

Child Rights and Welfare Impact Assessment

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

June 2019



Scottish Government
Riaghaltas na h-Alba
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CRWIA Front Sheet	
Policy/Measure	Female Genital Mutilation (Protection and Guidance) (Scotland) Bill
Initiating department	The Violence against Women and Girls Team in the Equality Unit leads on this new legislation, working closely with colleagues in the Scottish Government Legal Directorate and the Parliamentary Counsel's Office.
Policy aims	Female Genital Mutilation has been illegal in Scotland since 1985. The Female Genital Mutilation (Protection and Guidance) (Scotland) Bill will aim to strengthen the existing legislative framework against FGM to offer extra protection to women and girls at risk of FGM. This Bill will seek to create provisions to introduce statutory guidance for professionals, and to create FGM Protection Orders.
Timetable	Submission to the Presiding Officer: 3 May 2019 Introduction: 29 May 2019 Publication and Media: 30 May 2019 Stage 1 debate: December 2019 Stage 2: February 2019 Stage 3: April 2020 Royal Assent: May 2020 Commencement: (earliest realistic date) February 2021
Authorisation	
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CRWIA Stage 1 Screening – key questions

1. Name the policy and describe its overall aims

Female Genital Mutilation has been illegal in Scotland since 1985. The Female Genital Mutilation (Protection and Guidance) (Scotland) Bill will aim to strengthen the existing legislative framework to offer extra protection to women and girls at risk of FGM. This Bill will seek to create provisions to introduce statutory guidance for professionals, and to create FGM Protection Orders.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

All aspects of this new legislation will affect children and young people.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

This new legislation impacts directly on children and young people as it seeks to prevent and eradicate FGM, which is primarily practiced on girls under the age of 18.

4. Which groups of children and young people will be affected?

Sex: This new legislation will predominately affect young girls, as is the nature of FGM; more specifically, it is more likely to impact on girls under the age of 15. According to data from the World Health Organisation, the majority of girls are ‘cut’ before they turn 15 years old.¹

Race and religion: In regards to other protected characteristics, FGM is not exclusive to any one race, religion or belief, therefore it cannot be said that this new Bill will affect one group more than another. However, UNICEF identified 29 FGM practicing countries in 2013, all of which are either located in the Middle East or Africa so it can be said that this new legislation would potentially have more impact on children who are from these countries, or who have parents/carers who are from these countries.²

Sexual Orientation: Those who practice FGM often justify it by reference to culture. Justifications can be closely linked to fixed gender roles and perceptions of women and girls as gatekeepers of their family’s honour. This, in many cases, directly relates to strict expectations regarding women’s sexual “purity” and lack of desire. In some societies, the prevailing myth is that girls’ sexual desires must be controlled early to prevent “deviant” sexual behaviour. “Deviant” behaviour in this

¹ World Health Organisation, Sexual and Reproductive Health – Female Genital Mutilation (FGM), <https://www.who.int/reproductivehealth/topics/fgm/prevalence/en/>

² UNICEF FGM Practicing Countries (2013), https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf

context is likely to include same sex relationships, which continue to be the subject of substantial prejudice worldwide.

In relation to other protected characteristics, there is no evidence of any risk of children and young people being affected differently by this new legislation.

5. Will this require a CRWIA?

Yes. Although the Bill is determined to have a broadly positive impact on children and young people, it is important to undertake this impact assessment so that any potential unintended consequences of this legislation are identified and addressed. A CRWIA also helps to broaden and deepen our understanding of issues around children and young people as it relates to the work we do on FGM.

CRWIA Declaration

CRWIA required

Yes

CRWIA not required

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Authorisation

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CRWIA Stage 2 The CRWIA – key questions

1. Which UN Convention on the Rights of the Child (UNCRC) Articles are relevant to the policy/measure?

Article 2 (non-discrimination): Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parent/carer(s).

Article 3 (best interests of the child): Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing – and that the institutions, services and facilities responsible for their care and protection conform with established standards.

Article 4 (protection of rights): Governments should undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the UNCRC.

Article 6 (life, survival and development): Every child has a right to life and to develop their full potential.

Article 19 (protection from all forms of violence): Children have a right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Government's must do all that they can do ensure this.

Article 37(a) (inhumane treatment and detention): No child should be subjected to cruel, inhuman or degrading treatment or punishment.

