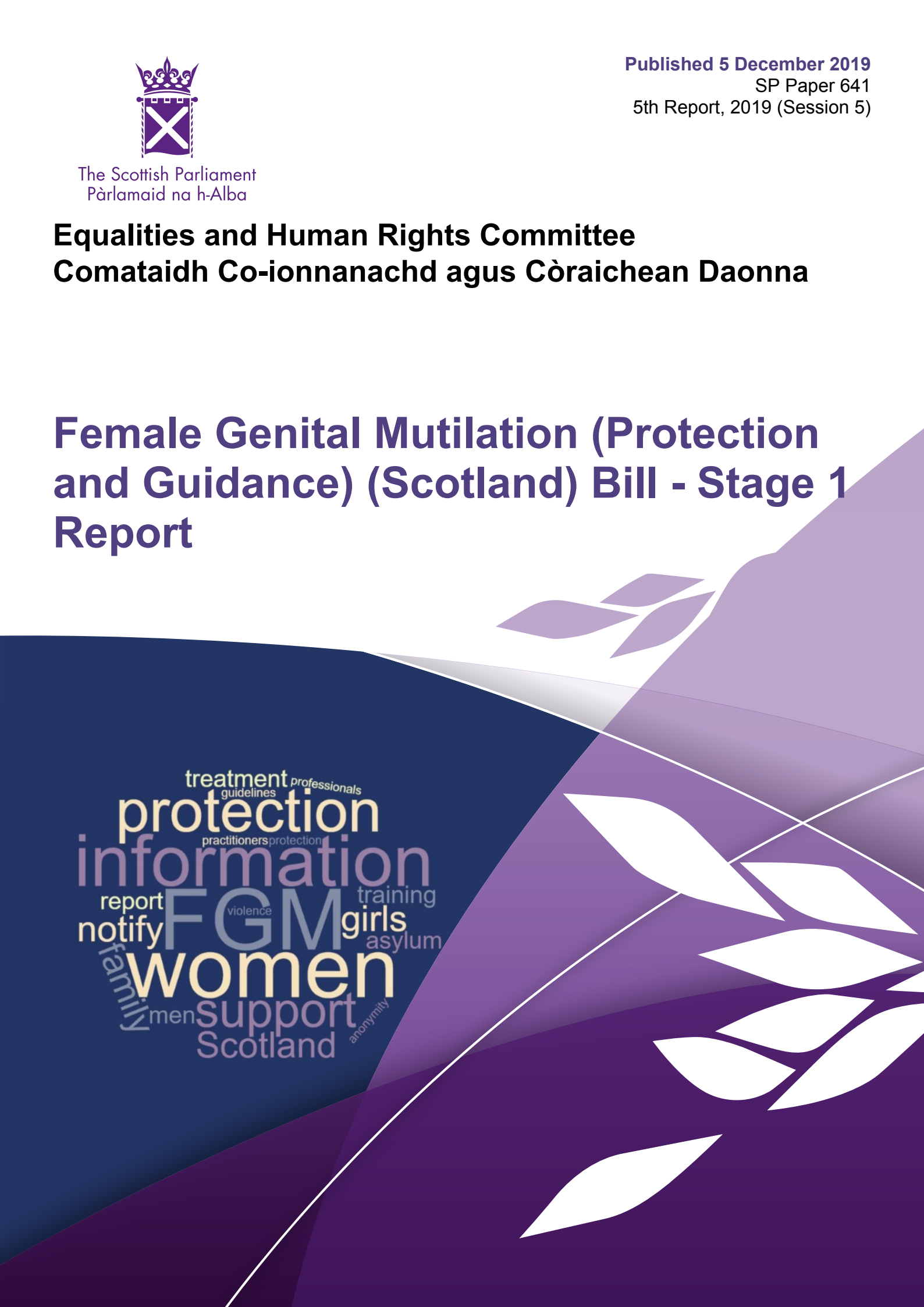
Published 5 December 2019
SP Paper 641
5th Report, 2019 (Session 5)

The Scottish Parliament
Pàrlamaid na h-Alba

Equalities and Human Rights Committee
Comataidh Co-ionnanachd agus Còraichean Daonna

Female Genital Mutilation (Protection and Guidance) (Scotland) Bill - Stage 1 Report



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
http://www.parliament.scot/abouttheparliament/91279.aspx

For information on the Scottish Parliament contact Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Background 1
Background to the Bill 1
Written and oral evidence 3
Engagement 3
Contents of the Bill 4
Racialisation 5
Protection orders 7
What do FGMPOs do? 7
Need for an FGMPO 7
Protection for children 8
16 and 17-year-olds 8
Protection for women 9
Empowerment 10
Conclusion 10
Children's Hearings and Children's Panels 12
Penalties for breaching an FGMPO 14
Asylum seeking and FGMPOs 16
Support for Women 18
Protection and support 18
Medical Services 19
Schools 20
Legal Aid 21
Community Support 22
Provisions not in the Bill 24
Anonymity 24
Failure to Protect 25
Duty to Notify 26
Labial elongation and breast ironing 27
Genital piercings 28
Intent to carry out FGM 29
Recording FGM 30
Statutory guidance 32
Consultation with Communities 33
Training 34

Conclusion 34
Work of other Committees 35
Delegated powers 35
Finance 35
General Principles 36
Annexe A: Written and oral evidence 37
Annexe B: Extract of minutes of meetings 39
Annexe C: Engagement 41
Annexe D: Fact-finding visit to Sweden 42

Equalities and Human Rights Committee

To consider and report on matters relating to equal opportunities and upon the observance of equal opportunities within the Parliament (and any additional matter added under Rule 6.1.5A). In these Rules, “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions.
Human rights, including Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/Equalities-Human-Rights-Committee.aspx

equalities.humanrights@parliament.scot


0131 348 6040

Committee Membership

Convener
Ruth Maguire
Scottish National Party

Deputy Convener
Alex Cole-Hamilton
Scottish Liberal Democrats

Angela Constance
Scottish National Party

Mary Fee
Scottish Labour

Fulton MacGregor
Scottish National Party

Oliver Mundell
Scottish Conservative and Unionist Party

Annie Wells
Scottish Conservative and Unionist Party

Background

1. The Female Genital Mutilation (Protection and Guidance) (Scotland) Bill was introduced by the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP, supported by Christina McKelvie, Minister for Older People and Equalities, on 29 May 2019.

2. The Bill was accompanied by:

   - a Policy Memorandum
   - Explanatory Notes
   - a Financial Memorandum
   - Statements on Legislative Competence ,
   - a Delegated Powers Memorandum
   - an Equality Impact Assessment and
   - a Child Rights and Welfare Impact Assessment.

3. According to the Policy Memorandum, the aim of the Bill is to strengthen the legal protection for women and girls at risk of female genital mutilation (FGM). It will do this in two ways—

   - creating a new protection order, a Female Genital Mutilation Protection Order (FGMPO), that can impose conditions or requirements on a person. An FGMPO aims to protect a women or girl from FGM, prevent further harm if FGM has already happened, or reduce the likelihood of FGM happening. It will be a criminal offence to breach an FGM Protection Order.
   - making provision for statutory guidance on matters relating to FGM, and statutory guidance on FGM Protection Orders

4. The Scottish Parliament Information Centre has prepared a briefing for the Bill .

Background to the Bill

5. The Female Genital Mutilation (Protection and Guidance) (Scotland) Bill ("the Bill") was introduced following a consultation by the Scottish Government, held between 4 October 2018 and 18 January 2019. A summary of responses to this consultation is available.

6. FGM (also referred to as "cutting", "female circumcision", and a wide range of traditional terms in different languages) describes all procedures involving partial or total removal of the external female genitalia, or other injury to the female genital organs, for non-medical reasons. There are no health benefits to FGM. The procedure is likely to cause short and long term physical and psychological harm. FGM is a form of violence against women and girls, and it is recognised internationally as a violation of their human rights. It is estimated that FGM has

been practised for over 5,000 years across different continents, countries, communities and belief systems. While some may believe that FGM has religious support, no religion condones it. Because of the worldwide movement of people, FGM is found in communities all over the world, including Europe. [1]

7. While FGM has been a criminal offence in the UK since the Prohibition of Female Circumcision Act 1985, further legislation has aimed to strengthen existing protections. FGM is illegal in Scotland under the Prohibition of Female Genital Mutilation (Scotland) Act 2005 . The relevant legislation in England, Wales and Northern Ireland is the Female Genital Mutilation Act 2003 . Most recently, the Serious Crime Act 2015 , passed by the UK Parliament, contained six provisions related to FGM. These are—

   - Lifelong anonymity for victims of FGM, to prohibit publication of any information that might lead to the identification of someone against whom an FGM offence is alleged to have been committed;
   - Failure to protect - prosecution for those responsible for a child who fail to prevent FGM;
   - The creation of FGM protection orders;
   - Mandatory duty on doctors, teachers, and others to report cases of FGM to the police;
   - Statutory guidance on FGM for professionals; and
   - Extension of extra-territorial jurisdiction.

