

Strengthening protection from Female Genital Mutilation (FGM)

Analysis of Consultation Responses

May 2019

Introduction

Female genital mutilation (FGM) involves procedures which include the partial or total removal of the external female genital organs for cultural or other non-therapeutic reasons.

FGM has been a specific criminal offence in the UK since the passage of the Prohibition of Female Circumcision Act 1985 ("the 1985 Act"). In England, Wales and Northern Ireland, the Female Genital Mutilation Act 2003 ("the 2003 Act") repealed and re-enacted the provisions of the 1985 Act, gave them extra-territorial effect and increased the maximum penalty for FGM. The Female Genital Mutilation (Scotland) Act 2005 ("the 2005 Act") passed by the Scottish Parliament, repealed and re-enacted for Scotland the provisions of the 1985 Act, gave extra-territorial effect to those provisions and increased the maximum penalty for FGM in Scotland from 5 to 14 years' imprisonment. Further, it made additional forms of FGM unlawful, and allowed the Scottish Ministers to modify the procedures which are offences and added offences under the Act to Schedule 1 to the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") (offences against children under 17 to which special provisions apply). Further information on the 2005 Act is at Annex B.

The Serious Crime Act 2015 is a UK wide act, and introduced a number of additional provisions in relation to FGM, only one of which applies to Scotland (section 70).

These are as follows:

Provision	Description
Section 70: Offence of female genital mutilation and extra-territorial acts	Amended sections 3 and 4 of the 2005 Act so that they apply to UK nationals and residents rather than, as was, UK nationals and permanent UK residents. This section made similar amendments to the 2003 Act.
Section 71: Anonymity for victims of female genital mutilation	Made provision for the anonymity of victims of FGM, prohibits the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under the 2003 Act as well as aiding, abetting, counselling and procuring the "principal offence". The prohibition lasts for the lifetime of the alleged victim.

<p>Section 72: Offence of failing to protect girl from risk of genital mutilation</p>	<p>Creates a new offence of failing to protect a girl under the age of 16 from risk of genital mutilation. A person is liable for the offence if they are responsible for a girl at the time when an offence under section 1, 2 or 3 of the 2003 Act is committed against the girl (and genital mutilation has actually occurred). The term "responsible" covers two classes of person (i) a person who has parental responsibility for the girl and has frequent contact with her; and (ii) any adult who has assumed responsibility for caring for the girl in the manner of a parent. Defences are provided for in that (i) the defendant did not think that there was a significant risk of the girl being subject to FGM and could not reasonably have been expected to be aware that there was any such risk and/or (ii) that the defendant took reasonable steps to protect the girl from being the victim of FGM.</p>
<p>Section 73: Female genital mutilation protection orders</p>	<p>Provides that the High Court or the family court in England and Wales may make an order (an "FGM protection order") for the purposes of protecting a girl against the commission of a genital mutilation offence. That it may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate to protect the girl in question. A breach of an FGM protection order is a criminal offence, however it may also be dealt with as a contempt of court and carries a potential prison term of up to 5 years.</p>
<p>Section 74: Duty to notify police of female genital mutilation</p>	<p>Places a duty on persons who work in a "regulated profession" in England and Wales, namely healthcare professionals, teachers and social care workers, to notify the police when, in the course of their work, they discover that an act of female genital mutilation appears to have been carried out on a girl who is under 18.</p>
<p>Section 75: Guidance about female genital mutilation</p>	<p>Confers a power on the UK Secretary of State to issue, and from time to time revise, guidance about the effect of any provision of that Act or about other matters relating to FGM.</p>

At the time of the Act's passage, the Scottish Government and the UK Government agreed a legislative consent motion which amended the 2005 Act in respect of section 70. The Scottish Government indicated that it would consider further whether section 71 to 75 were appropriate for introduction in Scotland.

Following that period of engagement, this formal public consultation sought views on these provisions, as well as whether there are further steps The Scottish Government should be considering that help to strengthen protection for those at risk of FGM.

The Consultation asked the following questions:

1. Do you believe that a provision for anonymity for victims of FGM should be introduced?
2. If anonymity is not introduced and having regard to existing convention and powers of the courts, what further steps do you consider could be taken to ensure protection of victims and complainers of FGM in the Justice system?
3. Do you think that Scotland should introduce an offence so that individuals can be prosecuted if they fail to protect a person they have caring responsibilities for being subjected to FGM?
4. Do you think that the Scottish Government should introduce Female Genital Mutilation Protection Orders? What do you think the penalty should be for breach of a FGMPO?
5. Do you think the Scottish Government should introduce a duty to notify Police of FGM?
6. Do you agree that the Scottish Government should issue statutory guidance for professionals in relation to female genital mutilation?
7. Using existing non-statutory guidance as a basis, what should be covered by statutory guidance?
8. Do you consider that additional protections need to be introduced in Scotland in respect of the practice of vaginal elongation? Do you have any evidence to

suggest that individuals in Scotland have been subject to the practice of vaginal elongation?