There are no Optional Protocols that are relevant to this legislation.

2. What impact will the policy/measure have on children's rights?

Positive: this new legislation has the potential to advance the realisation of children's rights in Scotland.

3. Will there be different impacts on different groups of children and young people?

Sex: This new legislation will predominately affect young girls, as is the nature of FGM; more specifically, it is more likely to impact on girls under the age of 15. According to data from the World Health Organisation, the majority of girls are 'cut' before they turn 15 years old.³

³ World Health Organisation, Sexual and Reproductive Health – Female Genital Mutilation (FGM), <https://www.who.int/reproductivehealth/topics/fgm/prevalence/en/>

Race and religion: In regards to other protected characteristics, FGM is not exclusive to any one race, religion or belief, therefore it cannot be said that this new Bill will affect one group more than another. However, UNICEF identified 29 FGM practicing countries in 2013, all of which are either located in the Middle East or Africa so it can be said that this new legislation would potentially have more impact on children who are from these countries, or who have parents/carers who are from these countries.⁴

Sexual Orientation: Those who practice FGM often justify it by reference to culture. Justifications can be closely linked to fixed gender roles and perceptions of women and girls as gatekeepers of their family's honour. This, in many cases, directly relates to strict expectations regarding women's sexual "purity" and lack of desire. In some societies, the prevailing myth is that girls' sexual desires must be controlled early to prevent "deviant" sexual behaviour. "Deviant" behaviour in this context is likely to include same sex relationships, which continue to be the subject of substantial prejudice worldwide.

In relation to other protected characteristics, there is no evidence of any risk of children and young people being affected differently by this new legislation

4. If a negative impact is assessed for any rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

There is a potential risk that particular groups could be subject to disproportionate state interference as a result of the fact that they belong to communities that are potentially affected by FGM. As stated previously, UNICEF have identified 29 FGM practicing countries, all of which are located in either Africa, or the Middle East.⁵ However, this would be mitigated by the provision of effective guidance to front-line professionals.

5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?

Section 96(2) of Children and Young People (Scotland) Act lists the eight wellbeing indicators, sometimes referred to by the acronym SHANARRI:

- **Safe** – protected from abuse, neglect or harm at home, at school and in the community.
- **Healthy** – having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices.
- **Achieving** – being supported and guided in learning and in the development of skills, confidence and self-esteem at home, in school, and in the community.

⁴ UNICEF FGM Practicing Countries (2013), https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf

⁵ UNICEF FGM Practicing Countries (2013), https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf

- **Nurtured** – having a nurturing place to live in a family setting, with additional help if needed, or, where this is not possible, in a suitable care setting.
- **Active** – Having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community.
- **Respected** – having the opportunity, along with carers, to be heard and involved in decisions that affect them.
- **Responsible** – having opportunities and encouragement to play active and responsible roles at home, in school and in the community, and where necessary, having appropriate guidance and supervision, being involved in decisions that affect them.
- **Included** – having help to overcome social, educational, physical and economic inequalities, and be accepted as part of the community in which they live and learn.

The Bill will directly impact the following children’s wellbeing indicators:

Safe

- FGM is a form of child abuse. The Bill will seek to strengthen the current legislative framework around FGM, and offer further protection to women and girls at risk. Therefore, it directly contributes to keeping children safe and protected from abuse, neglect and harm by others.

Healthy

- FGM has no health benefits, and is an extremely harmful practice that potentially carries devastating short and long-term health consequences for women and girls. By offering further protection to young girls potentially affected by FGM, this Bill directly contributes to the healthy wellbeing indicator by giving greater opportunity for them grow up having the highest attainable standards of physical and mental health.

Nurtured

- FGM is usually carried out on young girls by older members of their family or community. As a result, FGM can contribute to negative relationships between victims and their families. Emotional shock is one of the most immediate side-effects of FGM, and this is often exacerbated by the fact that the victim has usually been subjected to the trauma by parents, carers, extended family, and friends. Victims of FGM often suffer from the psychological side-effects of the procedure in the long-term. Young women receiving psychological counselling have reported feelings of betrayal by parents, incompleteness, regret and anger. By strengthening protections for young girls at risk of FGM, this will ultimately give them greater opportunities to grow up in a nurturing environment.