8. The last of these (extension of extra-territorial jurisdiction) was adopted by the Scottish Government through a legislative consent memoranda considered by the Justice Committee in session 4. This extended the reach of the extra-territorial offences in that Act to habitual (as well as permanent) UK residents.

9. However, rather than implement all the other FGM provisions in the Serious Crime Act, the Scottish Government decided to consult and determine a Scotland-specific course of action. The resulting National Action Plan to Prevent and Eradicate FGM covers the period of 2016-2020. A year three report on the national action plan was published 8 November 2019. The Committee has therefore had limited time available to scrutinise the update.

10. The Bill is part of ongoing work on the Scottish Government's national action plan to prevent and eradicate FGM . The plan covers the period of 2016-2020. It was developed to form a Scottish response to FGM, and to the Serious Crime Act 2015 which was passed by the UK Parliament.

11. The Bill would introduce FGM protection orders and statutory guidance which are already in place in England and Wales. The remaining provisions (anonymity, failure to protect, and a duty to notify police, also referred to as mandatory reporting) are not included in the Bill. However, the Scottish Government consulted on them, and the Committee has also explored the issues. In addition, the Committee has also followed the Scottish Government consultation in exploring labial elongation, breast ironing, and genital piercings. These are set out later in the report.

12. As part of its action plan, the Scottish Government issued multi-agency guidance around FGM in 2017.

Written and oral evidence

13. The Committee issued a Call for Evidence on 14 June which closed on 30 August 2019. A total of 14 submissions were received and these, along with supplementary submissions, can be viewed on our website. A letter was also received from Victoria Atkins MP, Minister for Safeguarding and Vulnerability. A summary of written evidence is available. Details of written and oral evidence are available at Annexe A.

14. The Committee held evidence sessions on 12 and 19 September, 10 October, and 7 and 14 November. Minutes of these meetings are available at Annexe B.

15. The Committee would like to thank all those who gave evidence for sharing their views and experience to inform its scrutiny.

Engagement

16. The Committee undertook a number of activities to hear the voices of affected communities. Details of engagement are set out at Annexe C and Annexe D. Between July and August 2019, Members visited—

- The Ruby Project, Glasgow
- Multi-cultural Family Base, Leith
- Community InfoSource, Glasgow, and
- The Women's Support Project, Glasgow.

Notes of the visits are available on the Committee's website.

17. The Committee also worked with a group of women affected by FGM. The women were involved in digital storytelling workshops, and produced short films of their experiences and their views on the Bill. These are available on the Committee's website. More details on how these stories were made are also available.

18. Finally, the Committee worked with partner organisations to gather the views of their service users. A toolkit and questions for discussion were sent to selected organisations. Responses were received from two, and a summary is available. The views and questions received were incorporated into the Committee's scrutiny process.

19. The Committee expresses its thanks to all those who shared their views and experiences. The subject matter covered in the Bill meant that individuals who shared their testimonies were often detailing intimate and difficult experiences, and their strength, openness, and desire to help inform the Committee's scrutiny is to be commended.

Contents of the Bill

20. The Bill contains 11 sections:

- **Section 1** establishes FGMPOs through amendment to the Prohibition of Female Genital Mutilation (Scotland) Act 2005
- **Section 2** provides for Scottish Ministers to issue guidance around FGM
- **Section 3** provides for Scottish Ministers to issue guidance around FGMPOs
- **Sections 4-7** contain consequential modifications to the Prohibition of Female Genital Mutilation (Scotland) Act 2005
- **Section 8** amends the Children's Hearings (Scotland) Act 2011
- **Sections 9-11** contain final provisions around commencement, regulations, and the short title

Racialisation

21. Concerns were raised by some witnesses that the Bill, and the treatment of FGM as a distinct form of violence against women and girls, could lead to racialisation. Dr Saffron Karlsen, University of Bristol, told of her work with ethnic minority communities which suggested "some policy responses to FGM that are already in practice in the UK and elsewhere have led to the stigmatisation and criminalisation of many innocent families." [2] She added that "some participants in our research…felt strongly that there was evidence of racial profiling in the provision of safeguarding protection." She urged consideration of how the Bill will add to current protection for different forms of child abuse, saying, "People in our study felt that they were being identified because they were Muslim and African, regardless of any established level of risk to their children." [3]

22. However, Neil Hunter, Principal Reporter, Scottish Children's Reporter Administration (SCRA), said, "We are well aware that abuse and exploitation of children and young people happens across the community" and therefore the SCRA take "a broad, generic approach to the issues of child abuse, child exploitation and child-related harms rather than focusing on particular groups or particular subsections of the community." [4]

23. Gillian Mawdsley, Policy Executive, Law Society of Scotland, said that equality and diversity are "a key part of much of legal training…that is followed all the way through legal careers." [5] Anne Marie Hicks, National Procurator Fiscal for Domestic Abuse and Head of Victims and Witness Policy, Crown Office and Procurator Fiscal Service (COPFS), agreed saying, "The Crown Office has made a significant investment over a number of years in training on diversity and equality issues. We have a big commitment to that. We have also had training for our staff on things such as unconscious bias." [6]

24. The Committee heard from Leethen Bartholomew of the National FGM Centre. The Centre has been involved with over 260 FGM affected women and girls, and has worked to obtain 35 FGMPOs. He said, "the idea that [FGM] criminalises a certain group of people probably ends up being on shaky ground, because we have worked with families from over 65 countries" [7] while the Christina McKelvie, Minister for Older People and Equalities (the Minister) said—

> I reject the assertion that the bill racially profiles people. The bill does not do that. We need to understand that FGM is a form of child abuse and gender-based violence and that everyone deserves to be protected from it. We know that FGM has been practised across many countries, continents, communities and belief systems for about 5,000 years. Because of global migration patterns, it now happens globally. [8]

25. The Committee notes the concerns of those who gave evidence that FGMPOs might lead to stigmatisation of specific communities but agrees that FGM is a global issue. The Committee considers training for professionals to be essential to avoid racialisation and stigmatisation.

26. **The Committee asks the Scottish Government to develop guidance and training that is mindful of the ongoing need to minimise the risk of racialisation and stigmatisation.**

Protection orders

What do FGMPOs do?

27. An FGMPO allows a court to impose "prohibitions, restrictions or requirements…that it considers appropriate." [9] Section 1 of the Bill, which inserts section 5B(3) into the 2005 Act, provides a non-exhaustive list. Examples mentioned in the Policy Memorandum are requiring a person to give up their passport or "restricting them from taking a protected person to a specified place, including outwith Scotland." [10]

28. FGMPOs will be tailored to each individual, and are unique to each case. The Minister told the Committee—

> They will contain conditions to protect girls and women from FGM. They will also be able to be used by law enforcement agencies against those who wish to perpetrate this terrible crime, restricting their activities, even when no potential victim has been identified. [11]

Need for an FGMPO

29. The Financial Memorandum estimates there will be up to nine applications for FGMPOs each year, based on the experience in England and Wales and accounting for population size. [12]

30. Although some expressed concerns around possible racialisation of certain communities, most organisations were supportive of the proposal to introduce FGMPOs, saying they would enhance protections available to women and girls and align Scotland with the rest of the UK.

31. Researcher Emmaleena Käkelä highlighted the views of 12 FMG-affected women living in Scotland. She found that while none of women considered their daughters to be at risk of FGM in Scotland, some had faced pressure from their extended families to have FGM done to their daughters in their country of origin. Her interviews suggested FGM protection orders could help women demonstrate the seriousness with which FGM is dealt with in Scotland, and help families resist pressures from overseas. She added, though, that other methods like a leaflet signed by the Chief of Police, may be just as effective. She also wrote that some of the interviewed women had visited their countries of origin and successfully resisted pressure to have FGM done to their daughters. [13]

32. One of the organisations the Committee visited, Multi-cultural Family Base in Leith, questioned what the orders would do to protect the families they work with. They pointed out that a protection order often needs to protect the whole family as it's rarely the case that just one person is at risk. In particular, they asked how a protection order would work alongside the asylum process, and whether an FGMPO

could hold off Home Office actions, and give someone time and support to consider options. [14]

33. The Royal College of Paediatrics and Child Health Scotland thought protection orders would be helpful in preventing young people and children from being taken abroad. They noted this could currently be done under a Child Protection Order but considered an FGM-specific order would add clarity and align Scotland with the rest of the UK. [15]

34. Police Scotland consider FGMPOs would be "an obvious tool to prevent certain activity and place conditions on individuals, which will assist us in trying to enforce the legislation." [16]

35. Neil Hunter, SCRA, said—

> Having protection orders on the statute book will offer an opportunity to respond quickly and effectively to issues of FGM as they arise. Where there are concerns about a child's safety or vulnerability to FGM, it will also allow… a preventative approach to be taken in order to avoid the child being harmed or removed from the UK, or any other potential risk to the child. There is both a reactive and a preventative element to the protection order, which we support. [17]

Protection for children

36. Under the child protection system in Scotland there are existing powers that can be used in relation to FGM—

- the child protection order, where a child could be moved to keep them safe from significant harm,
- the compulsory supervision order, where a child becomes looked after and responsibility for their care, protection and control is assumed by the local authority.