9. Do you consider that additional protections need to be introduced in Scotland in respect of the practice of breast ironing? Do you have any evidence to suggest that individuals in Scotland have been subject to the practice of breast ironing?

10. Do you have views in relation to the place of cosmetic genital piercings in relation to protections and guidance?

Executive Summary

This summary provides an overview of the responses to the Scottish Government's consultation on Strengthening Protections for FGM. The consultation ran from 4th October 2018 to 4th January 2019 and received 71 responses, 43 of which were from organisations.

The consultation was primarily concerned with gauging perspectives on five legislative provisions in relation to FGM, already adopted in England and Wales via the Serious Crime Act 2015. These legislative provisions concerned the provision of anonymity of victims of FGM, the creation an offence of failing to protect a girl from the risk of FGM, the introduction of FGM protection orders, the introduction of a duty to notify police of FGM and the introduction of statutory guidance relating to FGM.

Respondents were largely supportive of anonymity, protection orders and the introduction of statutory guidance. Views on an offence of failing to protect and a duty to notify the police were mixed, with many arguments both for and against these positions being raised. In terms of the additional practices mentioned in the consultation, vaginal elongation and breast ironing, respondents had limited evidence that individuals in Scotland had been subject to these practices and there was limited support for the creation of further offences.

The section below gives a brief overview of the responses to each of these questions in more detail.

Anonymity of Victims

There was strong support for providing automatic anonymity for victims of FGM. It was felt that this would protect the dignity of victims, encourage reporting and reduce the risks that may result from reporting. This latter point was emphasised particularly in relation to the risk of 'honour-based violence' that may accompany FGM given the small and closed nature of some of the communities where this practice was perceived to take place. Insofar as respondents disputed the need for anonymity provisions, this largely reflected their perspective that existing provisions were

sufficient. The potential that victims may wish to waive their anonymity for campaigning reasons was also noted.

Failure to Protect

The respondents were quite divided on this question. Among those who were in favour of these provisions, this was in some cases seen as morally appropriate and a potential deterrent. However, these views were in a number of cases qualified by an emphasis on the need for clear guidelines and for the whole family situation to be taken into account. For those against this provision, this frequently reflected concern about the potential criminalisation of primary caregivers who, in this context, may have limited agency to influence events. Several respondents also noted that this provision might make individuals less likely to report FGM.

Protection Orders

There was strong support for the creation of FGM Protection Orders (FGMPOs) among the respondents. FGMPOs were perceived to be a fast, responsive and proven – with reference to Forced Marriage Protection Orders – method for reducing the risk to potential victims. Another benefit raised was that they would offer a civil mechanism that a range of parties could apply for, including women and girls at risk of FGM. Among respondents who recommended a sentence, many thought that penalties should resemble those for a Forced Marriage Protection Order, although there was also some support for sentences in line with grievous bodily harm.

Duty to Notify Police of FGM

Respondents were divided on this question. Respondents who were against this duty emphasised that there were already mechanisms for reporting child abuse and, in this context, creating an additional legal duty around FGM would potentially create situations where the interests of the patient/service-user would come into conflict with the needs of process and limit the exercise of professional discretion on the part of healthcare practitioners. Some respondents perceived that there was also a risk that this would create mistrust between healthcare practitioners and service users, when the priority should be on ensuring that victims or those at risk come forward. Those who supported this duty often emphasised the symbolic nature of this

approach, given that it would emphasise strongly the seriousness of the crime and was viewed in a few cases as raising the likelihood of reporting.

Statutory Guidance

There was strong support for statutory guidance on FGM. This was seen as potentially improving inter-agency working, removing knowledge gaps, reducing regional differences in knowledge, and offering clarity and certainty in engaging with this area. In terms of what the guidance should contain, there was a wide range of perspectives on this question, with suggestions ranging from clear definitions around FGM, signs for identifying victims/those at risk, training, data collection, data protection, highlighting pathways to support, reporting requirements, guidelines for inter-agency working, clear systems of accountability and guidance around risk assessments that would relate to protection orders. Those who referred to existing guidance viewed this as providing a good basis for statutory guidance.

Additional Offences

There was limited knowledge and very limited evidence of the practices of breast ironing and vaginal elongation occurring in Scotland provided by the respondents. There was some limited support for the criminalisation of these practices as they were regarded as abusive, but this was tempered by an emphasis among other respondents that existing mechanisms may be sufficient and more evidence would be needed before the development of policy here. Regarding vaginal elongation, several respondents perceived this to be already captured within the definition FGM. In relation to cosmetic genital piercings, this was generally viewed as something over which those of appropriate age should have discretion, although concern was expressed about the possibility of recipients of these practices either being under the age of consent or being coerced.

