11 December 2019

Dear Convener

Thank you for the constructive and positive Equalities and Human Rights Committee Stage 1 report on the Female Genital Mutilation (Protection and Guidance) Bill, which was published on 5 December.

Ahead of the Stage 1 debate scheduled for 18 December, I enclose the Scottish Government’s response to the recommendations in the report. In addition, I extend my thanks to both the Delegated Powers and Law Reform Committee and the Finance Committee for their consideration of the Bill at Stage 1. I am copying this letter to their Conveners.

I look forward to continuing to work with the Committee as the Bill continues its passage through Parliament.

Yours sincerely,

CHRISTINA MCKELVIE
RESPONSE TO EHRIC STAGE 1 REPORT ON FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) BILL

Overview

The Scottish Government welcomes the Committee’s report, and is grateful to both members of the Committee and those giving evidence for their input and scrutiny. The sections below respond to each recommendation, grouping under themes consistent with the Committee’s report and numbered consistently with the relevant paragraphs of the Committee’s report.

Racialisation

26. The Committee asks the Scottish Government, in developing guidance and training, is mindful of the ongoing need to minimise the risk of racialisation and stigmatisation.

The Scottish Government agrees with the Committee’s recommendation. As the Minister for Older People and Equalities stated at her evidence session, we reject the assertion that the bill racially profiles people. However, we do recognise that stigma can attach itself to these issues and we note the concerns expressed by some stakeholders during the Committee’s scrutiny.

In relation to public and professional bodies who will potentially deal with FGM or seek FGM Protection Orders, we note the evidence of the Crown Office and Procurator Fiscal Service, the Scottish Children’s Reporter Administration and the Law Society emphasising their commitment to training on equality and diversity issues. We understand that Children’s Hearings Scotland have also developed training for Panel Members designed to enhance the cultural competence of their volunteer community, which considers issues such as FGM.

We will work closely with these stakeholders and others to ensure that work on training (referenced in our response to paragraph 173 of the Committee’s report) is cognisant of these issues, and we will be guided by communities on the best way to reflect the issues in the development of statutory guidance and subsequent training.

Protection orders

51. The Committee asks the Scottish Government how it will engage with and involve women and communities in the development of guidance and awareness around FGM protection orders, and how it will monitor and evaluate success.

The Scottish Government welcomes the Committee’s strong focus on community engagement. Following Royal Assent, the Scottish Government will organise with community based stakeholders a series of community focus groups to shape the implementation of the Bill, including (but not limited to):

- Structure and content of statutory guidance;
- Ensuring effective pathways in place for individuals seeking an FGM Protection Order, and awareness of FGMPOs within communities
- Developing of effective training for public bodies in relation to FGM; and
- Future policy around preventing and eradicating FGM – what the Government and others should be focused on.

As the financial memorandum for the Bill states, data, monitoring and evaluation costs are estimated at £60,000. In relation to developing data collection, monitoring and evaluation, we
will involve relevant public bodies and communities themselves in developing effective monitoring and evaluation of the impact of the Bill.

**Penalties for breaching an FGMPO**

64. The Committee asks the Scottish Government to address the point raised by COPFS regarding difficulties of prosecuting inserted sections 5N (2), (3) and (4), based on the possibility of insufficient corroborated evidence.

The Scottish Government notes the Committee’s comments in respect of the feedback offered by the Crown Office and Procurator Fiscal Service as to the ability to be able to enforce the offence due to the challenge of obtaining sufficient corroborated evidence. We are clear that the offence is included to ensure those who while not bound by the terms of a FGMPO, would nevertheless try to frustrate its operation, or who would provide assistance to those who seek to breach it, are able to be held to account under the criminal law. This is important for, amongst other reasons, providing deterrence against those who may otherwise seek to assist breaches of FGMPOs or frustrate their aims.

We are considering appropriate ways to ensure that those who are not subject to an FGMPO but who have a connection with those who are - such as extended family - are aware of the existence of an FGMPO and its requirements, in a manner that may facilitate future prosecutions for breaches. In particular, we intend that this is covered in statutory guidance. As we progress consideration in this area, we will continue to engage with Crown Office officials.

**Asylum seeking and FGMPOs**

71. The Committee believes consistency around treatment of FGM is necessary. As asylum is a reserved matter, the Committee agrees to write to the Minister for Safeguarding and Vulnerability with a copy of this report, and will draw the Minister’s attention to this point.

The Scottish Government notes the Committee’s views and intentions in this area.

72. The Committee also asks the Scottish Government to raise the issue of consistency around treatment of FGM within asylum cases directly with the UK Government.

The Scottish Government notes the recommendation and will raise the issue with the new UK Government.

**Support for Women**

76. The Committee agrees that FGMPOs cannot work without additional support for individuals and families. The Committee notes the suggestion of renaming the protection orders to become “protection and support” orders. The Committee recommends the Scottish Government consider this, in conjunction with affected communities.