37. The Women's Support Project considered it was difficult to say whether FGMPOs would be "a more effective means of preventing FGM and safeguarding those at risk, compared to existing measures, but the existence of a specific protection order is generally welcomed because it highlights FGM as a specific risk to girls." [18] This view was echoed by many of the Committee's witnesses.

16 and 17-year-olds

38. While witnesses considered that many of the proposed functions of an FGMPO could already be achieved using existing child protection orders, these orders may not apply to 16 and 17-year-olds. Protection for adults can be achieved under other civil protection orders, [19] but these cannot be used for people under 18.

39. Andrea Bradley, Assistant Secretary Education and Equalities, Educational Institute of Scotland (EIS), noted "there is perhaps a question with regard to how well 16 and

17-year-olds are protected by the current procedures." [20] Andy Sirel, Head of Scottish Migrant and Refugee Centre, JustRight Scotland, explained that while it is predominantly younger children at risk of FGM, the risk "persists" for teenage girls. In his experience, a gap can exist for girls who are 16 and 17-years-old as the definition of a child varies in different legal contexts —

> 16 and 17-year-olds are often caught in between the legal protections available for children under 16 and those for vulnerable adults. Sometimes, 16 and 17-year-olds operate in the middle. That makes the existence of specific protection orders, whether that be forced marriage protection orders or FGM protection orders, all the more critical as a tool for local authorities, for example, to keep all girls in their care safe. [21]

40. Liz Owens, Social Work Scotland, explained that forced marriage cases often involve 16 or 17-year-olds. She said it has been helpful to have a protection order that can be used in these cases, and "it would be very useful to have a similar option in FGM cases." [22] Police Scotland considered FGMPOs would enhance child protection procedures and, "in addition, provide protection for 16/17-year-olds who are not under supervision as per the Children's Hearings (Scotland) Act 2011." [23]

41. The Minister agreed the Bill—

> provides targeted protection for under-16s and for those over 16 who fall outwith the child protection system who are perhaps not deemed vulnerable enough to be part of the adult protection system. Crucially, we want to wrap around and continue the level of protection for a girl at risk, even when she moves on from the child protection system and becomes a young adult. The care, attention, support and protection will all continue. [24]

Protection for women

42. While much of the Committee's evidence around FGMPOs centred on protecting children and girls, FGMPOs are also intended to protect women. The Committee explored how an FGMPO might benefit a woman who has already undergone FGM.

43. The Policy Memorandum states a court can make an FGM Protection Order for the purposes of—

- Preventing or reducing the likelihood that a person, persons or class of persons are subjected to FGM.
- Protecting a person who has already been subjected to FGM.
- Otherwise preventing or reducing the likelihood of a FGM offence being committed. [25]

44. Vickie Davitt, Gender Based Violence Midwife and FGM Lead, NHS Lothian, made the point that "FGM is not all about children; we are dealing with some women who have been severely traumatised by events that have gone on in their lives, and that needs to be recognised." [26]

45. At the Ruby Project, there was discussion around why an FGMPO might be needed for someone who had already been subject to FGM. They discussed a possible situation of a woman who had given birth and might need protection from being re-stitched. [27]

46. Vickie Davitt spoke of her experiences in maternity services working with women who had undergone FGM. She explained that after delivery, existing laws do not allow for the NHS to re-do FGM damage that had been done to a woman. In her experience, this was difficult for some women who might worried about the reaction of their husbands to a different body. [28] Another woman did not want deinfibulation because "her body works as her body has always worked" and she had no desire to change that. [29] She noted it was "really difficult" to protect women from further harm because they were over 18 and therefore "in theory" had a choice. However, she explained—

> you could debate choice up, down and sideways and you might never get the answer. She would say that she is freely choosing…but it is not a free choice if she is choosing to have it done because she is worried that if she does not, her husband will take another wife. [30]

Empowerment

47. As well as protecting from harm, some witnesses suggested an FGMPO might be empowering for women. Anne Marie Hicks, COPFS, said an FGMPO will protect people from harm and protect their rights, giving them options and opportunities to seek help which, she considered, would be empowering. [31] Detective Superintendent Elaine Galbraith, Public Protection, Specialist Crime Division, Police Scotland, agreed that protective measures could be empowering, and that an FGMPO would mean the responsibility wasn't entirely on a survivor or victim. [32] Liz Owens, Social Care Scotland, said an FGMPO "would be a really protective and empowering tool to have." [33]

48. Leethen Bartholomew, National FGM Centre, explained that domestic abuse was a factor in about 20 to 25% of the FGM cases they were involved in. His experience was that a mother would seek an FGMPO for her daughter at the point of leaving the relationship. He said an FGMPO gave the mother "the agency and the power not only to take a stance and protect herself but to also protect her child. That is a very empowering thing for a mother." [34]

49. The Minister said, "We want to empower communities and not disempower them. We also want to allow them to challenge and tackle outdated attitudes, which we think give rise to this gendered form of violence." [35]

Conclusion

50. The Committee agrees FGM protection orders would strengthen existing protections, particularly for 16 to 17-year olds, and notes the suggestions they could empower women, giving them options and opportunities. However, to ensure that

protection orders are not something that is “done to” a woman or community, engagement is essential.

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**.

Children's Hearings and Children's Panels

52. The Bill specifies who can apply to the court for an FGMPO—

> a) a person on whom there is a risk of an act of genital mutilation being performed,
>
> b) a person on whom such an act has been performed,
>
> c) the Lord Advocate,
>
> d) a relevant local authority,
>
> e) the chief constable,
>
> f) with the leave of the court only, any other person. [36]

53. The Minister told the Committee this list is "is not exhaustive and is pretty open, but we suspect that it will mostly be local authorities and perhaps, on rare occasions, individuals themselves who will look for a protection order." [37]

54. The Law Society of Scotland considered a ground of referral to the children's hearings system and the additional power for a children's panel to make FGMPOs would be beneficial—

> 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. [38]

55. However, SCRA did not think it was necessary for the children's hearings system to be able to grant an FGMPO. Neil Hunter, SCRA, said they were not seeking additional powers for the hearings system, as "the current grounds of referral are sufficiently broad and, more importantly, holistic as regards our approach to children and young people." He added neither were they seeking additional powers for the reporter to the children's panel as—

> the strengths of the hearings system lie in its focus on the child or young person—their best interests and the paramountcy of their welfare—and a hearing's ability to make compulsory supervision orders to regulate who has contact with the child and where the child can reside and to apply additional conditions that it might deem appropriate in individual circumstances. Therefore we believe that we have most of the powers that we require to respond to FGM cases at this stage. [39]

56. The Minister told the Committee—

> children's panels and hearings are called for a specific purpose, which relates to compulsory supervision orders and all the things that go along with them. All the issues that would lead to a child being referred to a panel would be taken into account. FGM is a schedule 1 offence, which would trigger a referral to the panel. That measure is already in place… because FGM is treated as a schedule 1 offence, there is an automatic trigger. [40]

57. The Committee is content that the powers of the Children's Hearing system are sufficient to deal with cases of FGM.

Penalties for breaching an FGMPO

58. Breach of an FGMPO would be a criminal offence. Inserted section 5N sets out the penalties for breaching an FGMPO—

> a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
>
> b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both). [41]

59. Witnesses gave their views on the penalties and the criminalisation of a breach of an FGMPO. Anne Marie Hicks, COPFS, thought criminalisation was appropriate, and is used in other legislation and civil orders such as forced marriage protection orders and domestic abuse interdicts. [42]

60. On whether the penalties set out were appropriate, Leethen Bartholomew, National FGM Centre, said it was difficult to answer "but I would say that five years or a fine would probably be suitable. I do not think that that is too draconian compared with the penalties for other offences." [43] However, Vickie Davitt, NHS Lothian, said—

> I can tell you what the women say…More often than not, when I mention the length of custodial sentence that is possible, many of them say that it is not long enough…They want the practice to stop and they think that one way that that could happen is much tougher sentencing. [44]

61. She explained that with only one conviction to date in the UK, it was difficult to say that penalties should be increased and more evidence on how courts treat cases was needed. She pointed out that the penalty in that conviction was 12 years jail, "so it was taken very seriously…However, we do not know whether that would happen in all cases until more cases are decided." [45]

62. COPFS commented that inserted sections 5N (2), (3) and (4) criminalise third parties who are not subject to FGM Protection Orders—

> in respect of acts mandated or prohibited by FGM Protection Orders that apply to other persons. These provisions may be challenging to prosecute from a practical perspective. In order to establish sufficient evidence and take prosecutorial action the Crown will require to prove by corroborated evidence that the accused person knew the content of the order despite the order not having been served on him/her. COPFS foresees that establishing sufficient evidence of a third party accused may prove challenging. [46]

63. The Committee agrees that breach of an FGMPO should be a criminal offence. It notes the comments that it is difficult to determine whether the penalties set out in the Bill are sufficient when only one prosecution has been achieved to date. It also accepts the view that for some victims, no sentence will be sufficient in terms of the violation of their human rights.