Anonymity for victims of FGM

The potential provisions for anonymity for victims in relation to criminal proceedings in relation to criminal offending in Scotland are covered, at present, by media self-regulation in relation to omitting identifying information in relation to sexual offences, and the Criminal Procedure (Scotland) Act 1995. Sections 271N-271Z of the Act make provision for the courts to, in response to applications and under certain conditions, grant witness anonymity orders, and s. 47 provides that the media shall not provide identifying information in relation to a witness or the accused when that person is under 18.

This section of the consultation asked respondents whether they thought there should be provisions for anonymity for victims of FGM.

Question 1. Do you believe that a provision for anonymity for victims of FGM should be introduced?

Yes

No

If yes, please outline these arguments.

There was strong support for the introduction of anonymity for the victims of FGM, with a large majority of respondents supporting these measures.

Question 2. If anonymity is not introduced and having regard to existing convention and powers of the courts, what further steps do you consider could be taken to ensure protection of victims and complainers of FGM in the Justice system?

Yes

No

If yes, please outline these arguments.

Main Arguments for the Introduction of Anonymity for Victims of FGM:

- It would protect the dignity of those reporting the offence.
- It would encourage women and girls to come forward and make it more likely for them to do so.
- It would ensure that individuals were protected from potential harm/repercussions that might otherwise accrue as a result of their coming forward. The risk of repercussions was emphasised given the community/familial context of FGM and the potential risks of 'honour-based violence.'
- It would be in line with provisions in England and Wales.
- It was emphasised that many communities stigmatised openness about FGM, and that sharing information about FGM could have negative consequences for those coming forward.
- One respondent suggested that also keeping the perpetrators name anonymous might further improve the protection of victims, as they may well be family members, although they recognised this may have pros and cons.
- Another respondent noted that existing provisions only cover those under 18 and those who seek an anonymity order, which is conditional and has high thresholds. Making this automatically apply to all victims could simplify things from the perspective of those reporting the abuse.
- It was noted by several respondents that women should have the capacity to share information about their FGM status in the event that they wished to do so for campaigning reasons.

Main Arguments Against the Introduction of Anonymity for Victims of FGM:

- The Criminal Procedure (Scotland) Act 1995 already offered sufficient protection.
- It was not clear that there was a need for further legislation. It was suggested that additional laws could even be counterproductive if they made the procedure more complicated.

- Another respondent noted that before introducing new regulations, the Scottish Government should ensure that current powers are being used effectively and that existing powers were insufficient.
- Another respondent emphasised that there should be greater clarity about and improvement of the provisions for all survivors of gender-based violence, as a lack of certainty could be a deterrent generally.

Alternatives to Anonymity:

A range of alternatives to anonymity were noted in the responses, although many of these effectively amounted to the provision of anonymity by another method or in another form:

- Specific restrictions on media reporting.
- Ensuring protection by the police, including a 24/7 helpline.
- Restricting knowledge to senior personnel within the justice system.
- Strengthening the practice of the Procurator Fiscal requesting anonymity so that this becomes policy with cases of FGM.
- Making the Criminal Procedure Act 1995 more robust.
- Provisions for closed courts in relation to FGM.
- Including the category of FGM in the Vulnerable Witness (Criminal Evidence) (Scotland) Bill, providing victims with additional protections in court.
- A presumption towards anonymity from the Crown Office and Procurator Fiscal Service.
- Training for those involved, given the lack of experience with FGM in Scotland, to ensure that there was awareness of the relevant provisions and the issue.
- Introducing a fine or penalty for those who released information.

An Offence of Failure to Protect from FGM

In the rest of the United Kingdom, if an offence of FGM is committed against a girl under the age of 16, then each person who is responsible for the girl at the time FGM occurred may be liable to conviction. The maximum penalty for this offence is seven years' imprisonment or a fine or both. To be "responsible" for a girl, the person either has parental responsibility (such as mothers, fathers married to the mothers at the time of birth and guardians) and have frequent contact with her, or where the person is aged 18 or over they will have assumed responsibility for caring for the girl "in the manner of a parent" for example family members to whom parents might send their child during the summer holidays.

The requirement for "frequent contact" was intended to ensure that a person who in law has parental responsibility for a girl, but who in practice has little or no contact with her, would not be liable. Similarly, the requirement that the person should be caring for the girl "in the manner of a parent" is intended to ensure that a person who is looking after a girl for a very short period – such as a baby sitter – would not be liable. It is a defence for an accused to show that at the relevant time, they did not think that there was a significant risk of FGM being committed, and could not reasonably have been expected to be aware that there was any such risk; or they took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of FGM. If evidence is led which raises this defence then the onus is on the prosecution to prove the contrary beyond reasonable doubt.

Question 3. Do you think that Scotland should introduce an offence so that individuals can be prosecuted if they fail to protect a person they have caring responsibilities for being subjected to FGM?