The Scottish Government recognises the importance that the provision of support has as part of the package of protections provided by the FGMPO (along with the fact FGM is criminal, and along with guidance both on FGMPOs and on FGM generally) and will consider further
with relevant stakeholders whether the name of the order should be changed ahead of stage 2.

77. The Committee asks the Scottish Government to detail what further support local authorities and COSLA can put in place to help people seeking an FGMPO, and how this support will be resourced. The Committee asks the Scottish Government to reflect on how this information is shared.

The Scottish Government notes the Committee’s recommendation, and we will work closely with COSLA to ensure that statutory guidance reflects the role of local authorities and others who may come into contact with people seeking assistance with applying for an FGMPO. We consider that the third sector has an important role to play in supporting individuals seeking protection, and we have sought to address this in other parts of this response. In relation to general awareness of available support, we will continue to explore awareness raising initiatives with third sector and community based partners. We will also update our FGM leaflet, which was originally published in 2015. The leaflet sets out what help is available, what to do if you suspect someone is at risk, what you can expect from health services, and general sources of support and advice. It is distributed to community members via community based organisations and public services.

87. The Committee recommends the Scottish Government look at ways of supporting women and healthcare professionals outside of maternity services to talk about FGM. The Committee asks the Scottish Government what paths it currently uses beyond midwives and maternity services.

The Scottish Government accepts this recommendation, and will discuss further with health stakeholders. The Scottish Government’s National Action Plan to prevent and eradicate FGM contains an objective that interventions are early and effective, preventing violence and maximising the safety and wellbeing of women and girls, and the multi-agency guidance published in 2017 sets out the expectations upon agencies on providing an effective response to victims, survivors and those at risk.

88. The Committee asks the Scottish Government to look and learn from the London experience of establishing an FGM clinic and to report back to the Committee with an evaluation of if and how this could be developed in Scotland given the need for culturally sensitives services that are both targeted and universal.

The Scottish Government accepts this recommendation, and will take this work forward separately from the Bill with an initial focus on better understanding the experience of establishing a clinic in London and how health services in Scotland can respond effectively and sensitively to FGM. The Government will discuss this with the FGM Action Plan Implementation Group in the first instance, and update the Committee as this work develops.

Education

95. The Committee asks the Scottish Government for more information on how FGM will be consistently built into the relationships, sexual health and parenthood (RSHP) education as part of the curriculum, and if and how it will consider extending learning to younger children, and how this connects to ongoing work around preventing child sexual exploitation.

The Scottish Government notes the Committee’s ask. The Scottish Government is clear that FGM is child abuse and an extreme form of gender based violence, causing significant and
life-long physical and emotional harm. As part of the revised National Guidance for Child Protection in Scotland, we are strengthening our guidance for frontline practitioners around the nature and impact of FGM, as well as responses and practice considerations. The sections within the Child Protection Guidance, seeking to raise awareness of CSE, FGM, Forced Marriage and Honour based violence, are drafted and will be the subject of scrutiny by the Steering Group and consultation in early 2020.

As the Committee is aware, Curriculum for Excellence (CfE) is the national approach to learning and teaching for young people aged 3 to 18 in Scotland. It provides significant flexibility, within broad national guidelines, for teachers to develop lessons which best meet the needs of individual learners, including advising young people about FGM. Teachers, head teachers and other professional educational practitioners are best placed to decide what is taught in Scotland’s schools.

Relationships, sexual health and parenthood (RSHP) education is an integral part of the health and wellbeing area of the school curriculum in Scotland. This aspect of the curriculum is intended to enable children and young people to build positive relationships as they grow older and should be presented in an objective, balanced and sensitive manner within a framework of sound values and an awareness of the law on sexual behaviour. To support teachers in the delivery of RSHP education, an online, nationally available teaching resource provides 133 learning activities for use in all education settings and is aligned with CfE. FGM is covered in the RSHP online resource in levels 3 and 4 (S1 to S3) through learning around sexuality and sexual rights. This builds on broad content on abuse and being protected from abuse introduced in level 2 (P5 to P7). The online resource will be reviewed at least once a year by a Group of expert stakeholders from education and health sectors to ensure content remains stage and age appropriate, and continues to reflect current issues facing children and young people.

Legal Aid

102. The Committee notes the Scottish Government has recently reviewed access to legal aid. However, the Committee asks the Scottish Government to consider what actions can be taken to remove barriers for those seeking help with FGM protection orders, in what might be urgent and time pressured situation for individuals unfamiliar with the legal system. The Committee welcomes the Minister’s willingness to consider arrangements around additional support, and looks forward to a response before Stage 2.

The Scottish Government will consider the Committee’s view and respond before Stage 2.

Community Support

107. The Committee recommends the Scottish Government pledge long-term funding, commensurate with the work that needs to be undertaken, to ensure communities are supported and organisations can continue to deliver successful initiatives.