Included

- FGM constitutes an extreme form of discrimination against women and girls. The prime motivation behind FGM is to control the behaviour of women, predominately their sexuality, therefore keeping them “pure.” This is closely linked to wider issues surrounding honour based violence as

cultures that practice FGM are extremely patriarchal and have fixed gender roles that perceive women and girls as gate keepers to their family's honour. It is hoped, that by offering further protections to girls at risk of FGM, this Bill will advance Scotland's efforts to abolish inequalities related to gender. Therefore, this legislation directly contributes to ensuring children are able to overcome social inequalities.

The Bill will also have an indirect impact on the other children's wellbeing indicators (Achieving, Active, Respected and Responsible). As this legislation will directly contribute to keeping young girls safe, healthy, nurtured and included; it is hoped that this will ultimately give these children greater opportunity to improved wellbeing in other areas as well.

6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

Female Genital Mutilation has been illegal in Scotland since 1985. The Female Genital Mutilation (Protection and Guidance) (Scotland) Bill will aim to strengthen the existing legislative framework to offer extra protection to women and girls at risk of FGM. This Bill will seek to create provisions to introduce statutory guidance for professionals, and to create FGM Protection Orders.

UNCRC Articles

Article 2 (non-discrimination): Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parents/carers(s).

- FGM is an unacceptable and illegal practice, and an extreme violation of the human rights of women and girls. Furthermore, we acknowledge that the practice also constitutes a severe form of discrimination against women and girls. Thus, we would consider children who are victims of FGM as being discriminated against in the enjoyment of their rights. Therefore, this new legislation will contribute to furthering the implementation of UNCRC in Scotland by offering more protection to children at risk of FGM.

Article 3 (best interests of the child): Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing – and that the institutions, services and facilities responsible for their care and protection conform with established standards.

- As stated above, FGM constitutes a severe form of discrimination against women and girls, and reflects deep-rooted gender inequality. FGM also has no known health benefits and is an extremely harmful practice that always carries devastating short and long-term health consequences for women and girls.
- As a result, it is clear that FGM is never in the best interests of the child, and that the Scottish Government must do everything possible to protect those at risk. Therefore, it is in the best interests of the child to ensure strong legal protections are in place.

Article 4 (protection of rights): Governments should undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the UNCRC.

- As set out in this impact assessment, the objectives of this new legislation directly contributes to implementing a number of UNCRC articles in Scotland. Therefore, the measures being taken in the development of this Bill mean that we are contributing to Scotland's work in recognising and implementing the rights as set out in the UNCRC.

Article 6 (life, survival and development): Every child has a right to life and to develop their full potential

- FGM is an extremely harmful procedure that is most often carried out without any anaesthetic, in unclean environments with unclean instruments, by non-medically trained individuals. FGM has resulted in the death of the victim and an inhibitor to girls reaching their full potential.
- Therefore, by offering further protections to potential victims of FGM, this legislation is contributing to ensuring every child in Scotland is afforded their right to life, and to develop their full potential.

Article 19 (protection from all forms of violence): Children have a right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Governments must do all they can to ensure this.

- FGM is considered an extreme form of physical and mental violence against women. This Bill is seeking to create further protection for those at risk of FGM, which contributes to protection children in Scotland from all forms of violence.

Article 37(a) (inhumane treatment and detention): No child should be subjected to cruel, inhuman or degrading treatment or punishment.

- FGM is an extreme form of violence against women and girls, and directly contributes to the degradation of women in practicing communities. By taking further legislative steps to prevent FGM, this new Bill contributes directly to the implementation of this article of the UNCRC in Scotland.

UNCRC Concluding Observations 2016

The 2016 Concluding Observations sets out the recommendations made by the UN Committee on the Rights of the Child to the UK Government, setting out what it needs to do to comply with, and better progress, the implementation of the UNCRC.

This new legislation contributes to taking forward the following recommendations:

Best interests of the child: Ensure that the best interests of the child is adequately integrated into all legislative, administrative and judicial proceedings and decisions as well as policies and programmes.

- As stated previously, due to the cultural perceptions that perpetrate FGM and the short and long-term side effects of the procedure, FGM is never in

the best interest of the child. This new legislation is building on this recommendation by strengthening protections for those at risk of FGM.