64. **The Committee asks the Scottish Government to address the point raised by COPFS regarding difficulties of prosecuting the provision, based on the possibility of insufficient corroborated evidence.**

Asylum seeking and FGMPOs

65. Throughout its engagement work, the Committee repeatedly heard from women who hoped FGMPOs would be considered by those processing their asylum or immigration claims. One community organisation shared the experiences of the women it works with—

> We have supported a number of women who fled their home country and are claiming asylum in order to protect their girls from FGM. Women highlighted the difficulty of their situation, where on one hand they are told that FGM is regarded as a serious offence and a child protection issue, whilst on the other hand the Home Office has refused their asylum claim. These women hoped that a FGM Protection Order could help their situation and protect their daughters from FGM. [47]

66. Emmaleena Käkelä wrote that a number of the women she had interviewed in her research had applied for asylum to protect their daughters from FGM and other forms of gender-based violence. However, she reported that "victims of FGM consistently reported difficulties in making their case for the Home Office on the grounds of FGM and other forms of gender-based violence" for reasons including—

- 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 must be demonstrated in order to be granted asylum for fear of FGM),
- a "culture of disbelief" from officials dealing with asylum claims, including women being accused of lying about their FGM status or the pressure to submit their daughters to FGM. [48]

67. For many women, relocating within their country of origin is not possible. As well as potential economic barriers, there are other difficulties. Leethen Bartholomew, National FGM Centre, had experienced cases where parents were told they could return to a different part of their country of origin. He pointed out that could mean people moving outside of their community, and potentially into an ethnic group with which there is historical conflict—

> It is not as easy as saying that people can go to another part of the country. It is a real fear for some parents, and they feel as if they are being punished twice. [49]

68. Andy Sirel, JustRight Scotland, said that in his experience the majority of women and girls at risk of FGM have been seeking international protection, not for something that might happen in Scotland but for what might happen if they are sent back to their country of origin. [50] He considered FGMPOs "would play a positive role on whether a woman or girl receives international protection." [51] He explained the High Court in England and Wales ruled in 2017 that when the Home Office is assessing the risk of returning to a country—

> it is not bound by the existence of an FGM protection order, but must take that into account…The Home Office has published guidance…that states that an order can provide strong evidence in the context of a claim for asylum. Our strongly-held view is…if we are trying to demonstrate a past risk, a risk in the UK and, most important, a risk on return to the home country if there is a forced marriage, an FGM protection order being in place would be helpful, because it might have elicited further evidence and will have produced a result on a higher burden of proof. [52]

69. In response to questions on the interaction between asylum claims and FGMPOs, the Victoria Atkins, Minister for Safeguarding and Vulnerability wrote to the Committee . Her letter stated that "the legal processes surrounding FGMPOs and asylum claims are separate…FGMPOs are not intended for the purposes of assisting asylum claims, which are made and considered separately under the Immigration Rules." However, FGMPOs may be submitted as evidence in an asylum case, and caseworkers are expected to "carefully consider the detail of the order and give it appropriate weight in reaching a decision." The Minister concluded any link between FGMPOs and asylum claims would be made on a case-by-case basis. [53]

70. From its earlier work on asylum and destitution, the Committee is aware that treatment of asylum claims can vary depending on the office and caseworker. The Committee heard from women their hopes that FGMPOs would be considered as part of their asylum application. The Committee notes the statement from the Minister for Safeguarding and Vulnerability that there is no link between FGMPOs and asylum claims, and that these considerations are dealt with on a case-by-case basis.

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.**

72. **The Committee also asks the Scottish Government to raise this issue directly with the UK Government.**

Support for Women

Protection and support

73. A number of witnesses spoke of the need for support to accompany an FGMPO. Anne Spiers, Deputy Chief Executive Officer, Multi-cultural Family Base, suggested it would be helpful for the groups with which they work if FGMPOs could be called "FGM Protection and Support Orders." She explained, "Our experience of intervention is that it is best received when it goes alongside tangible support to people, so the order needs to offer people support as well as protection." [54] Hassan Darasi, Community Infosource, agreed [55] while Esther Kamonji, KWISA, highlighted the need for both protection and support systems to be in place. [56]

74. Anne Spiers gave the example of a woman they had supported. "Jane" had been living in Scotland with her family while her husband studied. His course had come to an end and they were to return to their home country, where Jane's child (who had been born in Scotland) would undergo FGM. Jane's husband would not tell her when he planned for them to return to their home country. Jane was faced with an immediate choice. She could remain in Scotland, without her husband, as an asylum seeker, with the likelihood her husband and family would abandon her. Or, she could return with her husband to her home country where her daughter would undergo FGM. If Jane claimed asylum, she and her children would be relocated to Glasgow where she had no support or community. Anne Spiers explained she—

> would be on her own in Scotland, where she did not choose to come in the first place, in order to protect her child. That is where we talk about protection and support. The little bit of breathing space that a protection order might have provided in the first instance would perhaps have given her some time to think about her options, with some protection. [57]

75. In evidence to the Committee, the Minister noted that an FGMPO can direct local authorities to put support in place. [58]

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.**

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.**

Medical Services

78. Several areas where medical professionals could provide additional support were raised: primarily, support directed to women engaging with maternity services, and support available outwith maternity services.

79. Vickie Davitt, NHS Lothian, told the Committee that Lothian has a policy of "universal inquiry", where all women engaging with maternity services are asked "whether they have had any form of cutting or piercing that might cause problems in childbirth." [59] This helps avoid the possibility of racial profiling, as all women are asked. Women can then be referred to a specialist midwife for support.

80. While this seems an ideal approach, it does not appear to be replicated across the country. The Committee heard from women supported by the Women's Support Project. The women agreed they do not tend to speak to health workers about their FGM related problems. They voiced discomfort at visiting sexual health clinics. One woman said she felt she stood out in her hijab and was embarrassed to be there, and there was frustration around seeing someone new at each visit. Women suggested they might be more comfortable if a clinic employed a woman with experience of FGM, from an affected community. Women said they don't know where to get help. One has had three babies in Scotland but was never asked about FGM, by social workers or her GP. She said she only discovered she had FGM when she started going to a community group. [60]

81. The Committee questioned whether health professionals feel supported to speak to women about FGM. Katie Cosgrove, Organisational Lead for Gender Based Violence, NHS Health Scotland, said maternity services "probably feel more supported than others" because there has been "a huge concentration of effort on ensuring that we can have sensitive conversations with women when they present to maternity services". However, she considered there had "perhaps been less attention in other areas of the health service." [61]

82. Jan MacLeod, Manager, Women's Support Project, said—

> We regularly—month in, month out—come across women who have been in touch with services and who have not been asked the questions or given the information that has allowed them to talk about physical or mental problems. [62]

83. Katie Cosgrove argued that women with FGM are "not just mothers. They have been through an experience that may have been traumatic…and the repercussions for their long-term mental and physical wellbeing need to be taken into account." Professionals in all areas of the health service must be able to have conversations with women about FGM, including the impact on their mental health, "because there are multiple points of entry into the health service and we know the litany of subsequent emotional and physical impacts of FGM on women's health." [63]

84. Jan MacLeod agreed resources should be targeted at key points of contact with women, which include registering with a GP, the smear testing programme, and maternity services. [64]

85. Leethen Bartholomew, National FGM Centre, also spoke of the need to provide support for women outside of maternity services. He mentioned FGM clinics for non-pregnant women had just been set up in London—

> At those clinics, there is therapeutic support for women, which is one of the best things that can happen. Women sometimes say to our workers that the point at which we engaged with them was the first time that anyone had taken the opportunity to talk to them about FGM. Those women have been through the healthcare system, been to their general practitioners and given birth, but no one has had that conversation with them. [65]

86. The Committee notes there is some good work already taking place in this area but the focus of this work seems to be based in maternity services. More can be undertaken to ensure health professionals across medical services are supported and confident to deal with cases of FGM. The existing multi-agency guidance is a good start, but there is evidently more work to be done. The Committee welcomes the elevation of guidance to statutory level, and considers this will help in achieving consistency and best practice across Scotland.

