

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

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 11

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Christina McKelvie

- 1 In section 1, page 2, leave out lines 10 to 14

Oliver Mundell

- 2 In section 1, page 2, line 11, after <requirement> insert <on a Scottish public authority (within the meaning given by section 126(1) of the Scotland Act 1998)>

Oliver Mundell

- 3 In section 1, page 2, line 12, after <support> insert <, immediate or ongoing,>

Oliver Mundell

- 5 In section 1, page 2, line 14, at end insert—
- <(5B) The court may appoint an individual (“the appointed person”) to review, from time to time, the provision of practical support referred to in subsection (5A).
 - (5C) The court may permit the appointed person to make recommendations, specifying changes that may be made by a public authority to the provision of practical support being provided in a female genital mutilation protection order.
 - (5D) A public authority to whom a recommendation under subsection (5C) relates must have regard to that recommendation.>

Oliver Mundell

- 6 In section 1, page 2, line 14, at end insert—
- <() The provision to provide practical support mentioned in subsection (5A) may include, but is not limited to, a requirement to provide—
 - (a) access to any medical assistance, health care or counselling as the protected person may require,

- (b) suitable accommodation or advice and support as the protected person may require to secure and retain suitable accommodation,
- (c) suitable means of financial support to ensure an adequate standard of maintenance and accommodation for the protected person and any dependants of the protected person,
- (d) such advice and support as the protected person may require to enable the protected person or (as the case may be) any dependants of the protected person to attend school or an educational institution (within the meaning of Part 5 of schedule 1 to the Freedom of Information (Scotland) Act 2002).>

Oliver Mundell

7 In section 1, page 2, line 14, at end insert—

- <() In considering the practical support, the court or the appointed person (as the case may be) must have regard to the wishes and feelings (so far as reasonably ascertainable) of the persons mentioned in subsection (5A) to such extent as the court or appointed person considers appropriate, taking into account the person’s age and understanding.>

Oliver Mundell

8 In section 1, page 2, line 14, at end insert—

- <() For the avoidance of doubt, the fact an order does not make provision for the practical support mentioned in subsection (5A) does not affect any duty or responsibility which that public authority has under any other enactment.>

Oliver Mundell

9 In section 1, page 2, line 14, at end insert—

- <(A6) The Scottish Ministers may—
 - (a) publish such guidance as they consider appropriate on the operation of this section, in particular how the court or appointed person is to discharge their functions under subsection (5A),
 - (b) by regulations, modify subsection (5A).
- (B6) Regulations under subsection (A6)(b) are subject to the negative procedure.>

Christina McKelvie

4 In section 1, page 2, line 14, at end insert—

- <(5B) Subsection (5C) applies where a person who would be a protected person were a female genital mutilation protection order made is not ordinarily resident in Scotland.
- (5C) The court may make a female genital mutilation protection order under or by virtue of a provision mentioned in subsection (3) in relation to a person mentioned in subsection (5B) only where the person is in Scotland when the order is applied for or, as the case may be, made.>

Christina McKelvie

10 In section 1, page 3, line 22, at end insert—

<(3A) A female genital mutilation protection order may, among other things, also require a Scottish public authority to consider what support and assistance the authority may be able, in exercise of its functions, to provide to the protected person or another person.

(3B) But a requirement mentioned in subsection (3A) may be included in the female genital mutilation protection order only where a person—

(a) who is a party to the proceedings for the order, or

(b) who, in the case of such an order made by virtue of section 5E or 5F, would have been a party to such proceedings,

requests the court to do so.

(3C) Where a requirement mentioned in subsection (3A) is included in a female genital mutilation protection order, the Scottish public authority to whom the requirement applies must, so far as reasonably practicable, provide such support and assistance as the authority considers appropriate.>

Christina McKelvie

11 In section 1, page 4, line 32, leave out from beginning to end of line 28 on page 5

Oliver Mundell

12 In section 1, page 4, line 34, leave out from <person> to end of line 38 and insert <protected person, make an order requiring all reasonable measures to be taken to ensure the identity of the protected person is not made public>

Oliver Mundell

13 In section 1, page 4, leave out from beginning of line 40 to end of line 24 on page 5

Oliver Mundell

14 In section 1, page 5, line 25, leave out <deciding the measures> and insert <considering the request under subsection (1)>

Oliver Mundell

15* In section 1, page 5, line 27, at end insert—

<(4A) The Scottish Ministers may—

(a) publish such guidance as they consider appropriate on the operation of this section,

(b) by regulations modify subsection (1).