Torture and other cruel or degrading treatment or punishment: Act in accordance with Sustainable Development Goal 16, Target 16.2: *To end abuse, exploitation, trafficking and all forms of violence against children.*

- FGM is an extreme abuse of the human rights of women and girls and reflects deep-rooted inequality between the sexes. FGM is also most commonly carried out on girls between the ages of infancy and 15 years old, making this practice one of the most severe forms of child abuse.
- This new legislation contributes to progressing this recommendation by offering further protections to children at risk of FGM.

Harmful practices: Strengthen measures, collect data, raise awareness and provide education and training to professionals on the use of harmful practices, including Female Genital Mutilation (FGM), and unnecessary surgical interventions on intersex children.

- This new Bill will strengthen the existing legislative framework on protecting women and girls from FGM.
- Furthermore, the introduction of statutory guidance will assist in raising awareness and providing education and training to professionals on the use of harmful practices, specifically FGM.

UNCRC 'General Comments'

'General Comments' are a series of guidelines on a number of different subject matters issued by the UN Committee on the Rights of the Child. These comments set out a series of recommendations for states to consider. This legislation is in line with the following:

Adolescent health and development in the context of the Convention on the Rights of the Child (2003): States must take effective measures to ensure that adolescents are protected from all forms of violence, abuse, neglect and exploitation, paying increased attention to the specific forms of abuse, neglect, violence and exploitation that affects this age group.

- FGM is an extreme form of violence against women and girls, and is also primarily carried out on children between the ages of infancy and 15 years old.⁶
- This legislation is relevant to this 'general comment' as it seeks to offer further protection from a serious form of violence and abuse that most often impacts children.

On the right of the child to enjoyment of the highest attainable standard of health (2013): All policies and programmes affecting children's health should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information,

⁶ World Health Organisation, Sexual and Reproductive Health – Female Genital Mutilation (FGM), <https://www.who.int/reproductivehealth/topics/fgm/prevalence/en/>

education, justice and security, including the elimination of all forms of sexual and gender-based violence.

- FGM constitutes a severe form of discrimination against women and girls. It is carried out for the primary purpose of controlling the behaviour of women, and perpetrates patriarchal values.
- By seeking to protect women and girls from FGM, this legislation is contributing to the elimination of all forms of gender-based violence.

[On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\)\(2014\)](#): The Committees recommend that the States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices. In doing so:

- They should ensure that the process of drafting legislation is fully inclusive and participatory. For that purpose, they should conduct targeted advocacy and awareness-raising and use social mobilisation measures to generate broad public knowledge of and support for the drafting, adoption, dissemination and implementation of the legislation.
 - In the development of this Bill, the Scottish Government carried out a consultation that was put out to the general public, as well as key stakeholders in this area. Policy officials also engaged throughout the policy-making process with individuals from the third sector, and potentially affected communities.
 - Furthermore, this new Bill will include a provision for the Scottish Government to publish statutory guidance on FGM. The drafting process for this will include extensive engagement with stakeholders from the statutory and third sectors, and potentially affected communities; as well as another consultation on the contents of this guidance.
- They should ensure that legislation is consistent and comprehensive and provides detailed guidance on prevention, protection, support and follow-up services and assistance for victims, including towards their physical and psychological recovery and social reintegration, and is complemented by adequate civil and/or administrative legislative provisions.
 - Included in this legislation will be a provision for the Scottish Government to publish statutory guidance on FGM. This guidance will be drafted with input from key stakeholders, including statutory and third sector organisations, and representatives from potentially affected communities.
- They should ensure that all initiatives to draft and amend criminal laws must be coupled with protection measures and services for victims and those who are at risk of being subjected to harmful practices.
 - The Bill will include provision for the creation of FGM Protection Orders, as an effective additional civil protective measure for potential victims of FGM.
 - The intention of statutory guidance, that will be drafted as a result of this Bill, will equip public bodies with the knowledge and understanding to ensure that potential victims and survivors of FGM have access to the most appropriate interventions.