Yes

No

If yes, please outline these arguments.

The responses were mixed on this point. In essence, while many respondents emphasised the responsibility of those caring for individuals to prevent FGM and their moral culpability for failing to do so, a number of contextual factors were seen to complicate the situation and many respondents were wary of attaching criminal

liability to those who may have limited control over the situation due to an unequal distribution of power within relationships and communities.

Arguments For the Introduction of the Offence of Failure to Protect:

- Those caring for someone subjected to FGM were responsible for the people within their care, and therefore prosecution of this offence would be justified.
- This offence would convey how seriously FGM is taken and may encourage a cultural shift.
- It would act as a deterrent to collusion with FGM.
- It would harmonise the laws with those in England and Wales.
- This offence was regarded by some respondents as essential to enforcing the law.
- It would be consistent with the international safeguarding principle.

It should be noted that there were a number of qualifications among those who supported such a provision. Several respondents were clear that there would need to be mitigating circumstances, with a key concern around the question of whether the person in question was able to effectively exercise agency in relation to the decision making. The need to take individual circumstances into account and consider matters on a case by case basis was made clear by a number of respondents, as a range of contextual factors were perceived to be important.

A key point of contention was the current legal situation in relation to child protection. It was understood by several respondents that child protection law currently involved an offence of failure to protect and that this would align FGM with current laws, while affording the same defences to women who were otherwise unable to exercise agency in this context.

Arguments Against the Introduction of the Offence of Failure to Protect:

- The offence would risk alienating communities in a context where there has been a commitment to work collaboratively with them

- It risks criminalising those with limited power and/or say in the outcomes for children, with the result that those coerced into not reporting this are prosecuted.
- It may risk diverting people from reporting the offence or communicating with agencies if they are concerned that they may be prosecuted.
- It may negatively impact efforts to foster trust within communities.
- There may be difficulty in gathering sufficient evidence to prove a failure to protect.
- It is not clear that this has led to prosecutions in England and Wales.

For those who **didn't know**, much of the uncertainty related to the fact that the carer might not be fully aware of the crime or have limited power to prevent or influence it.

Furthermore, while it is observed that it might be possible that fear of failing in a duty to care might encourage people to come forward more readily, it was also observed that it might also make reporting less likely if there is fear of prosecution. There was also a risk that immediate family might be criminalised, but that this might not include those more directly responsible. One respondent noted that an individual failing to protect someone in their care may reflect a context of 'honour-based violence' more broadly. It was also observed that the mothers may themselves have been victims of FGM.

Another point raised in the responses was that accessing information about laws and rights in a new country might be a challenge for those with limited knowledge of English, which doesn't excuse behaviour but should potentially be taken into account and speaks to the importance of awareness raising.

Respondents also sought clarification on whether local authorities or social workers would be liable for such an offence. Another respondent argued that, before such an offence could be introduced, it would be necessary for there to be clarity on how such an offence could operate.

FGM Protection Orders

An FGM Protection Order (FGMPO) may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate to protect the girl in question. A number of individuals and organisations could apply for an FGMPO, namely the person who has had or is at risk of FGM; a local authority; or any other person with the permission of the court (for example, the police, a teacher, or a family member). Persons under 18 would be able to apply; and they could do so without a formal need for assistance. Applications would be made to the Sheriff Court and the Scottish Government would develop guidance to support those wishing to apply. There would be no court fee in relation to applying. Each FGMPO would be specific to the individual case. The conditions within the orders could vary, but might include the following. i.e. the person causing the risk does not take the protected person abroad, the person causing the risk surrenders their travel documents, etc.

An application to vary, extend or discharge (end) a FGMPO at a later time could also be made. Legal aid would be available for applicants for FGMPOs, subject to the usual criteria. If the conditions in the FGMPO are not followed this would constitute a breach and would be a criminal offence. The maximum penalty for breaching an FGMPO would be set with in legislation and likely to mirror the penalty for breaching forced marriage protection orders (which is in the case of convictions without a jury, up to 12 months in prison, a fine of up to £5000, or both; and in the case of a conviction with a jury, up to 5 years in prison, an unlimited fine, or both).

Question 4. Do you think that the Scottish Government should introduce Female Genital Mutilation Protection Orders? What do you think the penalty should be for breach of a FGMPO?

Yes

No

If yes, please outline these arguments.

Question 5. What do you think the penalty should be for breach of a FGMPO?

There was widespread support among the respondents for the introduction of FGMPOs, which were viewed as having numerous benefits. There was less consensus about the penalties for breaching a FGMPO, but the common responses referred to the Forced Marriage Protection Orders or the penalties for grievous bodily harm.

