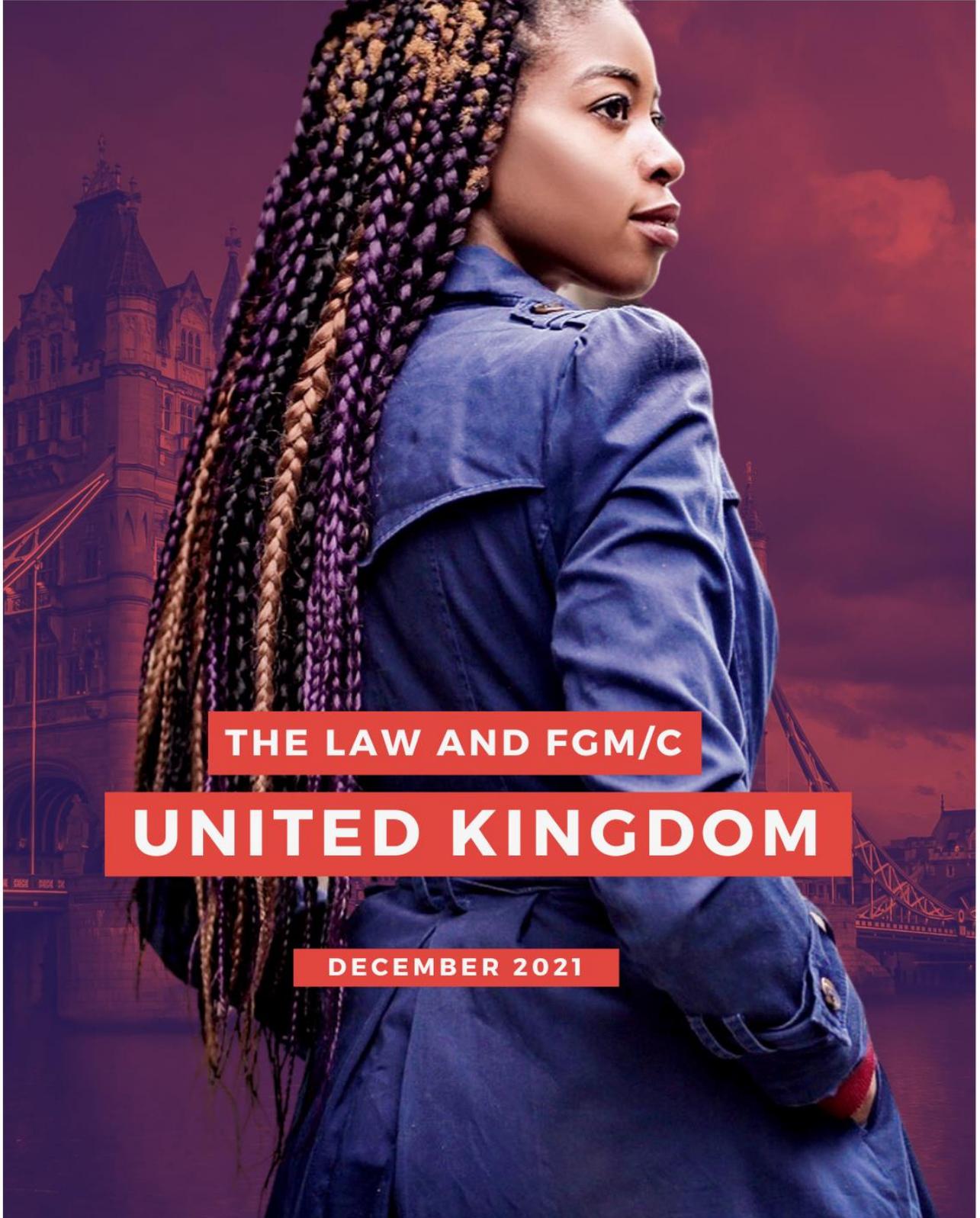




ORCHID  PROJECT



THE LAW AND FGM/C

UNITED KINGDOM

DECEMBER 2021

# National Legal Framework

## Overview of National Legal Framework in the United Kingdom

### National legislation:

- ✓ Specific law/provision criminalising FGM/C
- ✓ Provides a definition of FGM/C
- ✓ Criminalises the performance of FGM/C
- ✓ Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
- ✓ Obligation for professionals to report incidents of FGM/C to the authorities
- X\* Criminalises the participation of medical professionals in acts of FGM/C
- ✓ Extraterritorial application regardless of double criminality

\* Not specifically criminalised.