The Scottish Government accepts this recommendation. We committed three year funding through the Equalities and Human Rights Budget to organisations working to tackle violence against women and girls, including organisations working in the field of FGM. The current funding round runs to June 2020, and the Scottish Government will set out plans for future funding rounds early next year. The Scottish Government is content to make a commitment to pledge future multi-year funding, as part of our broader ambitions under the Equally Safe strategy to prevent and eradicate all forms of violence against women and girls.
Provisions not in the Bill

118. The Committee strongly supports the principle that the views and wishes of victims and survivors should be paramount and central to court considerations. The Committee believes that anonymity on request is a reasonable expectation for victims of FGM and asks the Scottish Government how this can be given.

The Scottish Government notes the Committee’s view in this area. The Scottish Government will provide a response to the point before Stage 2.

137. The Committee recommends the Scottish Government keep the issues of labial elongation and breast ironing under review, and ensure they are covered in any future guidance around violence against women and girls, and honour-based violence.

The Scottish Government accepts this recommendation. We will ensure that issues around labial elongation is covered in the forthcoming statutory guidance, and consider further how information on breast ironing is best reflected in guidance more generally.

143. The Committee asks the Scottish Government what guidance is currently available to both medical practitioners and licensed body piercers around genital piercing. The Committee asks the Scottish Government to consider whether clarity is needed, and whether additional guidance for those recording FGM would be helpful.

There is currently limited guidance available to both licensed body piercers and medical practitioners on genital piercings. The Scottish Government agrees that further clarity would be helpful, and will include material on genital piercings within statutory guidance.

145. The Committee asks the Scottish Government for its views on an additional provision suggested by Police Scotland relating to intention to carry out FGM.

The Scottish Government notes that this FGM Bill is not intended to create new FGM offences, or amend the existing ones. It may be helpful for the Committee to note that the scenario set out by Police Scotland would seem to be covered by the Bill already. An FGMPO will be able to be made for the purpose of preventing or reducing the likelihood of a FGM offence being committed (under Section 5A(2)(c) – a ‘type 3’ FGMPO). Accordingly if a person is found to possess items indicative of an intent to carry out FGM, the Police will be able to seek a FGMPO against that person, even if no victim has been identified. If granted, a type 3 FGMPO could provide: that such items are taken from the person, that they are prohibited from possessing such items in the future and that other restrictions are placed upon them in order to reduce the likelihood that they commit FGM. FGMPOs can be obtained on a lower burden of proof (balance of probabilities) than that required for a conviction (beyond reasonable doubt) so will be easier to obtain by the police. Further if the FGMPO is breached, e.g. the person is caught with cutting tools that they have been prohibited from having, that will be an offence in itself and in proving that offence, the police will not need to provide evidence that the person intended to carry out FGM.

In addition, the Scottish Government would draw to the Committee’s attention that possession of such items could constitute an attempt to commit an FGM offence, (which is an offence by virtue of section 294 of the Criminal Procedure (Scotland) Act 1995). Depending on the circumstances, if section 3 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 is applied, that section makes it an offence to aid, abet, counsel, procure or incite another
person to carry out FGM. We will engage further with Police Scotland on these matters and bring this information to their attention.

Recording FGM

154. The Committee recommends the Scottish Government consider this issue when developing its statutory guidance, and that it does so in consultation with frontline health workers, to better understand their needs.

The Scottish Government accepts this recommendation, and we will further integrate engagement with health workers into our developing implementation plan.

Statutory guidance

171. The Committee welcomes the elevation of FGM guidance to statutory level, and asks the Scottish Government to take account of the evidence it has heard as to what the guidance might include.

The Scottish Government considers the evidence provided during the Committee’s scrutiny to be very helpful and will take it into account in the development of the guidance.

172. The Committee agrees that communities and professionals must be involved in the design of the guidance, and asks for an outline of what engagement work is planned for developing the guidance.

The response to the recommendation at paragraph 51 outlined planned engagement work in communities. We will discuss further with the FGM National Action Plan Implementation Group the best way to take forward engagement with public bodies on the development of the guidance, which will include a proposal for establishing a drafting group for the guidance that would then engage with public bodies and communities in the development of it. This work will commence following Royal Assent and be complemented by formal consultation on draft guidance later in 2020.

173. To ensure FGM protection orders are used appropriately and implemented effectively, the Committee recommends that statutory guidance should be supported by appropriate professional training.

The Scottish Government accepts this recommendation. As part of plans for the implementation of the Bill, we will work with stakeholders to develop a specific module relating to FGM Protection Orders, and ensure this is disseminated to key bodies with a role in seeking orders.

To assist with the effective operation of future statutory guidance on FGM, we will work with stakeholders to ensure that core training adequately reflects the position on FGM including the updated legislation. As we have done for other forms of gender based violence, we will work with stakeholders to identify the requirement for bespoke multi-agency training sessions to support the effective implementation of the Bill, and support the delivery of these sessions. The financial memorandum for the Bill notes the estimated cost (between £100,000-500,000) across all local authorities for relevant staff to familiarise themselves with the legislative requirements of FGM Protection Orders and for appropriate training, and that this will be discussed with local authorities during the implementation of the Bill. The financial memorandum notes that Police Scotland will also require training, with an estimated cost of just over £100,000.