Arguments for the Introduction of FGMPOs:

- FGMPOs could be fast and responsive.
- FGMPOs did not necessarily involve criminalisation. This could be particularly important for those concerned about criminalising family members.
- The use of protection orders in relation to forced marriages was viewed as a positive development that could be replicated with FGMPOs.
- FGMPOs increased the protection available to those at risk of FGM.
- FGMPOs would provide women and girls with agency in that they would be able to apply for their own protection orders.
- It would also allow any adult to apply for a protection order, as well as relevant agencies. This would include, as was pointed out, the ability for parents to raise orders to keep their children safe.
- This would ensure that women and girls in Scotland had access to the same protections as they had in England and Wales.
- The lower burden of proof would mean that FGMPOs may be possible where criminal prosecution would not be.

While there was limited objection to introducing FGMPOs, these were largely founded on the fact that Child Protection Orders were already in existence. A lack of knowledge about the number of children whom this would benefit/extent of FGM in Scotland was noted by a few respondents.

Key Concerns

There were also a number of important concerns raised by respondents about measures that could potentially improve the performance of FGMPOs. One respondent emphasised the need to ensure that awareness was raised about FGMPOs within communities and that legal advice and services were available free of charge. The need for training for practitioners and those responsible for orders was also noted.

There was concern to make sure that there was a consistent process for making FGMPOs. There were also requests for guidance to ensure a consistent process for applying for FGMPOs and the enforcement of their breach. Another respondent noted that, on the assumption that various professionals would be in a position to apply for orders, training would be necessary.

The question of how to accurately assess risk, both in terms of what would trigger a protection order and how risk is to be identified, was raised by a number of respondents. Another point was raised that orders might benefit from independent risk assessment in the event that individuals applied for their release under duress. The question of how long these orders would last and the contexts in which they would cease was also raised.

Another respondent mentioned the risk that a failure to obtain a protection order might be taken as mitigation for a perpetrator in the event of taking a child abroad for the purposes of FGM.

What Should the Penalty be for a Breach of a FGMPO?

There were a range of views on penalties. Many respondents did not feel qualified to comment on this. Several others offered generic responses, i.e. the penalty should be a fine or a prison sentence. Many suggested that penalties were similar to those for Forced Marriage Protection Orders. However, several others emphasised that given the nature of FGM, the penalty should be more in line with those for grievous bodily harm, or akin to the penalties for an offence of FGM.

Duty to Notify Police of FGM

In England and Wales, regulated health and social care professionals and teachers are required to report cases of FGM in girls under the age of 18, which they identify in the course of their professional work, to the police. In Scotland, agencies should respond to FGM using existing child and adult protection structures, procedures and policies, including multi-agency arrangements. There are sections in guidance on reporting covering a range of agencies.

Question 7. Do you think the Scottish Government should introduce a duty to notify Police of FGM? Please explain your answer.

Yes

No

If yes, please outline these arguments.

The respondents were much divided on this point, with both considerable support for and opposition to the introduction of a duty to notify the police about FGM.

Arguments For Introducing a Duty to Notify the Police of FGM:

- It may improve the protection of victims.
- It sends a strong message about FGM and may potentially improve reporting in contexts like schools, as a legal duty to report would encourage institutions to ensure they were acting diligently.
- One respondent noted that the duty to report to police would be part of the training provided to healthcare professionals (owing to the situation in England and Wales) so harmonising requirements would therefore make sense.
- It might improve the data on the incidence of FGM and raise greater awareness about its prevalence.
- The severity and irreversibility of FGM makes maximum reporting obligations necessary.

- This would generally align Scottish practices with those in England and Wales.
- It would make the situation very clear for anyone coming into contact with the practice of FGM.

Arguments Against Introducing a Duty to Notify the Police of FGM:

- There is already guidance that should suffice in offering protection without the need for an additional duty to notify the police.
- It may dissuade reporting due to the fear that this would lead to a criminal investigation.
- As health services were the most likely point of contact, the possibility that this would create distrust should be considered, as well as the potential to discourage the reporting of FGM related health problems.
- There may be cases where reporting is not appropriate, and imposing a duty would potentially pit the needs of the patient against the needs of process. This would also limit professional discretion, in a context where mechanisms for reporting abuse are already established.
- The potential risk that might accrue to women in the event that they lost control of proceedings.
- There is limited data as to whether mandatory reporting has improved detection or responses to FGM in England and Wales.
- It was not clear why there should be a line between FGM and other forms of child abuse, for which there was not mandatory police reporting.
- There is no clear evidence of non-reporting currently that this measure would be responding to.

Further Discussion

Among those who objected to the creation of a specific duty to report, this largely reflected the fact that there were several risks potentially associated with mandatory reporting in a context where strong mechanisms for child protection already existed and where there was limited evidence of cases not being reported or that additional duties were effective in improving outcomes. As one respondent noted in their

response, they were unsure why there would be a duty to notify the police in relation to this form of child abuse, but not in relation to others. In this context, it might be more important to raise awareness of current provisions.