- They should ensure that legislation establishes jurisdiction over offences of harmful practices that applies to nationals of the State party and habitual residents, even when they are committed in a State in which they are not criminalised.
 - Although the new legislation will not explicitly talk about nationality, non-UK citizens will be able to be protected in Scotland in terms of the law in Scotland.
- They should ensure that the legislation includes mandatory restraining or protection orders to safeguard those at risk of harmful practices and provides for their safety and measures to protect victims from retribution.
 - This new legislation will include provision for the creation of FGM Protection Orders, which will provide means to protect and safeguard victims and potential victims of FGM. They will be granted by a court and will be unique to each case. They will contain conditions to protect a victim or potential victim from FGM; this could include, for example, surrendering a passport to prevent the person at risk from being taken abroad for FGM, or requirements that no one arranges for FGM to be performed on the person being protected.

[On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\)\(2014\)](#): The Committees recommend that the States parties to the Conventions provide all relevant front-line professionals with information on harmful practices and applicable human rights norms and standards and ensure that they are adequately trained to prevent, identify and respond to incidents of harmful practices, including mitigating negative effects for victims and helping them gain access to remedies and appropriate services.

- This Bill will introduce a provision for the Scottish Government to publish statutory guidance on FGM. This will include information on the practice, as well as advice and information on how to support potential victims and survivors of FGM. This guidance will support front-line staff in public bodies to better respond to women affected by FGM.

[On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\)\(2014\)](#): The committees recommend that the States parties to the conventions initiate public discussions to prevent and promote the elimination of harmful practices, by engaging all relevant stakeholders in the preparation and implementation of the measures, including local leaders, practitioners, grass-roots organisations and religious communities. The activities should affirm the positive cultural principles of a community that are consistent with human rights and include information on experiences of successful elimination by formerly practicing communities with similar backgrounds.

- This Bill will introduce a provision for the Scottish Government to draft statutory guidance on FGM. The process for drafting will include extensive stakeholder engagement with individuals from the statutory and third sectors, and potentially affected communities. Furthermore, the Scottish Government will also conduct a public consultation on the contents of the statutory guidance, which will give individuals from around the country the

opportunity to input. As part of stakeholder engagement on these issues, the Scottish Government will also be hosting a Summit on FGM Policy and Legislation in mid-July.

7. What evidence have you used to inform your assessment? What does it tell you?

In conducting this Child Rights and Wellbeing Impact Assessment, demographic information played an important role in the evidence base. For instance, in 2012, 733 children were born in Scotland to mothers from an FGM-practicing country, of which, 363 were girls.⁷ We also know that in 2011, there were 508,892 females under 18 living in Scotland. Of this, 417,238 were ages 0-14.⁸ According to the World Health Organisation, the majority of girls have FGM carried out on them before they turn 15.⁹ However, of these figures, we do not know how many of these girls are living in potentially affected communities in Scotland.

Furthermore, demographic figures on race were considered. Although there does seem to be a larger proportion of known cases coming from predominately West African countries, FGM is not exclusive to any one particular race. Nevertheless, UNICEF identified 29 FGM practicing countries in 2013, all of which are either located in Africa or the Middle East.¹⁰ According to the 2011 Census, the size of the visible ethnic minority population in Scotland was just above 200,000, which is approximately 4% of the total population (based on the 2011 ethnicity classification).¹¹ This has doubled since 2001. However, this does not breakdown into how many people from FGM practicing countries are currently living in Scotland.

We also conducted a public consultation, which ran from the 4 October 2018 to 18 January 2019 and received 75 responses. This gave individuals and organisations across Scotland the opportunity to voice opinions on the proposed policies for the new Bill. The analysis of this was an important evidence base.

Furthermore, policy officials have had ongoing engagement with stakeholders through working groups, and on a more ad hoc basis; for example, Police Scotland's Child Protection Unit, the Child Protection Committee Scotland, and officials from the Child Protection Policy team have been involved in the development of this Bill.

8. Have you consulted with relevant stakeholders?

Yes. Throughout the development of this legislation, officials have engaged with key stakeholders in child protection including: Police Scotland's Child Protection

⁷ Scottish Refugee Council Report: Tackling Female Genital Mutilation in Scotland; A Scottish Model of Intervention pg. 14

⁸ Scotland's Census 2011 – National Records of Scotland Table – Age by Sex

⁹ World Health Organisation, Sexual and Reproductive Health – Female Genital Mutilation (FGM), <https://www.who.int/reproductivehealth/topics/fgm/prevalence/en/>

¹⁰ UNICEF FGM Practicing Countries (2013), https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf

¹¹ Scotland's Census 2011 – National Records of Scotland Table – Ethnic Group

Unit, the Child Protection Committee Scotland, colleagues in Child Protection Policy, and third sector organisations who work with children. Furthermore, we ran a public consultation, which ran from 4 October 2018 to 18 January 2019. This gave individuals across the country the opportunity to voice opinions on the policies included in this legislation.

