FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) (SCOTLAND) ACT 2020

Purpose

1. To invite members to consider a rules request on the subject of Female Genital Mutation Protection Orders received on 22 January 2026 from the Scottish Government and to seek confirmation on whether drafting instructions should be issued. The request sets out proposals for civil court rules to support orders which may be made under the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 (the 2020 Act).

Timing

2. *ROUTINE* – the Scottish Government confirmed that their proposed commencement date for the 2020 Act is December 2026.

Background

3. Last year, the SCJC Secretariat, SCTS Legislation Implementation Team (Annex 1) held discussions with the Scottish Government to assist in addressing some outstanding policy and operational gaps within their proposals. The Scottish Government have been invited to attend the FLC meeting to present their paper (Paper 3.2A) and address any questions arising.

Rules Proposal

4. The 2020 Act makes provision for FGMPOs to be made by civil courts on application to the sheriff court or in the course of other civil proceedings. The 2020 Act creates a new FGM protection order ("FGMPO"). The order can: impose conditions or requirements upon a person(s) for the purpose of protecting an individual from FGM; safeguard an individual from further harm if FGM has already occurred; or, otherwise prevent or reduce the likelihood that FGM offences will occur. The 2020 Act makes it a criminal offence to breach a FGMPO or an equivalent UK order.

Summary of Proposals

5. Section 1 of the 2020 Act inserts new sections 5A to 5R into the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (the 2005 Act). References below to section numbers are, unless otherwise indicated, to sections as inserted into

the 2005 Act. The Scottish Government propose that a new chapter is inserted into the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999.

6. The Committee is invited to -

- Consider the drafting of a court rule and a prescribed form of an FGMPO made by a civil court, either on application or in the course of other proceedings before the court,
- Consider the proposal for drafting new court rules for the manner of application for an FGMPO. The Scottish Government propose that such applications are to be made under summary application procedure. Additionally, it is requested that to ensure the rules achieve the intended purpose of the Act, that applications for the purpose of section 5C are applied for using a bespoke form of application, prescribed within court rules,
- Consider the proposal that a rule similar to Summary Application Rules Chapter 3 Part XL Rule 3.40.2 is drafted for the purpose of seeking leave to apply for an FGMPO, where necessary and requiring that leave is sought by letter to the sheriff clerk, at the time of presenting the application in the required prescribed form.
- Consider the proposal that court rules should be drafted to provide that leave to apply for variation, discharge or extension of an FGMPO should be made by letter to the sheriff clerk. The application for variation, discharge or extension should be made by a prescribed form.
- Consider drafting a prescribed form for the purpose of notification under section 5P.

Recommendations

7. The Committee is invited to:

- Consider the rules request at Paper 3.2A and confirm whether any drafting instructions should be issued to LPPO.

Scottish Civil Justice Council Secretariat

February 2026

Annex 1

In terms of operational issues, the SCTS Legislation and Implementation Team has identified the following issues that may still be outstanding:

- **Anonymity** - Without automatic anonymity then details may be in the public domain before an anonymity order is later made. This creates a risk for those involved.
- **Seeking Views** - Seeking views of the protected person. There are no steps or processes in place for this. There is uncertainty over the engagement and ability to intimate on the protected person.
- **Civil Criminal crossover** - In practical terms there are still concerns over how the civil management of the criminal orders will work in practice given this is an unusual route.

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