It was pointed out by several respondents, however, that existing protections only apply to those under 16, leaving scope to potentially widen them to include 16 and 17 year olds. Although, as was noted, these concerns might be better addressed in the context of the upcoming refresh of child protection legislation.

The perception that mandatory reporting did not always put the individual survivor and potential victim of FGM first was shared by another respondent, who felt it could in some cases work against an individual's best interests. The respondent emphasised that professionals should be able to exercise discretion in the instances where immediate disclosure was considered to put the victim at the risk of greater harm.

Another respondent suggested that police reporting of historic abuse would help build up intelligence in relation to these offences.

It was noted that in event of introducing such an offence, there would remain considerable work to clarify to whom it applied, the scope of the duty and the consequences of breaching it.

Another question raised in the responses was whether this would apply to cases prior to 2005 when the offence was introduced, and whether it would apply to women or girls who appeared to be at risk of FGM.

In the event that a duty was implemented, another respondent emphasised the importance of timescales, i.e. that there could be differences between what was 'as soon as reasonable' and what was as 'as soon as possible'. They were also keen to ensure that professionals were able to put the interests of patients and service users first, with appropriate and consistent sanctions.

Statutory Guidance

In 2017, the Scottish Government published multi-agency guidance in relation to FGM. The Scottish Government is minded to make provision for Scottish Ministers to issue statutory guidance about the effect of any provisions of this Bill, any provisions of the 2005 Act or about any matter relating to FGM. The purpose and content of the guidance would be similar to that published in November 2017, but by placing it on this particular form of statutory footing we believe that it will better ensure that public bodies work effectively together to ensure that women and girls are protected.

Question 8. Do you agree that the Scottish Government should issue statutory guidance for professionals in relation to female genital mutilation? Please explain your answer.

Yes

No

If yes, please outline these arguments.

Question 9: Using existing non-statutory guidance as a basis, what should be covered by statutory guidance?

Should Guidance be Introduced?

There was widespread support for the introduction of statutory guidance on FGM among respondents. The key benefits of guidance were perceived to be:

- Ensuring that there is widespread knowledge about the subject, which would reduce regional variations.
- Ensuring a shared national approach among professional bodies.
- Improving inter-agency collaboration and potentially reducing regional differences in responses.

While there were limited objections to the introduction of statutory guidance, the point was raised some important guidance was non-statutory and that this had not necessarily limited its application or utility. Another respondent made the point that

there was limited evidence of FGM in Scotland and that further legislation was therefore unnecessary.

It was also emphasised that ensuring accountability in the use of this guidance was important. Several respondents emphasised the merits of the existing guidance and suggested that future guidance should be based on what had been done already.

What should be covered by Statutory Guidance?

A wide range of potential objectives are mentioned here, including:

- How to identify, engage with and support those who have been subject to FGM or are at risk of FGM.
- Clarification of the legal situation.
- Referral pathways for reporting instances of FGM.
- The need for healthcare workers to share information about significant concerns.
- Detailed direction and responsibility to ensure that questions are not dodged in relation to a difficult and relatively 'new' situation.
- Accountability to ensure everyone fulfils their responsibilities.
- Cultural sensitivity with a view to effecting cultural change, along with clarification around cultural norms and how to respond to them.
- Available resources, including professional support and where to direct potential victims.
- Information sharing requirements, multi-agency working and joint responsibilities.
- Grounds for referral to the Children's Hearings System similar to those for forced marriage in the 2011 Act.
- Definitions around FGM, as well as information about the dangers and risks of the practice.
- Data collection mechanisms.
- Linkage with other issues such as domestic abuse, forced marriage and the Equally Safe National Strategy.

- Information about processes, including timescales and thresholds.
- Guidance around risk assessments.
- Clarity concerning the situation of 17 and 18 year olds who are not covered by child protection rules.
- Establishing FGM indicators for ongoing monitoring.

Another respondent suggested locating the guidance within the broader guidance on gender-based violence, given the broader connections of this with FGM.

Vaginal Elongation

Vaginal elongation (also known as labia stretching) is the act of lengthening the *labia minora* (the inner lips of the female genitals) through manual manipulation (pulling) or physical equipment (such as weights). It is a familial cultural practice in parts of Africa and a body modification practice elsewhere. It is performed for sexual enhancement of both partners, aesthetics, symmetry and gratification.

Question 10. Do you consider that additional protections need to be introduced in Scotland in respect of the practice of vaginal elongation?

Yes

No

If yes, please outline these arguments.

Question 11. Do you have any evidence to suggest that individuals in Scotland have been subject to the practice of vaginal elongation?

Yes

No

If yes, please outline these arguments.

Additional Protections

Most respondents either did not know, or did not support the introduction of additional protections in relation to vaginal elongation. While there was some support for protections here, this was largely based on the principle that this was a harmful practice, rather than a perception that it was widespread or necessitated a specific policy response. It was suggested by several respondents that vaginal elongation might be considered as a type of FGM, or may indeed already be covered by the definition of FGM, specifically Type IV FGM.

