

Serious Crime Act 2015

Factsheet – female genital mutilation

Background

1. Female genital mutilation (“FGM”) involves procedures that include the partial or total removal of the external female genital organs for non-medical reasons. The practice is extremely painful and has serious health consequences both at the time when the mutilation is carried out and in later life.
2. The age at which girls undergo FGM varies enormously according to the community. The procedure may be carried out when the girl is newborn, during childhood or adolescence, just before marriage or during the first pregnancy. However, the majority of cases of FGM are thought to take place between the ages of five and eight.
3. FGM has been a specific criminal offence in the UK since 1985 when the (UK-wide) Prohibition of Female Circumcision Act (“the 1985 Act”) was passed. The Female Genital Mutilation Act 2003 (“the 2003 Act”) replaced the 1985 Act in England, Wales and Northern Ireland¹. It modernised the offence of FGM and the offence of assisting a girl to carry out FGM on herself while also creating extra-territorial offences to deter people from taking girls abroad for mutilation. To reflect the serious harm caused, the 2003 Act increased the maximum penalty for any of the FGM offences from five to 14 years’ imprisonment.
4. To date no-one has been convicted of FGM in England and Wales. In July 2014, the UK Government and UNICEF hosted the first Girl Summit,² aimed at mobilising domestic and international efforts to end FGM. The Government made a number of commitments for new legislation to tackle FGM.

Current law

5. Under the 2003 Act it is an offence for any person in England, Wales or Northern Ireland (regardless of their nationality or residence status) to perform FGM (section 1); or to assist a girl to carry out FGM on herself (section 2). It is also an offence to assist (from England, Wales or Northern Ireland) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident (section 3).
6. Section 4 extends sections 1 to 3 to extra-territorial acts so that it is also an offence for a UK national or permanent UK resident to: perform FGM abroad; assist a girl to perform FGM on herself outside the UK; and assist (from outside the UK) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident.

¹ The Prohibition of Female Genital Mutilation (Scotland) Act 2005 replaced the 1985 Act in Scotland.

² <https://www.gov.uk/government/topical-events/girl-summit-2014>

7. The intention was for the extra-territorial provisions to catch offences involving those with a substantial connection to the UK but not those who were here temporarily. However, the Director of Public Prosecutions has highlighted a small number of cases where the CPS could not prosecute for FGM committed abroad because those involved were not, at the material time, permanent UK residents as defined by the 2003 Act.

Extension of extra-territorial jurisdiction

8. Against that background, section 70(1) of the Serious Crime Act 2015 (“the 2015 Act”) amends section 4 of the 2003 Act so that the extra-territorial jurisdiction extends to prohibited acts done outside the UK *by* a UK national or a person who is resident in the UK. Consistent with that change, section 70(1) also amends section 3 of the 2003 Act (offence of assisting a non-UK person to mutilate overseas a girl’s genitalia) so it extends to acts of FGM done *to* a UK national or a person who is resident in the UK.
9. “UK resident” is defined as an individual who is habitually resident in the UK. The term habitually resident covers a person's ordinary residence, as opposed to a short, temporary stay in a country.
10. These changes will mean that the 2003 Act can capture offences of FGM committed abroad by or against those who are at the time are habitually resident in the UK irrespective of whether they are subject to immigration restrictions. It will be for the courts to determine on the facts of individual cases whether or not those involved are habitually resident in the UK and thus covered by the 2003 Act.
11. Section 70(2) of the 2015 Act makes equivalent amendments to the Prohibition of Female Genital Mutilation (Scotland) Act 2005.

Anonymity of victims of FGM

12. Reluctance to be identified as a victim of FGM is believed to be one of the reasons for the low incidence of reporting of this offence. It is anticipated that providing for the anonymity of victims of alleged offences of FGM will encourage more victims to come forward.
13. Section 71 of the 2015 Act amends the 2003 Act to prohibit the publication of any information that would be likely to lead to the identification of a person against whom an FGM offence is alleged to have been committed. This is similar, although not identical, to the anonymity given to alleged victims of sexual offences by the Sexual Offences (Amendment) Act 1992.
14. Anonymity will commence once an allegation has been made and will last for the duration of the victim’s lifetime.
15. There are two limited circumstances where the court may disapply the restrictions on publication. The first is where a person being tried for an FGM offence, could have their defence substantially prejudiced if the restriction to prevent identification of the person against whom the allegation of FGM was committed is not lifted. The second circumstances is where preventing identification of the

person against whom the allegation of FGM was committed, could be seen as a substantial and unreasonable restriction on the reporting of the proceedings and it is considered in the public interest to remove the restriction.