9. Have you involved children and young people in the development of the policy/measure?

We ran a public consultation, which ran from 4 October 2018 to 18 January 2019. This gave stakeholders the opportunity to voice opinions on the policies being considered under this legislation. The consultation received 75 responses and the analysis is being used to inform our approach going forward. Several of these responses came from groups or organisations who work with children and young people in Scotland on honour based violence issues. Furthermore, the Scottish Government are hosting a summit in mid-July on FGM legislation and policy; we are committed to having young people involved in this event and will use it as an opportunity to gain views on current and future policies, as well as what should be covered in the statutory guidance that is being drafted as a result of this Bill.

CRWIA – Stage 3 Authorisation and Publication

Executive Summary

This Child Rights and Wellbeing Impact Assessment considers the impact of the upcoming Female Genital Mutilation (Protection and Guidance) Bill. FGM has been illegal in Scotland since 1985. As part of the Scottish Government's approach to tackling FGM, the Programme for Government 2018-19 contained a commitment to introduce a new Bill strengthening the existing legislative framework for the protection of women and girls from FGM. Programme for Government indicated that the Bill will seek to introduce protection orders for women and girls at risk, and place guidance for professionals on a statutory footing.

This Bill will have a direct impact on children and young people, specifically young girls, as FGM is primarily practiced on girls under the age of 18. Therefore, a Child Rights and Wellbeing Impact Assessment was required. Despite the fact that the Bill is determined to have a broadly positive impact on children and young people, it was important to undertake this assessment so that any potential unintended consequences of this legislation were identified and addressed.

This impact assessment has identified that this new legislation has an overwhelming positive impact on furthering child rights and wellbeing in Scotland. The Scottish Government considers FGM to be an unacceptable and illegal practice, and an extreme violation of the human rights of women and girls. Furthermore, FGM always results in serious long and short-term health complications, both physical and psychological. Therefore, it is clear that any child who is subjected to this practice has had their rights violated. In total, the Bill contributes to six articles of the UNCRC. These include: Article 2 (non-discrimination); Article 3 (best interests of the child); Article 4 (protection of rights); Article 6 (life, survival and development); Article 19 (protection from all forms of violence); and Article 37(a) (inhumane treatment and detention).

Furthermore, this legislation also contributes to implementing some of the recommendations given to the UK in the UN's Committee on the Rights of the Child in their Concluding Observations (2016). In total, this Bill is acting in accordance to 3 recommendations. These are:

- Ensure that the best interests of the child is adequately integrated into all legislative,

	<p>administrative and judicial proceedings and decisions as well as policies and programmes.</p> <ul style="list-style-type: none"> • Act in accordance with Sustainable Development Goal 16, Target 16.2: <i>To end abuse, exploitation, trafficking and all forms of violence against children.</i> • Strengthen measures, collect data, raise awareness and provide education and training to professionals on the use of harmful practices, including Female Genital Mutilation (FGM), and unnecessary surgical interventions on intersex children. <p>Finally, this legislation also acts in accordance with a number of the ‘General Comments’ made by the UN, which are guidelines issued by the UN Committee on the Rights of the Child. Including recommendations outlined in their General Comments on:</p> <ul style="list-style-type: none"> • Adolescent health and development in the context of the Convention on the Rights of the Child. • On the right of the child to enjoyment of the highest attainable standard of health. • On harmful practices (Joint General Comment with the Committee on the Elimination of Discrimination Against Women). <p>This impact assessment has also identified that this legislation has a positive impact on contributing to the wellbeing of children and young people in Scotland. The Bill contributes directly to four of the children and young people wellbeing indicators: Safe, Healthy, Nurtured and Included. Moreover, it is also noted that this legislation will have a positive indirect impact on the other wellbeing indicators; keeping young girls safe, healthy, nurtured and included will ultimately give these children greater opportunity for improved wellbeing in other areas as well.</p> <p>Overall, this impact assessment has shown that this new FGM legislation will have an overall positive impact on the furthering of child rights in Scotland, and on ensuring their wellbeing.</p>
<p>Policy Background</p>	<p>The Programme for Government (PfG) 2018/19 contained a commitment to introduce a Bill strengthening the existing legislative framework for the protection of women and girls from Female Genital Mutilation (FGM), a form of gender based violence. PfG indicated that the Bill will seek to introduce protection orders for women and girls at risk, and place guidance for professionals on a statutory footing. The Bill will seek to amend the</p>