Evidence

Among the respondents, there was very limited evidence of individuals being subject to this practice. There were a very small number of instances in which respondents mentioned coming across anecdotal evidence about the practice.

Breast Ironing

Breast ironing, also known as breast flattening, is the pounding and massaging of a pubescent girl's breasts, using hard or heated objects, to try to make them stop developing or disappear. It is typically carried out by the girl's mother who will say she is trying to protect the girl from sexual harassment and rape, to prevent early pregnancy that would tarnish the family name, or to allow the girl to pursue education rather than be forced into early marriage. It is mostly practiced in parts of Cameroon, where boys and men may think that girls whose breasts have begun to grow are ready for sex. Some reports suggest that it has spread to the Cameroonian diaspora.

Question 12. Do you consider that additional protections need to be introduced in Scotland in respect of the practice of breast ironing?

Yes

No

If yes, please outline these arguments.

Question 13. Do you have any evidence to suggest that individuals in Scotland have been subject to the practice of breast ironing

Yes

No

If yes, please outline these arguments.

Additional Protection

As with vaginal elongation, there was relatively limited support for the introduction of additional protections for breast ironing, with much support based on the respondent views that the practice is perceived as abusive and a form of gender-based violence, rather than a conviction that breast ironing is a widespread practice. Among respondents who did not support further protections, many did not elaborate on their answers but those who did either cited a lack of knowledge or that there were sufficient existing provisions.

Evidence

Among the respondents, evidence of this practice was very limited.

Cosmetic Genital Piercings

Women can seek to obtain cosmetic genital piercings for various reasons. The mandatory reporting practices introduced in England and Wales mean that health services will seek to record cosmetic genital piercings as a form of FGM, to identify where this has been done in an abusive context. Cosmetic genital piercings are not prohibited under FGM legislation, but neither is it explicitly exempted from requirements to record and report.

Question 14. Do you have views in relation to the place of cosmetic genital piercings in relation to protections and guidance?

Yes

No

If yes, please outline these arguments.

Many respondents emphasised that cosmetic genital piercings were a matter of consent and emphasised personal choice, and several emphasised the importance of not blurring this issue with FGM. There was limited suggestion that the government should intervene in relation to consenting adults seeking this form of cosmetic surgery.

Insofar as there was concern about potential problems with cosmetic genital piercings, these related to potential concern that participants in these procedures might be subject to coercion or under the age of consent (generally perceived to be 16). When concerns were raised, these were primarily related to distinguishing between coercion and choice. For example, one respondent suggested that cosmetic genital piercing should be considered as FGM when it occurred at the behest of an adult third party in relation to a child or young person under the age of consent, and should be recognised as domestic abuse in the statutory guidance when an adult women is being forced. Another respondent considered cosmetic genital piercing FGM if the women is under the age of 16 when the procedure was undertaken.

Several respondents suggested that healthcare practitioners and those involved in administering the procedure should be supported in asking questions to confirm whether or not the piercing was coerced and the age at which it took place, in case further action was required. Another suggested that all cosmetic genital piercings should be recorded, but acknowledged that this might move the practice 'underground'. Another suggested that the age of consent for cosmetic genital piercings should be 18. Reference was made by a few respondents to the WHO guidance on FGM, which lists 'piercing' as Type IV FGM.

Additional Issues

There were several distinct points raised in the responses to the other questions which are worth restating in this context.

Question 15: In relation to the issues covered within this consultation, are there any other points you would wish to make that are not already included under other answers

Yes

No

If yes, please outline these arguments

Other additional issues raised by respondents included:

- The need for better education across healthcare and education. The need for more training for those with work potentially related to FGM was also raised.
- The need for education in schools about FGM.
- Grassroots work with community workers and consultations with victims of FGM. The need for ongoing support for community groups. Engagement and consultation with affected communities to encourage the reduction of FGM.
- The need for strengthening clinical guidance on FGM.
- The need for an enquiry into the lack of FGM-related prosecutions in Scotland so far.
- The need to address the lack of statistical information demonstrating the extent of FGM in Scotland.
- Several respondents raised the issue of gender discrimination, as the provisions were specifically concerned with women and girls, thus excluding boys from consideration. This was viewed by one respondent as implying that treating boys in this way was acceptable and by another respondent as ignoring the situation of boys. Another respondent considered the failure to protect boys from genital mutilation as gender discrimination.
- The possibility of 'umbrella' legislation on gender-based crimes.