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.**

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 sensitive services that are both targeted and universal.**

Schools

89. Many of the women who participated in the Committee's engagement suggested there was a place for education around FGM in schools. At the Women's Support Project visit, one woman said she would like support in how to talk to her daughter about FGM, as she did not know where to start. She thought if teachers discussed it in schools, with both girls and boys, it would give her a starting point to have conversations around it. [66]

90. The role of boys and men in FGM conversations was also raised by the men at Community InfoSource. Men said they were not aware of FGM happening in their own communities, or their own families, until they attended workshops with Community InfoSource. [67] There was a need for more awareness, and including FGM teaching in schools could help.

91. Women considered the "right" way for schools to teach about FGM would be from a human rights and health perspective.

92. In the digital stories prepared for the Committee, women talk about teaching FGM in schools as part of the curriculum so that it is mainstreamed. Another considers covering the subject in schools can remove some of the risk of FGM happening.

93. Leethen Bartholomew, National FGM Centre, gave an example of FGM being taught in a primary school in England. It was done so as part of the science curriculum, in a school with a strong ethos of children's rights. He said the children "grasped the issue and understood it pretty well. They asked very informed questions, including questions that some adults would not even think of." [68] Obi Amadi, lead professional officer at Unite the Union, agreed that school involvement is important and said health professionals ask that work is done with both boys and girls. [69]

94. The Minister said new resources for relationships, sexual health and parenthood education which include a lesson plan for third and fourth year secondary school students "on sexuality and the idea of their rights, and that includes FGM." [70] The Committee notes that FGM will be mandatory teaching in secondary schools in England from 2020. The Committee also notes the requests of women to have FGM taught in schools. However, the Committee considers this teaching could take place earlier, and an optional lesson in secondary school may not reflect the needs of communities.

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, if and how it will consider extending learning to younger children, and how this connects to ongoing work around preventing child sexual exploitation.**

Legal Aid

96. The Policy Memorandum considers that while the majority of applications for an FGMPO would be made by the Lord Advocate, it is possible for individuals to pursue a protection order, either for themselves or another person.

97. The Committee has heard evidence on the potential legal costs to those applying for an FGMPO. Detective Superintendent Galbraith, Police Scotland, considered legal aid should be free because "FGM is not like any other crime. It is different, because people are not confident in the system or…they do not even know that it is a criminal offence." [71]

98. Neil Hunter, SCRA, pointed out that while local authorities and other agencies might be making an application on behalf of someone (and therefore legal aid would not apply), if they were not involved—

> the degree of urgency around an individual who is seeking to make an application to protect themselves through an order would require pretty rapid access to legal advice and assistance. That suggests that, if there are barriers or inhibitors to accessing legal aid, we need to examine and try to reduce them. [72]

99. Leethen Bartholomew, National FGM Centre, noted that they work with a few barristers who represent women in court *pro bono* because "we know that if they do not qualify for legal aid, they will have to pay for it and some women just cannot afford it." [73]

100. Gillian Mawdsley, Law Society of Scotland, considered that making legal aid free for FGMPOs might lead to demands for it to be free in other contexts too. However, she noted that in the "spirit of access to justice", it's important that people aren't "hindered by the burden of financial assessment." She said it was difficult to estimate how large the demand would be, but added—

> I stress that, as well as making legal aid available, we need to have the lawyers to provide the legal aid in order to ensure that people can access justice wherever in the country advice and assistance might be required. [74]

101. The Minister considered in the majority of cases an FGMPO will be sought by a public body and legal aid would not apply. Where an individual was bringing a case, the usual means-testing of legal aid would apply. [75] However, the Minister indicated that while she considered the current arrangements to be sufficiently robust and supportive, she was open to considering other measures. [76]

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.**

Community Support

103. Through its engagement and evidence taking, the Committee has heard from organisations working in communities to support those affected by FGM, and to prevent it occurring.

104. However, as Emmaleena Käkelä noted in her submission, FGM-affected women highlighted a need for communities to take charge of the issues that affect them, and be involved in FGM prevention work. However, she added that "All community participants noted the limited funding available for community groups to engage and organise their own events." [77]

105. The Minister spoke of the work done by Scottish Government funded organisations and programmes, like Saheliya, KWISA, and Waverley Care. She added that the Scottish Government looks to Saheliya "as the experts in ensuring that people get the right support." [78]

106. The Committee echoes the Minister's view that these groups are the "experts" in providing support, but this support must be sustained if FGM is to be eradicated. The Committee considers these organisations, and others working in this area, need to be provided with long-term funding to deliver the support that is required along with this Bill.

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.**

Provisions not in the Bill

108. This Bill as introduced diverges from the Serious Crime Act in excluding three areas: anonymity, failure to protect, and duty to notify. The Scottish Government consulted on these, and the Committee has taken evidence on them to consider whether they should be included in the Bill.

Anonymity

109. While the Serious Crime Act 2015 provides for lifelong anonymity for FGM victims in England, Wales and Northern Ireland, provisions around anonymity are not included in this Bill. In the Scottish court system, anonymity is currently available under sections 271N-271Z of the Criminal Procedure (Scotland) Act 1995. Media restrictions on cases involving children also exist under section 47 of the Criminal Procedure (Scotland) Act 1995. In addition, a longstanding convention in Scotland prevents alleged victims of sexual offences from being named in the media.

110. The Scottish Government's consultation showed support for the introduction of anonymity for the victims of FGM, with 75% of those responding agreeing that the Bill should have provision for anonymity of victims.

111. The Policy Memorandum accompanying the Bill states—

> Given the statutory protections already in place the Scottish Government is not proposing to bring forward legislation on this topic, however, recognising the feedback from the consultation the Government would propose to keep this under review and would welcome the views of the scrutinising committee and stakeholders. [79]

112. Views on anonymity were mixed. Arguments in favour of anonymity included that it would protect the dignity of those reporting the offence, encourage women and girls to come forward, protect individuals from potential harm or repercussions, and be in line with England and Wales. Police Scotland considered that "without protection of automatic anonymity" a fear of repercussions could make it difficult to obtain evidence around FGM, and this could be a barrier to reporting. [80] SCRA also supported anonymity. [81] Those against the inclusion of anonymity in the Bill considered there were already sufficient protections. The Royal College of Paediatrics and Child Health Scotland considered "existing legislature already covers this situation to a satisfactory degree." [82]

113. In the Committee's engagement, support for anonymity was limited, and individuals questioned whether it would be possible in close-knit communities for identities to be kept secret. Some considered that FGM should not be singled out, but any provisions around anonymity should relate to victims of all honour-based violence. [83]

114. The Committee questioned whether anonymity should be automatic, or something that can be automatically requested. Leethen Bartholomew, National FGM Centre, said that anonymity should be automatic for children, who might not be aware of how the decision might affect them in later life. He added—

> That could also apply to adults, who might say that they do not want anonymity because automatic anonymity in some sense removes power and control from the woman to make decisions about her life. The matter should be considered case by case, but the default position should be, at the starting point when the allegation is made, that the person is given anonymity. [84]

115. However, the Minister considered automatic anonymity could go against the principles of openness and accessibility in the courts, and that there were sufficient provisions already available to ensure anonymity when justified. She noted that in her experience, some women wanted to be able to tell their stories and it was important they were able to do so. She concluded—

> although we are not convinced that the bill should provide for the automatic granting of anonymity, we are absolutely convinced that the courts have the power to offer it when circumstances require it. [85]

116. The Committee questioned whether if anonymity were requested, it could be refused by a court. The Minister replied she had not experienced this when a case involved a vulnerable person or child, adding, "Our courts are pretty well versed in the treatment of sensitive issues, and we should trust them to do the right thing." [86]

117. While some individuals may not want to be anonymous, offering anonymity to those who wish it is essential. It is not sufficient to say that the courts should look sensitively on these requests. Those reporting FGM may not be confident to do so if there is any question that anonymity may not be granted, and may not be reassured by precedents or conventions.

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.**

Failure to Protect

119. Under Section 72 of the Serious Crime Act 2015, in England and Wales failure to protect applies to a person if they are responsible for a girl when an FGM offence is committed against her. The offence carries a maximum penalty of seven years' imprisonment, a fine, or both. To be "responsible" a person either has to have parental responsibility and have frequent contact with the girl; or be an adult with assumed responsibility "in the manner of a parent."

120. The Scottish Government did not propose this offence, noting primarily concerns that it could have the consequence of criminalising someone who may lack the power or agency to protect a girl, particularly in cases of coercive or abusive relationships. [87]

121. The Scottish Government's consultation provided mixed responses, with 48% in favour of the provision and 33% opposed. [88] The Committee's own evidence was likewise mixed.

