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Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform
Committee
Room T1.01
Scottish Parliament

Sent via email: DPLR.Committee@parliament.scot

1 October 2019

Dear Andrew

FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) BILL AT STAGE 1

Thank you for your letter of 6 September to James Hynd. I have been asked to reply as Bill team leader. You ask why guidance being issued in relation to (i) FGM generally and (ii) FGM protection orders does not list the Crown Office and Procurator Fiscal as one of the bodies excluded from being given any guidance. You note that such a provision was included in the Age of Criminal Responsibility (Scotland) Act 2019, which created an obligation upon COPFS to provide information to the Scottish Ministers in relation to a review of the age of criminal responsibility.

It is provided in the Bill that guidance may not be given to a procurator fiscal, rather than providing that such guidance may not being able to be given to the Crown Office and Procurator Fiscal Service (COPFS) (or to both that Service and the individual fiscals), because of the particular functions of the office of 'procurator fiscal'. The reference to the exclusion of that office from being subject to guidance recognises its independence and the independent exercise of the functions within it, particularly in the context of particular prosecution decisions. It is considered that any functions of the procurator fiscal exercised through COPFS remain vested with the office of procurator fiscal and not the department, and are therefore excluded from the scope of the guidance. With regard to the difference of approach between the references in the Bill and in the Age of Criminal Responsibility (Scotland) Act 2019; COPFS is referred to in the Act due to its role in collating statistical data, a role not carried out by the office of procurator fiscal.

I hope this helps to clarity the position, and would be happy to discuss further if helpful.

Yours sincerely

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