	<p>Female Genital Mutilation (Scotland) Act 2005. Practically, the proposed Bill will seek to do two things: make provision for Scottish Ministers to issue statutory guidance about FGM, or any matter relating to FGM, which those exercising public functions will be obliged to have regard to; and introduce provisions for the creation of Female Genital Mutilation Protection Orders.</p>
<p>Scope of CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</p>	<p>The Bill will have a direct impact on children and young people in Scotland. This is a practice that is primarily carried out on young girls; evidence suggests that it is most often carried out on girls under the age of 15, but it is more likely to affect children under 8.</p> <p>Although FGM is not exclusive to any one race, religion or belief; UNICEF identified 29 FGM practicing countries in 2013, all of which are either located in the Middle East or Africa.¹² Therefore, it can be concluded that this legislation will have more of an impact on young girls who are from these countries, or who have parents/carers who are from these countries.</p> <p>In relation to this Bill, a full Child Rights and Wellbeing Impact Assessment was conducted. The evidence base used included demographic information, primarily extracted from the 2011 Scottish Census. We also conducted a public consultation, which ran from 4 October 2018 to 18 January 2019 and received 75 responses. The analysis of the responses was also an important source of evidence for this assessment. Engagement with stakeholders through working groups, and on a more ad hoc basis, was used to inform this assessment as well.</p>
<p>Children and young people's views and experiences</p>	<p>We ran a public consultation from the 4th of October 2018 to the 18th of January 2019; we received 75 responses, some of which came from stakeholders who engage directly with children and young people on issues related to FGM and honour based violence more broadly.</p> <p>We have engaged with key stakeholders in child protection bodies on a more ad hoc basis as we've developed our policies related to this Bill. This includes policy colleagues, Police Scotland's Child Protection Unit, and the Child Protection Committee Scotland.</p> <p>Additionally, the Scottish Government funds a number of third sector organisations through our equally safe fund</p>

¹² UNICEF FGM Practicing Countries (2013), https://www.unicef.org/protection/files/00-FMGC_infographiclow-res.pdf

	<p>specifically to work with children. For example, the Shakti Women’s Aid Children’s Service and Hemat Gryffe’s Children and Young People Support Services. Furthermore, we fund a number of other organisations, including Saheliya and Waverley Care amongst others, who work on supporting victims and potential victims of FGM. This work also includes supporting children and young people. We then engage directly with these stakeholders to help shape our policy based on the best interests of the children they work with.</p> <p>Overall, stakeholders are strongly in favour of the provisions to be included in the Bill. There is widespread support for the introduction of FGM Protection Orders, which are viewed as having numerous benefits. In general, the protection orders are viewed as being a fast and responsive measure that offered a good civil remedy to cases of FGM as opposed to a criminal one. This is considered to be crucial as members of potentially affected communities are often concerned about criminalising members of their families. Furthermore, given the success of Forced Marriage Protection Orders in Scotland, and FGM Protection Orders in England and Wales, stakeholders agree that there was strong evidence that these orders will also be effective.</p> <p>On the introduction of statutory guidance, there is also widespread support from stakeholders. It is noted that statutory guidance would ensure that there is widespread knowledge about FGM, which would reduce regional variations in knowledge. Furthermore, stakeholders also note that guidance would ensure a shared national approach amongst professional bodies and improve inter-agency collaboration, potentially reducing regional differences in responses.</p> <p>Furthermore, the Scottish Government are hosting a summit in mid-July on FGM legislation and policy; we are committed to having young people involved in this event and will use it as an opportunity to gain views on current and future policies, as well as what should be covered in the statutory guidance that is being drafted as a result of this Bill.</p>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will</p>	<p>Upon conducting this Child Rights and Wellbeing Impact Assessment, it is evident that this new Bill will have a positive impact on enhancing Children’s Rights in Scotland, and in ensuring the wellbeing of Scottish children. The Scottish Government considers FGM to be an extreme abuse of human rights, therefore any child</p>

contribute to children's wellbeing

who falls victim to the practice will have been prevented from fully enjoying their rights. Consequently, by strengthening the legislative framework around FGM, this Bill is strengthening the protection of children's rights in Scotland.