122. The National FGM Centre considered this measure sent a strong message that involvement in FGM had serious, criminal ramifications and is an "essential part of English and Welsh FGM law." [89] In evidence to the Committee, Leethen Bartholomew reiterated that while there was not yet much evidence in England and Wales to show how this offence worked, its inclusion gave a strong, symbolic message to anyone who had care of a child. However, he questioned whether the symbolic value should lead to its inclusion in legislation. [90]

123. Royal College of Paediatrics and Child Health Scotland noted a concern that if failure to protect was not sought for a case where it is applicable, "this could be interpreted as mitigation for the perpetrator." [91] They thought the introduction of an offence around failure to protect fit with a child rights approach, and might be a deterrent. They wrote, "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" and should be viewed as a carer failing to protect a child from abuse. However, they stipulated that if a mother can demonstrate she is the victim of domestic abuse and therefore had no control over a decision, she should not be penalised. [92]

124. Police Scotland considered it might be challenging to gather sufficient evidence to allow for a prosecution on these grounds. [93]

125. In its engagement, the Committee did not find support for the inclusion of failure to protect. Women felt that it might have unintended consequences, and might serve to frighten and further silence some women. One woman said "Women in my community have no say. It's not the women who are allowed to make decisions." Others described situations where their husbands had made decisions with other family members without their knowledge or consent, sometimes actively misleading the woman. Another recounted an adult woman being forcibly re-infibulated against her will during a trip to her home country. She commented that if women are not able to protect themselves it would be unfair to punish them for failing to protect their child. [94]

126. The Committee is concerned that a failure to protect offence could have unintended consequences, primarily of punishing someone who is unable, rather than unwilling, to protect a child. Therefore, offences around failure to protect should not be included in the Bill.

Duty to Notify

127. The Committee heard concerns around the inclusion in the Bill of a duty to notify, or "mandatory reporting". The General Medical Council raised concerns the proposal leaves "no scope" for professional judgement or considering the child's best interests. [95] Dr Wood, Information Services Division, NHS National Services Scotland, raised concerns about how the duty would affect the relationship between

health practitioners and their patients, potentially creating conflict between "mandatory duties that take away from…professional judgement." [96]

128. The National FGM Centre gave an example of a young woman they had supported who had delayed reporting FGM (which had taken place in the UK) until she was 18 because she did not want her parents to be arrested. Leethen Bartholomew explained that in England, "mandatory reporting is not working as we think it should work." [97] He added reporting can damage relationships and create barriers, and that "mandatory reporting is probably not a good measure." [98]

129. The Royal College of Paediatrics and Child Health Scotland note in their submission that it is not possible to generalise as to who might be at risk of FGM based on where the family originates, and that "the danger of introducing a duty to notify the police is that there would have to be an [Inter-agency Referral Discussion (IRD)] for every girl from most of Africa and much of Asia." They point to the example in Lothian. There, girls are risk assessed, professionals get to know families well, and police are only notified if and when there are reasonable grounds to believe a girl is at risk and intervention is required. [99]

130. The Committee has not heard any positive benefits of introducing this provision in Scotland, and is concerned by the evidence that the provision may not be working as intended in England. The Committee recognises medical professionals must be able to use professional judgement. In relation to children, professionals already use existing procedures to refer when there are reasonable grounds.

131. The Committee considers there are no benefits to including provisions around a duty to notify and they should not be added to the Bill.

Labial elongation and breast ironing

132. Labial elongation (sometimes called vaginal elongation) and breast ironing are both are considered acts of violence against women and girls. While they are not covered by the Bill, the Scottish Government included them in its consultation. The Committee also received some views on the practices.

133. The Royal College of Paediatrics and Child Health Scotland said its members had "limited clinical experience of vaginal elongation or breast ironing…Existing legislation should already cover all types of abuse and assault on a person, including the above." [100]

134. Police Scotland view labial elongation as being covered by the 2005 Act (Section 1) [101] while breast ironing would already result in police investigation and the instigation of multi-agency child protection procedures as it is considered assault to severe injury and permanent disfiguration. [102]

135. The Women's Support Project wrote they had "not seen evidence of the need of specific protections relating to vaginal elongation or breast ironing, but believe that it is important that these are included in public education and practitioner training." [103]

136. The Committee notes the lack of data around labial elongation and breast ironing in Scotland, but is concerned by anecdotal evidence these practices occur, no matter how infrequently.

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

Genital piercings

138. Under World Health Organisation (WHO) guidance , piercing or pricking of the genitals is classed as Type 4 FGM. However, it is unclear whether this covers cosmetic piercings, or forms of non-consensual piercing only. The WHO classification system has been used to inform FGM coding practices, including the new codes introduced in Scotland in April 2016. Genital piercing is currently recorded in England as Type 4 FGM, and if the Scottish NHS utilises the relevant coding it too will be capturing procedures like consensual piercings.

139. The guidance from the Chief Medical Officer and Chief Nursing Officer on standards for healthcare to prevent and respond to FGM, includes an annex on recording. This does acknowledge the range of procedures covered by type IV, but it does not make any exception for them.

140. Police Scotland wrote that “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.” [104]

141. The Royal College of Paediatrics and Child Health Scotland agree that piercing should be seen as FGM. They write that a child should have the legal capacity to give informed consent and recommend that piercing is not permitted until the age of consent for sexual activity is reached [105] —

> A woman of any background, who makes the independent decision to undergo cosmetic piercing, has a different motivation and if the decision is hers alone and she has capacity and is an adult of over 16, we would not dispute her right to do it and the right to make that decision for herself. [106]

142. The Committee agrees that while in some cases piercing can rightly be seen as FGM, the issue of cosmetic piercing may be treated differently. Informed consent and independent decision making are key factors in determining the difference.

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.

Intent to carry out FGM

144. Police Scotland suggest there is a potential gap in the existing legislation to cover when someone is found with items in their possession suggesting they intend to carry out FGM. They state there is "limited legislative power at present or within the Bill to cover such eventualities" and suggest an addition to the Bill "to include a preventative offence around the intent or being in possession of items for the purposes of FGM." [107]

145. **The Committee asks the Scottish Government for its views on this additional provision suggested by Police Scotland.**

Recording FGM

146. A difficulty in undertaking scrutiny of legislation related to FGM is the lack of data for Scotland. Figures on the prevalence of FGM in Scotland are generally estimated based on parental countries of origin. In 2014, the Scottish Refugee Council published a report which estimated the location and number of Scottish communities that might be affected by FGM. It estimated around 24,000 people living in Scotland were born in a country where FGM is practised to some extent. Communities potentially affected by FGM are in every local authority area, with the largest in Glasgow, Aberdeen, Edinburgh and Dundee respectively.

147. However, the Committee heard in evidence that parental attitudes may change once they have left their country of origin, or parents may leave a country to avoid FGM. Also, some countries may practice FGM in certain areas only. It's therefore difficult to assume FGM prevalence based solely on country of origin, and a more accurate measurement might be to look to the NHS to record FGM.

148. Dr Rachael Wood, NHS National Services Scotland, explained how FGM data is recorded by the NHS. Recording is done at local level, in patients' notes, and also at national level using a coding system. Codes for recording FGM and procedures to correct FGM at a national level came into place in 2014 for recording deinfibulation [108] procedures, and 2016 for FGM. This follows guidance issued by the Chief Medical Officer in 2014 and 2016 . [109]

149. Dr Wood reported that fewer than 10 women a year are recorded as having a deinfibulation procedure. In the most recent data for 2018/19, around 100 women were recorded as known to have had FGM. This is an increase from about 50 women in 2016/17, when figures were first collected. Dr Wood said this demonstrates, "FGM is now being recognised in the health service and is being recorded more accurately than it could be previously." [110] She suggested "that process is strengthening…as a result of the guidance that is available." [111]

150. However, Vickie Davitt, NHS Lothian, spoke of the difficulties of NHS systems in different health boards not communicating with each other. She was not supportive of any form of recording in a different way that added extra work for busy healthcare workers. [112] She explained that "We need to find some way of recording FGM" because a lack of data might suggest "FGM is not an issue in Scotland, but we know that it is." [113]

151. Katie Cosgrove, NHS Health Scotland, said there was a challenge in ensuring staff know about the requirement to record FGM, and that it's recorded accurately. [114] Obi Amadi, Unite the Union, agreed that training for professionals is "key, to make sure that they are addressing the issue and addressing it properly." [115]

152. The Minister noted the guidance that had been issued on recording FGM, and the need to do so "in a sensitive way that helps us to understand the issue, and helps professionals to understand it so that they can give the right support." She added that the Scottish Government is working with NHS boards and data collection agencies alongside communities "to make sure that we get it right." [116]

153. Without a baseline, it is difficult to measure the success of interventions and to allocate resources. The Committee notes the guidance issued by the Chief Medical Officer, but also the challenges faced by NHS workers who might be working with systems that do not communicate with each other. The Committee has heard a key difficulty in recording FGM is understanding the issues and recording them properly.

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.**

Statutory guidance

155. As well as creating FGM protection orders, the Bill provides for guidance relating to FGM (section 2) and guidance relating to FGMPOs (section 3). Both forms of guidance are to be statutory, as opposed to the existing guidance on FGM which is advisory.

