

EQUALITIES AND HUMAN RIGHTS COMMITTEE

FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) (SCOTLAND) BILL

SUBMISSION FROM CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Introduction

1. The Crown Office and Procurator Fiscal Service (COPFS) supports the steps being taken by the Scottish Government to strengthen statutory protections for women and girls at risk of female genital mutilation (FGM).
2. COPFS' submission is offered with a view to highlighting the potential practical consequences of the legislation on the prosecution of crime in Scotland, in order to assist the Committee and the Parliament in their consideration of the Bill.

FGM Protection Orders

3. Similar orders are already available in Scotland to protect persons at risk of forced marriage in terms of section 1 of the Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011.
4. It is noted that an FGM Protection Order may be made by the court:
 - on application to the court by any of a specified list of persons (section 5C);
 - where no application has been made but there are live civil proceedings, the court considers that an application should be made and one of the parties to the proceedings would be affected by such an order (section 5E); and
 - on sentencing (or disposal under section 51A or 53F of the Criminal Procedure (Scotland) Act 1995) on conviction of an offence under section 1 or 3 (section 5G).
5. It is anticipated that Police Scotland or the relevant local authority will be best placed to make the majority of applications in terms of section 5C. COPFS anticipates that the Lord Advocate is most likely to make applications should an accused person be convicted of an offence under section 1 or section 3.
6. Sections 5N (2), (3) and (4) criminalise third parties who are not subject to FGM Protection Orders in respect of acts mandated or prohibited by FGM Protection Orders that apply to other persons. These provisions may be challenging to prosecute from a practical perspective. In order to establish sufficient evidence and take prosecutorial action the Crown will require to prove by corroborated evidence that the accused person knew the content of the order despite the order not having been served on him/her. COPFS foresees that establishing sufficient evidence of a third party accused may prove challenging.

The financial impact of the Bill on COPFS

7. As the Bill proposes the creation of new criminal offences, COPFS anticipates an up-turn in costs associated with assessing and prosecuting breaches of FGM Protection Orders.
8. In addition, as noted above, it is anticipated that in the Lord Advocate is most likely to apply for FGM Protection Orders as part of sentence in relevant cases and that the majority of applications will be made by the police or local authorities. That being so, it is not anticipated that significant costs will be incurred in that respect.
9. The Financial Memorandum accompanying the Bill sets out a basis for calculating these costs based on extrapolation from data from England and Wales. COPFS is content with those projections.