This Bill directly broadens the implementation of six UNCRC articles. These are:

- **Article 2 (non-discrimination):** Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parents/carer(s).
- **Article 3 (best interests of the child):** Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing – and that all institutions, services and facilities responsible for their care and protection conform with established standards.
- **Article 4 (protection of rights):** Governments should undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the UNCRC.
- **Article 6 (life, survival and development):** Every child has a right to life and to develop their full potential.
- **Article 19 (protection from all forms of violence):** Children have a right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Governments must do all they can to ensure this.
- **Article 37(a) (inhumane treatment and detention):** No child should be subjected to cruel, inhuman or degrading treatment or punishment.

Additionally, this assessment has found that this Bill contributes to implementing some of the recommendations set out in the Concluding Observations 2016 given by the UN Committee on the Rights of the Child to the UK Government.

- **Best interests of the child:** Ensure that the best interests of the child is adequately integrated into all legislative, administrative and judicial proceedings and decisions as well as policies and programmes.

	<ul style="list-style-type: none"> • Torture and other cruel or degrading treatment or punishment: Act in accordance with Sustainable Development Goal 16, Target 16.2: <i>To end abuse, exploitation, trafficking and all forms of violence against children.</i> • Harmful Practices: Strengthen measures, collect data, raise awareness and provide education and training to professionals on the use of harmful practices, including Female Genital Mutilation (FGM), and unnecessary surgical interventions on intersex children. <p>Furthermore, the Bill also complies with some of the guidelines and recommendations set out in the General Comments given by the UN Committee on the Rights of the Child. Including advice set out in the General Comments on:</p> <ul style="list-style-type: none"> • Adolescent health and development in the context of the Convention on the Rights of the Child; • The right of the child to enjoyment of the highest attainable standard of health; and • Harmful Practices. <p>Lastly, this Bill also contributes to the furthering of child wellbeing in Scotland in reference to the eight child wellbeing indicators. The legislation will directly impact on the indicators of: Safe, Healthy, Nurtured and Included. It will also have an indirect impact on the other indicators (Achieving, Active, Respected and Responsible), as it is hoped that by keeping more children safe, healthy, nurtured and included, this will ultimately give greater opportunity for improved wellbeing in other areas</p>			
Monitoring and review	Given the nature of this Bill, in particular the statutory guidance, it will be appropriate for a review of this assessment during the drafting process of the statutory guidance.			
Bill – Clause	Aims of measure	Likely to impact on...	Compliance with UNCRC requirements	Contribution to wellbeing indicators
FGM Protection Orders	This clause will create a provision for the creation of FGM Protection Orders, a form of civil order which can	Young girls under the age of 18, who live in potentially affected communities.	Article 2 (non-discrimination) Article 3 (best interests of the child)	Safe Healthy Nurtured Included

	impose conditions or requirements upon a person for the purpose of protecting a person or persons from FGM or safeguarding them from harm if FGM has already occurred.		<p>Article 4 (protection of rights)</p> <p>Article 6 (life, survival, and development)</p> <p>Article 19 (protection from all forms of violence)</p> <p>Article 37(a) (inhumane treatment and detention)</p>	
Statutory guidance	This clause will create a provision for Scottish Ministers to issue statutory guidance about FGM, or any matter relating to FGM, which those exercising public functions will be obliged to have regard to.	<p>Young girls under the age of 18, who live in potentially affected communities.</p> <p>Statutory bodies who will be obliged to have regard to the guidance.</p>	<p>Article 2 (non-discrimination)</p> <p>Article 3 (best interests of the child)</p> <p>Article 4 (protection of rights)</p> <p>Article 6 (life, survival, and development)</p> <p>Article 19 (protection from all forms of violence)</p> <p>Article 37(a) (inhumane treatment and detention)</p>	<p>Safe</p> <p>Healthy</p> <p>Nurtured</p> <p>Included</p>

CRWIA Declaration

Authorisation

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Date

10/04/2019

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