



Joint Parliamentary Briefing: Stage 3 Proceedings: Female Genital Mutilation (Protection and Guidance) (Scotland) Bill

BACKGROUND

1. Introduction

Engender and Scottish Women's Aid welcome this opportunity to comment on the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill ahead of the Stage 3 debate on 19th March 2020. Our organisations broadly support the Bill and recognise that work to strengthen statutory protections for women and girls at risk of female genital mutilation (FGM) is a key aspect of delivering Scotland's violence against women strategy, Equally Safe, around which we both work in various capacities.

However, we recently joined with other bodies¹ to raise some very specific concerns about amendments to the Bill with party spokespersons. In summary, we viewed these amendments as well intentioned but potentially having unforeseen consequences that risk undermining women's safety and dignity and the efficacy of the Bill as a whole. Since we drafted that letter, amendments have been brought forward by both the Scottish Government and opposition MSPs that pertain to these issues.

This briefing addresses the specific concerns in turn, and we urge all MSPs to consider them and the corresponding proposed amendments ahead of the stage 3 debate.

SPECIFIC CONSIDERATIONS

1. Amendments on support of protected persons

¹ Signatories included: Dr. Marsha Scott CEO Scottish Women's Aid, Emma Ritch Executive Director Engender, Sara McHaffie Amina the Muslim Women's Resource Centre, Shruti Jain Chair Saheliya, Beth Morgan Manager Strategy & Operations Dundee International Women's Centre, Dr. Ima Jackson Senior Lecturer Glasgow Caledonian University, Judy Wasige Glasgow Caledonian University, Hassan Darasi Project Manager Community InfoSource, Ms Mukami McCrum Kwisa - for African Women, Anne Spiers Acting Chief Executive Officer Multi-Cultural Family Base, Andy Sirel Senior Associate Just Right Scotland, Girijamba Polubothu CEO Shakti Women's Aid. These signatories refer only to the letter and not this briefing, although the concerns raised are the same.

i. **Our concerns**

Following stage 2, Section 5A(5A) of the Bill now allows the court to include within a Female Genital Mutilation Protection Orders (FGMPO) *a requirement for a person or body to provide practical support to a protected person or any other person to whom the order will apply.*

Any support put in place must have the purpose of reducing any ongoing risk to that person. The Bill currently mandates that if support is included in an FGMPO, any person or body named within it must provide support to a protected person or any other person as part of the FGMPO. **Failure to provide the support as set out will be a criminal offence in terms of section 5N.**

It is our shared ambition that victim-survivors and those at risk of FGM get the support and protection they need, and we welcome the intention behind the stage 2 amendment. However, we are concerned that the practical effect of the provision as drafted may well be harmful for those it is meant to help, which could have been avoided if stakeholders and service providers had been consulted. We routinely hear from victim-survivors of domestic abuse that **well-meaning officials—in courts, in SCRA, and in Children and Family services—demonstrate little to no understanding of the context in which FGM or domestic abuse or, for that matter other forms of violence against women and girls, occur** nor have any experience with appropriate interventions. As a result, victims are often held to account for “failure to protect” and risk having their children removed and placed in foster care. The outcome for mothers and children is traumatic and long-lasting, and **the very possibility has a chilling effect on victim help-seeking.** Given that FGM cases will largely involve women of colour, **the likelihood of good and effective interventions that respond to women’s needs decreases even further.**

i. **Amendments proposed**

The Scottish Government has **proposed amendment 10.** This would have the effect of replacing the duty to provide support as currently foreseen with a provision that enables courts to include support and assistance by a public authority within an FGMPO, where requested by a party seeking the order. While this is a more limited duty to consider support and assistance, our experience outlined above suggests that officials lack the expertise to mandate appropriate interventions and that **more flexibility and less court involvement stands to benefit women and enable the right support to be developed.**

Amendment 2 has the effect of narrowing the scope of the duty to provide support to a public authority. This is welcome and removes the risks that the third sector and private persons are inadvertently criminalised for being unable to provide support that a court deems appropriate, but which is unsuitable or impractical. However,

amendments 3 and 5 maintain the degree of court oversight and involvement that demands victim-survivors return to courts for potentially difficult and protracted issues which are, in our view, unlikely to be developed with the relevant expertise to ensure the right support is in place for women.

Additionally, **amendment 7** appears to desire that the wishes and feelings of the protected person are considered by the courts but, as drafted, could include any other person affected by the order, including the perpetrator. We view this as inappropriate and dangerous. **Amendment 6** also seeks to respond to concerns that courts are insufficiently expert in the experiences of FGM victim-survivors but does not address concerns that a body could be asked to do something for which it lacks the necessary powers or expertise to meet the needs of women. We therefore do not support these proposals.

2. Amendments on anonymity

i. Our concerns

Section 5CA of the Bill obliges the court, in “exceptional circumstances”, to make an order requiring measures to be taken to ensure the anonymity of either: a person applying for a FGMPO (where they are the protected person or person applying with permission of the court) or a person who would be subject to the terms of FGMPO (where that FGMPO has been applied for by a protected person or a person applying with the permission of the court). We see numerous problems with this amendment, including the following:

- Courts already have the power to order anonymity, but this amendment has the potential for promising perpetrators they will not be named, which we strongly oppose.
- The amendment raises the possibility that third-sector services would be unable to promise or provide confidentiality to service users. The potential for criminalising support efforts and organisations is particularly alarming.
- We are not clear what “exceptional circumstances” would be.

Additionally, a number of variables are unclear to us: the length of order, limits of order, points at which an order can be applied for during the FGMPO process, what happens when the FGMPO is discharged, appeal process—and relevant implications of each for victim-survivors would need to be considered very carefully.

Courts must already withhold a person’s identity in circumstances where the person faces a threat to life or limb, and where it is in the **interests of justice to protect a party to proceedings** from painful and humiliating disclosure of personal information where there is no public interest in doing so. **These circumstances are a good description of FGM cases and offer significant protection already.**

ii. Amendments proposed

The Scottish Government's amendments (17 and 18) propose new powers for the courts to grant an "anonymity order" and for courts to manage such orders. These powers do not extend to criminal courts where the existing powers referenced above apply. However, as drafted, the amendment could extend to granting anonymity to perpetrators. This is something our organisations cannot support without further reassurance as to how the Scottish Government intends anonymity to be applied, as we consider it vital that other women at risk or who have been victims of violent crime by the perpetrator have access to that information.

Amendment 12 limits section 5CA to just the protected person. We support this, as it removes the first of our concerns in this area that courts could promise a perpetrator that they will not be named. We do have concern that the provision has not adequately considered the existing powers of the court to grant anonymity, as the Scottish Government's amendment 17 specifically refers to other powers of the courts.

We therefore urge Parliament to support amendment 11, which would have the effect of removing section 5CA, and ask the Scottish Government to consider fully whether there is a need for additional specific powers, in conjunction with stakeholders, and how these would interact with existing powers of the courts.

CONCLUSIONS

Engender and Scottish Women's Aid support the Bill and urge MSPs to vote in its favour at Stage 3. However, we have concerns that without further amendments, elements of the Bill as currently constituted will have unintended negative consequences. We therefore call on MSPs to:

- Support amendment 10;
- Support amendment 2 if they do not support amendment 10;
- Oppose amendments 3, 5, 6 and 7;
- Support amendment 11;
- Oppose amendments 17, 18 and 12.

FOR FURTHER INFORMATION

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