



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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5 September 2019

Female Genital Mutilation (Protection and Guidance) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on 3 September 2018 and seeks an explanation of the following matters:

Section 2 (inserting section 5P of the 2005 Act)– Guidance relating to female genital mutilation

Power conferred on: the Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: None, but published

The Committee accepts that it could be helpful for Ministers to issue guidance under this section.

However, the new section 5P(3) sets out that guidance may not be given to any court or tribunal, the Lord Advocate, or a procurator fiscal. The DPM does not explain why this exclusion is not extended to the Crown Office and Procurator Fiscal Service (COPFS) as a body, as well as the individual fiscals.

An example of a recent Bill provision which refers to COPFS rather than fiscals, although not relating to guidance, is section 79 of the Age of Criminal Responsibility (Scotland) Act 2019. That section relates to obligations of COPFS to provide information to the Scottish Ministers in relation to a review of the age of criminal responsibility.

Why is it provided that guidance may not be given to a procurator fiscal, rather than to the Crown Office and Procurator Fiscal Service (or to both that Service and the individual fiscals)?

Section 3 (inserting section 5Q of the 2005 Act)– Guidance relating to female genital mutilation protection orders

Power conferred on: the Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: none, but published

The Committee accepts that issuing guidance under this section could be suitable in principle.

New section 5Q(4) provides that guidance under this section cannot apply to any court or tribunal, the Lord Advocate or a procurator fiscal. In a similar way to the new section 5P(3), COPFS as a body is not listed as a person or body to whom guidance cannot apply.

Why is it provided that the guidance may not apply to a procurator fiscal, rather than to the Crown Office and Procurator Fiscal Service (or to both that Service and the individual fiscals)?

I'd be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 1 October 2019.

Thank you.

Andrew Proudfoot

Clerk to the Delegated Powers and Law Reform Committee