Offence of failing to protect a girl from risk of FGM

16. Section 72 of the 2015 Act inserts new section 3A into the 2003 Act; this creates a new offence of failing to protect a girl from FGM. This will mean that if an offence of FGM is committed against a girl under the age of 16, each person who is responsible for the girl at the time of FGM occurred will be liable under this new offence. The maximum penalty for the new offence is seven years' imprisonment or a fine or both.
17. To be "responsible" for a girl, the person will either have parental responsibility for the girl (such as mothers, fathers married to the mothers at the time of birth and guardians) and have frequent contact with her, or where the person is aged 18 or over they will have assumed responsibility for caring for the girl "in the manner of a parent", for example family members to whom parents might send their child during the summer holidays.
18. The requirement for "frequent contact" is intended to ensure that a person who in law has parental responsibility for a girl, but who in practice has little or no contact with her, would not be liable. Similarly, the requirement that the person should be caring for the girl "in the manner of a parent" is intended to ensure that a person who is looking after a girl for a very short period – such as a baby sitter – would not be liable.
19. It would be a defence for a defendant to show that at the relevant time, they did not think that there was a significant risk of FGM being committed, and could not reasonably have been expected to be aware that there was any such risk; or they took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of FGM. The onus would then be on the prosecution to prove the contrary.

Female Genital Mutilation Protection Order ("FGMPO")

20. At the Girl Summit on 22 July 2014 the Prime Minister launched a consultation on a proposal to introduce a specific civil law measure for the purpose of protecting potential or actual victims of FGM, closely modelled on the forced marriage protection orders in the Family Law Act 1996. 85% of the respondents to the consultation supported the proposal.³
21. Section 73 of the 2015 Act provides, therefore, for FGMPOs for the purposes of protecting a girl against the commission of a genital mutilation offence or protecting a girl against whom such an offence has been committed. Breach of an FGMPO would be a criminal offence with a maximum penalty of five years' imprisonment, or as a civil breach punishable by up to two years' imprisonment.
22. The court may make a FGMPO on application by the girl who is to be protected or a third party. The court must consider all the circumstances including the need to secure the health, safety, and well-being of the girl.

³ <https://www.gov.uk/government/consultations/female-genital-mutilation-proposal-to-introduce-a-civil-protection-order>

23. Under the new provisions an FGMPD might contain such prohibitions, restrictions or other requirements for the purposes of protecting a victim or potential victim of FGM. This could include, for example, provisions to surrender a person's passport or any other travel document; and not to enter into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected.

Duty to notify police of female genital mutilation

24. At the Girl Summit, the Prime Minister also announced the Government's intention to introduce a mandatory reporting duty for FGM. A consultation on how to introduce the duty ran from 5 December 2014 to 12 January 2015, and the Government's response was published on 12 February. The intention is that the new duty will make professionals' responsibilities in respect of FGM absolutely clear, and that it will aid police investigations and support an increase in the number of perpetrators caught and prosecuted.

25. Section 74 inserts new section 5B into the 2003 Act which creates a new mandatory reporting duty requiring specified regulated professionals in England and Wales to make a report to the police. The duty applies where, in the course of their professional duties, a professional discovers that FGM appears to have been carried out on a girl aged under 18 (at the time of the discovery).

26. The duty applies where the professional either:

- is informed by the girl that an act of FGM has been carried out on her, or
- observes physical signs which appear to show an act of FGM has been carried out and has no reason to believe that the act was necessary for the girl's physical or mental health or for purposes connected with labour or birth.

27. The duty applies to professionals working within healthcare or social care, and teachers. It therefore covers:

- Professionals regulated by a body overseen by the Professional Standards Authority (with the exception of the Pharmaceutical Society of Northern Ireland). This includes doctors, nurses, midwives, and, in England, social workers,
- Teachers,
- Social care workers in Wales.

28. The duty does not apply where a professional has reason to believe that another individual working in the same profession has previously made a report to the police in connection with the same act of FGM. For these purposes, professionals regulated by a body which belongs to the Professional Standards Authority are considered as belonging to the same profession.

Guidance about female genital mutilation

29. Section 75 inserts new section 5C into the 2003 Act which confers on the Secretary of State a power to issue statutory guidance on FGM which relevant individuals are required to have regard to.

Other steps being taken to tackle FGM

26. Amending the law is not the only answer to securing additional prosecutions and convictions for FGM nor can it eradicate a practice that has been deeply ingrained in the culture of practising communities. The Government is committed to preventing and ending this form of violence against women and girls. Other measures announced at the Girl Summit included:

- working to improve the police response to FGM. The College of Policing will issue new guidance to raise awareness of FGM among officers. In addition, Her Majesty's Inspectorate of Constabulary will carry out an inspection of the police response to honour based violence with a focus on FGM and forced marriage;
- a national FGM Prevention Programme, working in partnership with NHS England;
- new briefing for schools on FGM and forced marriage commissioned by the Department for Education;
- more funding to help charities raise awareness and a network of community champions with the cultural knowledge and connections necessary to challenge beliefs and change behaviour; and
- a new cross-government specialist FGM unit working with criminal justice partners, children's services, healthcare professionals and affected communities. The FGM Unit was launched on 5 December 2014.

27. The Crown Prosecution Service is also working closely with the police to identify girls and women at risk of, or who have been subjected to, FGM.

28. FGM is unlikely to end in the UK before it ends in Africa so the Department for International Development is leading a £35 million flagship programme to support the Africa-led movement to end FGM and is supporting work in 17 countries.

**Ministry of Justice/Home Office
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