156. Those who gave evidence to the Committee were positive about the creation of statutory guidance. Sara McHaffie, Violence against Women Development Officer at Amina, noted that the move towards statutory guidance "might lend credence to the fact that…people need to take it on board and take it seriously." [117] Girijamba Polubothu, Manager, Shakti Women's Aid, spoke of her experience working on the statutory guidance around forced marriage. She said that from her experience, it is necessary for guidance to be statutory. [118]

157. The Royal College of Paediatrics and Child Health Scotland, "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…Experience shows us that unless this is explicit, professionals fail to appropriately risk assess and protect girls." [119]

158. Katie Cosgrove, NHS Health Scotland, agreed moving the guidance on to a statutory basis would give it more weight among professionals. She added this would "ensure that it has wider reach than it has at the moment" and "might allow more focus on areas of the health service outwith maternity care." She gave some examples of what should be included in guidance, including—

- speaking to women about abuse,
- the language that should be used, which should reflect how women want to be spoken to about FGM, including when and how women are asked as well as the terminology used, and
- health information, and asking questions not just on the basis of someone's ethnicity but asking whether FGM has had an impact on the woman's health, including mental health. [120]

159. Andy Sirel, JustRight Scotland, thought guidance could provide clarity around risk assessments and when legal orders to protect children must be applied for. He added, "In the past 18 months, our experience in respect of forced marriage has shown us that there are times when authorities have not acted and the consequences of that have been severe. Guidance would help local authorities to make decisions." [121]

160. The SCRA wrote their hope was that "this Bill will result in clear statutory guidance which will promote the existing protections to be found in the Children's Hearing System so that more young people at risk can be kept safe." [122] Detective Superintendent Galbraith, Police Scotland, thought statutory guidance could help to clarify existing child protection procedures. [123]

161. Andrea Bradley, EIS, thought statutory guidance would be helpful in making teacher training systematic across the country but noted that it must take consideration of the potential racial profiling element. She explained the current advisory guidance has meant it is not high in the consciousness of teachers and they are not comfortable addressing FGM. She suggested strengthening the status of the guidance could "generate a bit of activity within the system to improve that picture." She cautioned, though, that teachers face a large workload and numerous training and development demands, but "Space has to be created in the system, because this is about the safety of girls and young women." [124]

162. Leethen Bartholomew, National FGM Centre, considered the guidance should be statutory as "Professionals sometimes do not refer even to guidance that is statutory, and that is even more the case if the guidance is advisory." He considered the guidance could create high-level accountability by placing responsibilities on chief executives and directors. He added that the existing multi-agency guidance for Scotland "is a step in the right direction and mirrors the guidance in the rest of the UK." [125] In their written submission, the National FGM Centre considered guidance must be multi-agency and extend to other issues that may be present in FGM cases, such as other forms of honour based violence, domestic abuse, and abuse linked to faith or belief. [126]

163. The Minister differentiated between statutory and advisory guidance, saying "People must have due regard to statutory guidance, and adapt their understanding accordingly, whereas advisory guidance is open to interpretation." She said her aim is for the new guidance to have "no room for interpretation or misperception" and that such guidance is supportive for professionals using it. [127]

Consultation with Communities

164. Dr Ima Jackson, Glasgow Caledonian University, suggested it was essential that communities were involved in the creation of guidance, and their lived experience was central to it. [128] She explained that her work with women in affected communities showed their knowledge and willingness to engage but—

> Instead of just being consulted, they should have authority and be decision makers. We have to rethink our processes about who makes guidance and whose voice is allowed to influence what it becomes. That is where we can make real change in Scotland. As I said, I have seen attempts to do that in committees on other matters, but I have not often seen it happen around people of colour or around migrants. They are so far from that process. [129]

165. The General Medical Council support the approach that the guidance is produced after consulting stakeholders [130] while Emmaleena Käkelä wrote that all the FGM-affected women and members of migrant communities that she interviewed "argued for the need to further involve communities in the Scottish FGM prevention work." [131]

166. The Minister committed to ensuring—

> people in communities play a central role in shaping the services, policy and statutory guidance. The evidence to the committee has been clear that the involvement of communities is key to the success of the programme of work, and I agree with that. I am committed to implementing a comprehensive programme of engagement and involvement as we implement the bill. Nothing about them without them is my watchword. [132]

167. The Minister also agreed with evidence to the Committee that the use of language is "incredibly important", saying "we need to be very careful about how we use language and frame the issue." She committed to considering carefully "how we should develop our statutory guidance, and we will again consult the communities closely. We do not want to create the idea that the bill could lead to racial profiling or racialisation of the issue." [133]

168. The Committee agrees the elevation of guidance to statutory level is appropriate, and indicative of the seriousness with which professionals should be treating FGM. The Committee notes the comments of witnesses as to what should be included in the guidance, and the desires of affected communities to be involved in its creation.

Training

169. Leethen Bartholomew, National FGM Centre, considered FGMPOs were "poorly understood" [134] by professionals, and that "an order is sometimes considered to be the last option when it should be considered to be the first option". [135]

170. The Committee has heard that training on FGM, and FGMPOs, is required for many types of professionals, from doctors and midwives to teachers and lawyers.

Conclusion

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.**

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.**

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.**

Work of other Committees

Delegated powers

174. The Delegated Powers and Law Reform (DPLR) Committee considered the Bill on 3 September and 29 October 2019.

175. At its meeting on 3 September, the DPLR Committee was content with the delegated powers in the following provisions—

- Section 1 (inserting section 5O(4)(b)(ii) of the 2005 Act) – Offences relating to UK orders
- Section 7 (inserting section 7B of the 2005 Act) – Ancillary provision
- Section 10 – Commencement

176. The Committee sought further information from the Scottish Government in relation to the following provisions:

- Section 2 (inserting section 5P of the 2005 Act) - Guidance relating to female genital mutilation
- Section 3 (inserting section 5Q of the 2005 Act) – Guidance relating to female genital mutilation protection orders

177. A response from the Scottish Government was received on 1 October. The Committee then reconsidered the delegated powers at its meeting on 29 October 2019. A summary of its consideration is available in its report. [136] The DPLR Committee agreed it was content with the powers in the Bill.

Finance

178. The Finance and Constitution Committee issued a call for views on the financial elements of the Bill. No responses were received.

General Principles

179. **The Equalities and Human Rights Committee recommends the general principles of the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill be approved by the Scottish Parliament.**

Annexe A: Written and oral evidence

Submissions received:

- Police Scotland
- Emmaleena Käkelä
- General Medical Council
- Scottish Children's Report Administration
- Royal College of Paediatrics and Child Health Scotland
- National FGM Centre
- The Educational Institute of Scotland
- Law Society Scotland
- Scottish Youth Parliament
- CEMVO Scotland
- Equality and Human Rights Commission
- Women's Support Project
- Crown Office and Procurator Fiscal Service

Supplementary Submissions:

- JustRight Scotland
- Education Scotland
- Border Force

Correspondence

- Letter from Minister for Older People and Equalities, 21 June 2019
- Letter from Minister for Parliamentary Business and Veterans, 14 October 2019
- Letter from Victoria Atkins MP, Minister for Safeguarding and Vulnerability, 31 October 2019

Official Reports

- Official Report of Thursday 12 September
- Official Report of Thursday 19 September
- Official Report of Thursday 10 October

- Official Report of Thursday 7 November
- Official Report of Thursday 14 November

Annexe B: Extract of minutes of meetings

180. 20th Meeting of 2019 (Session 5) Thursday 12 September 2019

3. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Dr Ima Jackson, Senior Lecturer, Department of Nursing and Community Health, Glasgow Caledonian University;
- Andy Sirel, Head of Scottish Migrant and Refugee Centre, JustRight Scotland;
- Dr Saffron Karlsen, Senior Lecturer in Social Research, School of Sociology, Politics and International Studies, University of Bristol;
- Jan MacLeod, Manager, Women's Support Project;
- Angela Voulgari, Gender Based Violence Services Manager, Sacro;
- Hassan Darasi, Project Manager, Community Infosource;
- Anne Spiers, Deputy Chief Executive Officer, Multi-cultural Family Base.

4. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (in private): The Committee considered the evidence heard.

181. 21st Meeting 2019 (Session 5) Thursday 19 September 2019

1. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Alison Davis, Chief Executive Officer, Saheliya;
- Mukami McCrum, Chair, Kenyan Women in Scotland Association;
- Girijamba Polubothu, Manager, Shakti Women's Aid;
- Sara McHaffie, Violence Against Women Development Officer, Amina Muslim Women Resource Centre;
- Vickie Davitt, Gender Based Violence Midwife/FGM Lead, NHS Lothian;
- Dr Rachael Wood, Consultant in Public Health Medicine, Information Services Division, NHS National Services Scotland;
- Obi Amadi, Lead Professional Officer, Unite the Union;
- Katie Cosgrove, Organisation Lead for Gender Based Violence, NHS Health Scotland.

2. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (in private): The Committee considered the evidence heard.

182. 24th Meeting 2019 (Session 5) Thursday 10 October

1. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Andrea Bradley, Assistant Secretary Education and Equalities, Educational Institute of Scotland;
- Detective Superintendent Elaine Galbraith, Public Protection, Specialist Crime Division, Police Scotland;
- Suzanne Hargreaves, Senior Education Officer for Health and Wellbeing, Education Scotland;
- Liz Owens, Senior Officer Child Protection, Glasgow Health and Social Care Partnership, on behalf of Social Work Scotland;
- Anne Marie Hicks, National Procurator Fiscal for Domestic Abuse and Head of Victims and Witness Policy, Crown Office and Procurator Fiscal Service;
- Neil Hunter, Principal Reporter, Scottish Children's Reporter Administration;
- Gillian Mawdsley, Policy Executive, Law Society of Scotland.

2. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: The Committee considered the evidence heard.

183. 26th Meeting 2019 (Session 5) Thursday 7 November

2. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Leethen Bartholomew, Head of National FGM Centre, National FGM Centre.

3. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (in private): The Committee considered the evidence heard.

184. 27th Meeting 2019 (Session 5) Thursday 14 November

2. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Christina McKelvie, Minister for Older People and Equalities and Trevor Owen, Bill Team Leader, Scottish Government.

3. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (in private): The Committee considered the evidence heard.

185. 29th Meeting, 2019 (Session 5), Thursday 28 November 2019

4. Female Genital Mutilation (Protection and Guidance) (Scotland) Bill (in private): The Committee considered a draft Stage 1 Report. Various changes were agreed to, and the report was agreed for publication.

Annexe C: Engagement

Notes from visits

- Community InfoSource
- The Ruby Project
- Women's Support Project
- Multi-Cultural Family Base

Toolkit responses

- Summary of Toolkit Responses

Digital stories

- Digital stories

Annexe D: Fact-finding visit to Sweden

186. In October 2019, the Convener visited Sweden as part of a Scottish Parliament delegation to meet with organisations and parliamentarians to learn about the Swedish approach to FGM.

187. The Convener met—

- an official from the Division for Gender Equality in the Ministry of Employment,
- Ingela Holmertz, Secretary General, and Taric Adan of Action Aid Sweden, a global rights organisation founded in 1972 which works to fight poverty and move toward gender equality and equality and justice,
- Sara Mohammad, President of GAPF , a national organisation founded in 2001 whose vision is an equal society free from honour-related violence and oppression, and
- Members of Parliament and supporting officials from the Riksdag Committees on health and wellbeing and justice.

188. A report of the visit has been published by the Scottish Parliament's International Relations Office.

- Report of the 2019 visit by the Scottish Parliament delegation to Stockholm, Sweden

1 SPICe briefing

2 Official Report, 12 September, col.8

3 Official Report, 12 September, col.11

4 Official Report, 10 October, col.32

5 Official Report, 10 October, col.32

6 Official Report, 10 October, col.33

7 Official Report, 7 November, col.10

8 Official Report, 14 November, col.17

9 Policy Memorandum, paragraph 21

10 Policy Memorandum, paragraph 21

11 Official Report, 14 November, col. 6

12 Financial Memorandum, paragraph 9

13 Emmaleena Käkelä, written submission

14 Note of visit, Multi-cultural Family Base

15 Royal College of Paediatrics and Child Health Scotland, written submission

16 Official Report, 10 October, col. 4

17 Official Report, 10 October, col. 20

18 Women's Support Project, written submission

19 For a list of relevant protection orders, see the SPICe briefing for the Bill, p.19

20 Official Report, 10 October, col. 5

21 Official Report, 12 September, col.9-10

22 Official Report, 10 October, col. 5-6

23 Police Scotland, written submission

24 Official Report, 14 November, col.8

25 Policy Memorandum, paragraph 20

26 Official Report, 19 September, col.25

27 Note of visit, The Ruby Project

28 Official Report, 19 September, col.24

29 Official Report, 19 September, col.35

30 Official Report, 19 September, col.24

31 Official Report, 10 October, col.19-21

32 Official Report, 10 October, col.7

33 Official Report, 10 October, col.5

34 Official Report, 7 November, col.7

35 Official Report, 14 November, col.19

36 Bill as Introduced, Section 1, inserted text s.5C(2)

37 Official Report, 14 November, col.8

38 Law Society of Scotland, written submission

39 Official Report, 19 September, col.22

40 Official Report, 14 November, col.9

41 Bill As Introduced, s.1 (inserted section 5N(7))

42 Official Report, 10 October, col. 24

43 Official Report, 7 November, col.9

44 Official Report, 19 September, col.30

45 Official Report, 19 September, col.30

46 COPFS, written submission

47 Summary of Toolkit Responses

48 Emmaleena Käkelä, written submission

49 Official Report, 7 November, col.12

50 Official Report, 12 September, col.20

51 Official Report, 12 September, col.9

52 Official Report, 12 September, col.24

53 Letter from the Minister for Safeguarding and Vulnerability, 31 October 2019

54 Official Report, 12 September, col. 29-30

55 Official Report, 12 September, col. 31

56 Official Report, 19 September, col.11

57 Official Report, 12 September, col. 41-42

58 Official Report, 14 November, col.13

59 Official Report, 19 September, col.26

60 Note of visit, Women's Support Project

61 Official Report, 19 September, col. 22

62 Official Report, 12 September, col. 39

63 Official Report, 19 September, col. 22

64 Official Report, 12 September, col. 40

65 Official Report, 7 November, col.10-11

66 Note of visit, Women's Support Project

67 Note of visit, Community InfoSource

68 Official Report, 7 November, col.17

69 Official Report, 19 September, col.26-27

70 Official Report, 14 November, col.18

71 Official Report, 10 October, col. 14

72 Official Report, 10 October, col. 28

73 Official Report, 7 November, col.7

74 Official Report, 10 October, col. 27

75 Official Report, 14 November, col. 10

76 Official Report, 14 November, col.11

77 Emmaleena Käkelä, written submission

78 Official Report, 14 November, col. 13

79 Policy Memorandum, paragraph 37

80 Police Scotland, written submission

81 SCRA, written submission

82 Royal College of Paediatrics and Child Health Scotland, written submission

83 Toolkit Summary of Responses; Note of visit, Women's Support Project

84 Official Report, 7 November, col.20

85 Official Report, 14 November, col.23

86 Official Report, 14 November, col.24

87 Policy Memorandum, paragraph 43

88 Policy Memorandum, paragraph 42

89 National FGM Centre, written submission

90 Official Report, 7 November, col. 20-21

91 Royal College of Paediatrics and Child Health Scotland, written submission

92 Royal College of Paediatrics and Child Health Scotland, written submission

93 Police Scotland, written submission

94 Toolkit Summary of Responses

95 General Medical Council, written submission

96 Official Report, 19 September, col.33

97 Official Report, 7 November, col. 21

98 Official Report, 7 November, col. 21-23

99 Royal College of Paediatrics and Child Health Scotland, written submission

100 Royal College of Paediatrics and Child Health Scotland, written submission

101 Police Scotland, written submission

102 Police Scotland, written submission

103 Women's Support Project, written submission

104 Police Scotland, written submission

105 Royal College of Paediatrics and Child Health Scotland, written submission

106 Royal College of Paediatrics and Child Health Scotland, written submission

107 Police Scotland, written submission

108 The NHS explains deinfibulation is surgery that can be performed to open up the vagina if FGM has taken place. Deinfibulation is sometimes known as a reversal, although the procedure does not replace any removed tissue and will not undo the damage caused.

109 Official Report, 19 September, col.21-22

110 Official Report, 19 September, col.22

111 Official Report, 19 September, col.33

112 Official Report, 19 September, col.21

113 Official Report, 19 September, col.20

114 Official Report, 19 September, col.23

115 Official Report, 19 September, col.22

116 Official Report, 14 November, col.9

117 Official Report, 19 September, col.14

118 Official Report, 19 September, col.15

119 Royal College of Paediatrics and Child Health Scotland, written submission

120 Official Report, 19 September, col.27-28

121 Official Report, 12 September, col.25

122 SCRA, written submission

123 Official Report, 10 October, col.15

124 Official Report, 10 October, col.11

125 Official Report, 7 November, col.14-15

126 National FGM Centre, written submission

127 Official Report, 14 November, col.14

128 Official Report, 12 September, col.19

129 Official Report, 12 September, col.25

130 General Medical Council, written submission

131 Emmaleena Käkelä, written submission

132 Official Report, 14 November, col.7

133 Official Report, 14 November, col.17

134 National FGM Centre, written submission

135 Official Report, 7 November, col. 5

136 Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: Stage 1, Delegated Powers and Law Reform Committee, 54th Report 2019