child who may also be at risk. In our previous response to the Scottish Government consultation on strengthening protection from FGM, we proposed the following new ground of referral:
1. the child has been, or is likely to be, subjected to female genital mutilation
2. the child is or is likely to become a member of the same household as a person who has been subjected to female genital mutilation.
3. the child is or is likely to have, a close connection with a person who has carried out, arranged, or facilitated female genital mutilation.”

The NFGMC suggested restorative justice as an alternative approach. They recognise that it is difficult for girls to prosecute their parents, but girls want justice. “This will allow the victim to speak to the persons involved in this in a safe environment and this could help them receive justice in another way.”

Police Scotland said that there as a gap with regards to ‘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.”

Nicki Georghiou
SPiCe Research
11 September 2019