(4B) Regulations under subsection (4A)(b) are subject to the negative procedure.>

Oliver Mundell

16* In section 1, page 5, leave out line 28

17 In section 1, page 7, line 43, at end insert—

<5FA Anonymity orders: proceedings relating to making of female genital mutilation protection order

- (1) Where civil proceedings relating to the making of a female genital mutilation protection order are before the court, the court—
 - (a) must consider whether to make an order under subsection (2),
 - (b) may make such an order in accordance with subsection (4).
- (2) An order under this subsection (an “anonymity order”) may order any of the following—
 - (a) the withholding of—
 - (i) the name of a person who would be a protected person were the female genital mutilation protection order made,
 - (ii) the name of any other person,
 - (iii) other information,from the public in or in connection with proceedings before the court relating to the female genital mutilation protection order,
 - (b) the exclusion of the public from such proceedings before the court.
- (3) The court may make an anonymity order if it considers that it is just to do so having regard to all the circumstances, including the need to protect the health, safety and well-being of any person who would be a protected person were the female genital mutilation protection order made.
- (4) The court must, in complying with subsection (1)(a)—
 - (a) seek the views, so far as they are reasonably ascertainable, of—
 - (i) any person in respect of whom the court is considering making an anonymity order,
 - (ii) any person who would be a protected person were the female genital mutilation protection order made (if not a person mentioned in subparagraph (i)), and
 - (b) have regard to any such views (taking into account the person’s age and understanding).
- (5) But the failure of a person mentioned in subsection (4)(a) to provide views is not to be taken as indicating that the person is opposed to an anonymity order being made.
- (6) Where the court makes an anonymity order under this section, the court must also consider whether to exercise its power under section 11 of the Contempt of Court Act 1981 (power to prohibit publication of names or other matters in connection with proceedings).
- (7) The power to make an anonymity order is without prejudice to any other functions the court has in relation to ordering that names or other information be withheld or that the public be excluded from proceedings.

- (8) Subsection (4) does not apply to proceedings relating to the making of an interim female genital mutilation protection order by virtue of section 5F.
- (9) The reference in subsection (1) to proceedings relating to the making of a female genital mutilation protection order includes reference to proceedings in which the court is considering whether to make such an order by virtue of section 5E(1).

5FB Anonymity orders: other proceedings relating to female genital mutilation protection order

- (1) The court may also make an anonymity order in any other civil proceedings relating to a female genital mutilation protection order—
 - (a) on the application of—
 - (i) any person who was a party to the proceedings for the female genital mutilation protection order, or
 - (ii) any person who, in the case of such an order made by virtue of section 5E or 5F, would have been a party to such proceedings,
 - (b) even though no such application is made to the court.
- (2) The court may make an anonymity order if it considers that it is just to do so having regard to all the circumstances, including the need to protect the health, safety and well-being of—
 - (a) any protected person, and
 - (b) in the case of proceedings relating to the variation of the female genital mutilation protection order, any person who would be a protected person were the order varied.
- (3) The court must, before making an anonymity order under this section—
 - (a) seek the views, so far as they are reasonably ascertainable, of—
 - (i) any person in respect of whom the court is considering making an anonymity order,
 - (ii) any protected person and, in the case of proceedings relating to the variation of the female genital mutilation protection order, any person who would be a protected person were the order varied (if not a person mentioned in sub-paragraph (i)), and
 - (b) have regard to any such views (taking into account the person’s age and understanding).
- (4) But the failure of a person mentioned in subsection (3)(a) to provide views is not to be taken as indicating that the person is opposed to an anonymity order being made.
- (5) Where the court makes an anonymity order under this section, the court must also consider whether to exercise its power under section 11 of the Contempt of Court Act 1981 (power to prohibit publication of names or other matters in connection with proceedings).
- (6) The power to make an anonymity order is without prejudice to any other functions the court has in relation to ordering that names or other information be withheld or that the public be excluded from proceedings.

- (7) Subsection (3) does not apply to proceedings relating to the variation or extension of a female genital mutilation protection order on an interim basis by virtue of section 5L(3).

5FC Variation and discharge of anonymity orders

- (1) This section applies where the court has made an anonymity order which is in effect.
- (2) The court may vary or discharge the anonymity order—
- (a) on the application of—
 - (i) any person who was a party to the proceedings for the female genital mutilation protection order in relation to which the anonymity order was made,
 - (ii) any person who, in the case of such an order made by virtue of section 5E or 5F, would have been a party to such proceedings,
 - (b) even though no such application is made to the court.
- (3) The court may vary or, as the case may be, discharge an anonymity order if it considers that it is just to do so having regard to all the circumstances, including the need to protect the health, safety and well-being of any protected person.
- (4) The court must, before varying or, as the case may be, discharging an anonymity order—
- (a) seek the views, so far as they are reasonably ascertainable, of—
 - (i) any person in respect of whom the anonymity order was made,
 - (ii) any person who is a protected person (if not a person mentioned in sub-paragraph (i)), and
 - (b) have regard to any such views (taking into account the person’s age and understanding).
- (5) But the failure of a person mentioned in subsection (4)(a) to provide views is not to be taken as indicating that the person is content with the variation or, as the case may be, discharge of the anonymity order.>

Section 5

Christina McKelvie

18 In section 5, page 15, line 37, at end insert—

<“anonymity order” has the meaning given by section 5FA(2);>

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