- The possibility of changing immigration policies to grant asylum to girls at a high risk of FGM.
- The need for proactive community engagement and less language barriers in the next consultation.
- The need for awareness raising was mentioned several times.
- The issue of cosmetic surgery in response to individual/social pressure, as well as in the sex industry in order to improve earnings, in the broader context of cultural pressure on women to look a certain way.
- The possibility of a specific body to engage with FGM rather than local authorities or health/police/social work bodies.
- The need to consult as many Islamic scholars as possible.
- The possibility of linking Scottish resources to e-learning packages available in England and Wales in relation to FGM.
- The lack of coherency around the age of a child in relation to child protection, from the perspective that protection to prevent FGM should go up to 18. It was noted that the legislation landscape in relation to what constituted a child should be clarified. Consideration of adult protection was also suggested.
- That the information on the size of refugee and certain migrant communities may be incomplete and census data may skew statistics in relation to these groups.
- The need to ensure that that body modifications of consenting transgender females are not classified as FGM.
- The lack of objective evidence concerning the extent of FGM in Scotland.
- The numerous barriers to accessing services faced by women and girls affected by FGM, including language barriers, a lack of confidence, a lack of knowledge, stigma associated with mental health problems.
- The observation that many victims of gender-based violence may not seek help from mainstream agencies. This was seen to reflect a combination of factors, including cultural assumptions, fear of violence or rejection, lack of contacts, not knowing certain practices are wrong, limited autonomy, lack of confidence, negative anecdotal knowledge about services, low literacy or language skills, a lack of information and other factors. There were also

multiple barriers to women accessing services that would help them to learn English, while interpretation raised a number of challenges and may lead to subtle forms of miscommunication.

FEMALE GENITAL MUTILATION (SCOTLAND) BILL – NUMERICAL BREAKDOWN OF FIVE MAIN QUESTIONS

Do you believe that a provision of anonymity for victims of FGM should be introduced?

Respondent	Yes	No	Don't Know	Not Answered	All
Individuals	20	4	3	1	28
NHS Bodies	2	1	1	-	4
Police Scotland	1	-	-	-	1
Local Authorities	3	-	-	-	3
Charity/Third Sector	9	2	-	-	11
Child Protection Committee	4	2	-	-	6
Violence Against Women Partnerships	4	-	-	-	4
Non-Ministerial Public Bodies	-	-	-	1	1
Professional Representative Bodies	3	3	-	4	10
Other	3	-	-	-	3
Total	49	12	4	6	71

Do you think that Scotland should introduce an offence so that individuals can be prosecuted if they fail to protect a person they have caring responsibilities for being subjected to FGM?

Respondent	Yes	No	Don't Know	Not Answered	All
Individuals	17	7	3	1	28
NHS Bodies	-	3	1	-	4
Police Scotland	1	-	-	-	1
Local Authorities	1	1	1	-	3
Charity/Third Sector	7	2	2	-	11
Child Protection Committee	2	1	3	-	6
Violence Against Women Partnerships	1	3	-	-	4
Non-Ministerial Public Bodies	-	-	-	1	1
Professional Representative Bodies	2	4	1	3	10
Other	1	1	1	-	3
Total	32	22	12	5	71

Do you think that the Scottish Government should introduce Female Genital Mutilation Protection Orders?

Respondent	Yes	No	Don't Know	Not Answered	All
Individuals	23	2	2	1	28
NHS Bodies	3	-	1	-	4
Police Scotland	1	-	-	-	1
Local Authorities	3	-	-	-	3
Charity/Third Sector	11	-	-	-	11
Child Protection Committee	5	1	-	-	6
Violence Against Women Partnerships	3	-	1	-	4
Non-Ministerial Public Bodies	-	-	-	1	1
Professional Representative Bodies	5	-	2	3	10
Other	3	-	-	-	3
Total	57	3	6	5	71

Do you think the Scottish Government should introduce a duty to notify Police of FGM?

Respondent	Yes	No	Don't Know	Not Answered	All
Individuals	12	11	4	1	28
NHS Bodies	2	2	-	-	4
Police Scotland	-	-	1	-	1
Local Authorities	1	1	1	-	3
Charity/Third Sector	5	3	3	-	11
Child Protection Committee	-	5	1	-	6
Violence Against Women Partnerships	1	3	-	-	4
Non-Ministerial Public Bodies	-	-	-	1	1
Professional Representative Bodies	2	6	2	-	10
Other	1	2	-	-	3
Total	24	33	12	2	71

Do you agree that the Scottish Government should issue statutory guidance for professionals in relation to female genital mutilation?

Respondent	Yes	No	Don't Know	Not Answered	All
Individuals	21	2	3	2	28
NHS Bodies	2	1	1	-	4
Police Scotland	1	-	-	-	1
Local Authorities	3	-	-	-	3
Charity/Third Sector	10	-	1	-	11
Child Protection Committee	3	2	1	-	6
Violence Against Women Partnerships	4	-	-	-	4
Non-Ministerial Public Bodies	-	-	-	1	1
Professional Representative Bodies	6	-	3	1	10
Other	3	-	-	-	3
Total	53	5	9	4	71



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