## Introduction

The United Kingdom (UK) is a country in north-western Europe with an estimated population of 66.8 million.<sup>1</sup> The country is a constitutional monarchy with a unitary parliamentary democracy. It has a common-law legal system.

### FGM/C Prevalence

A study by the City University London and Equality Now estimated that, in 2011, 137,000 women and girls who have undergone female genital mutilation/cutting (FGM/C) were living in England and Wales, although born in countries where FGM/C is practised. It also estimated that as many as 60,000 women and girls living in the UK could be at risk of FGM/C.

The highest prevalence is in five cities: London, Manchester, Slough, Leicester and Birmingham.<sup>2</sup> Nearly half (49.9%) of the estimated number of women and girls living with FGM/C are from the Horn of Africa (Djibouti, Eritrea, Somalia and Sudan), where Type III (according to the categories defined by the World Health Organization) is most commonly practised. Another large diaspora community, representing 19.5% of the estimated number of women and girls living with FGM/C in the UK, is from Nigeria, where Type II is most commonly practised.<sup>3</sup>

## National Legal Framework

### Specific Laws

The UK has two specific laws criminalising FGM/C:

- the **Female Genital Mutilation Act of 2003** (the *2003 Act*), applicable in England, Wales and Northern Ireland; and<sup>i</sup>
- the Prohibition of Female Genital Mutilation (Scotland) Act of 2005 (the *2005 Act*), applicable in Scotland.

### Definition of FGM/C

The **2003 Act** defines 'FGM' in **Section 1(1)** as excising, infibulating or otherwise mutilating the whole or any part of a girl's labia majora, labia minora or clitoris. The **2005 Act** defines 'FGM' under **Section 1(1)** in combination with **Section 1(2)** as excising, infibulating or otherwise mutilating the whole or any part of the labia majora, labia minora, prepuce of the clitoris (clitoral hood), clitoris or vagina of another person.

'Excising' covers Type II FGM (according to the classifications of the World Health Organization), 'infibulating' covers Type III FGM, and 'otherwise mutilating' can be interpreted as covering Types I and IV FGM.

It is noteworthy that the **2003 Act** does not specifically mention the clitoral hood; however, it is likely that this would be recognised/interpreted as being part of the clitoris.

### Women and Girls of All Ages

The performance of FGM/C on women and girls of all ages has been criminalised in the UK. Although the **2003 Act** refers to 'a girl' in **Section 1(1)**, **Section 6(1)** specifically states that the definition of 'girl' includes women. The **2005 Act**, by using the word 'person' in **Section 1(1)**, criminalises FGM/C on women and girls of all ages.

### Procuring, Aiding and Abetting

Procuring, aiding in and abetting FGM/C have been criminalised in the UK. **Section 2 of the 2003 Act** qualifies the offence of assisting a girl to mutilate her own genitalia as aiding, abetting, counselling or procuring a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

The **2003 Act** does not explicitly criminalise procuring, aiding in or abetting another person in committing FGM/C on someone else in England, Wales and Northern Ireland. However, **Section 3 of the 2003 Act** does specifically criminalise assisting a non-UK person to mutilate a girl's genitalia overseas. **Sections 3(1) and (2)** define this as aiding, abetting, counselling or procuring a person who is not a UK national or resident to perform an act under Section 1 on a girl or woman who is a UK national or resident, outside of the UK. For example, this would apply when parents procure a foreign practitioner to perform FGM/C on their daughter while on holiday outside of the UK.

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<sup>i</sup> The Female Genital Mutilation Act 2003 was amended by sections 70–75 of the Serious Crime Act 2015.

It is also noteworthy that (potentially) procuring, aiding in and abetting FGM/C are grounds for making a person the respondent of a Female Genital Mutilation Protection Order (an *FGMPO*), under Sections 1(5) and 18(5) of Schedule 2 of the 2003 Act. FGMPOs will be further discussed in the section titled 'Protection' below.

The **2005 Act** criminalises aiding, abetting, counselling, procuring or inciting another person to perform FGM/C on someone else under **Section 3(1)(a)**. **Section 3(1)(b)** criminalises aiding, abetting, counselling, procuring or inciting a woman or girl to perform FGM/C on herself. **Section 3(1)(c)** criminalises aiding, abetting, counselling, procuring or inciting another person who is not a UK national or resident to perform FGM/C outside of the UK. The nationality or residence status of the victim is irrelevant for Section 3(1)(c) of the 2005 Act. **Under Section 5B(7)(b)**, in combination with **Section 5B(2)(c)**, (potentially) aiding, abetting, counselling, procuring or inciting another person to commit FGM/C can also make someone the respondent or subject of an FGMPO.

### Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM/C is not specifically criminalised in the UK. However, most likely allowing the use of premises would qualify as 'aiding', which is discussed in the section above titled 'Procuring, Aiding and Abetting'.

### Providing or Possessing Tools

Providing or possessing tools for the purpose of FGM/C is not specifically criminalised in the UK. However, as with allowing the use of premises, it is likely that providing tools would qualify as 'aiding', which is discussed in the section above titled 'Procuring, Aiding and Abetting'.

### Failure to Report FGM/C

Although **Section 5B of the 2003 Act** introduced a mandatory reporting duty, which requires regulated professionals to report 'known' cases of FGM/C to the police, failing to report FGM/C has not been criminalised in the UK. According to **Section 5B(2)(a) of the 2003 Act**, the following professionals have a reporting duty:

- healthcare professionals;
- teachers; and
- social-care workers in Wales.

**Section 5B(1)** prescribes that these professionals must make an 'FGM notification' if, in the course of their work, they discover that FGM/C appears to have been carried out on a girl under the age of 18.

**Section 5B(2)(b)**, in combination with **Sections 5B(3) and (4)**, describe that 'discovering' FGM/C can be the case when a girl tells the professional that FGM/C has been performed on her in whatever way described, or when the professional observes physical signs of the performance of FGM/C on a girl and has no reason to believe that the act was, or was part of, a surgical operation that was legal and carried out by a licensed or registered professional.

**Section 5B(5)** prescribes that the notification must be made within a month of the discovery and may be done orally or in writing. **Section 5B(7)** explicitly states that an FGM/C notification does not breach any form of professional confidentiality. Sanctions for not reporting are determined by the regulatory authorities for the relevant professionals.

## Medicalised FGM/C

Medicalised FGM/C is not specifically criminalised in the UK, but would fall under the general prohibitions of **Sections 1 of the 2003 and 2005 Acts**. There are, however, medical exemptions under which affecting the genitalia is not considered FGM/C.

**Section 1(2)(a)**, in combination with **Section 1(3)(a) of the 2003 Act**, prescribes that a surgical operation that is necessary for a woman's or girl's physical or mental health, carried out by a registered medical professional, does not qualify as FGM/C.

**Section 1(5) of the 2003 Act** underlines that, when determining whether an operation was necessary for a woman's or girl's mental health, the belief of herself or of any other person that it is a customary or ritual (religious) requirement is irrelevant.

**Section 1(2)b**, in combination with **Section 1(3)(b) of the 2003 Act**, prescribes that a surgical operation on a girl or woman who is in labour or has just given birth, for purposes connected with the labour or birth, carried out by a registered medical practitioner, midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife, does not qualify as FGM/C. These same medical exemptions are included in the **2005 Act under Section 1(3)** in combination with **Sections 1(4), 1(5) and 1(6)**.

## Extraterritoriality

Both the **2003 and 2005 Acts** have extraterritorial application regarding FGM/C. **Sections 4 of both Acts** extend the application of the Acts to the offences in **Sections 1 to 3 of the 2003 Act** and **Sections 1 and 3 of the 2005 Act** to any act done outside of the UK by a UK national or permanent UK resident. FGMPOs also have extraterritorial application.

## Penalties

There are different penalties for FGM/C in the UK.

For England, Wales and Northern Ireland, **Section 5(1) of the 2003 Act** determines that for the offences under Sections 1, 2 and 3 (performing FGM, assisting a girl in performing FGM on herself and assisting someone to perform FGM overseas), there is a *maximum sentence* of:

- fourteen years' imprisonment or a fine (or both) for a conviction on indictment (more severe offences); and
- six months' imprisonment or a fine (or both) for a summary conviction (less severe offences; for example, a less severe form of FGM/C).

Scotland applies the same terms. **Section 5 of the 2005 Act** determines that for the offences in the Act there is a *maximum sentence of fourteen years' imprisonment or a fine* for a conviction on indictment and *six months' imprisonment or a fine* for summary conviction.

Under the **2003 Act, Section 3A**, it is also an offence for people who are responsible for a girl (for example, parents) to fail to protect a girl from FGM/C. The contents of Section 3A will be further discussed in the following section of this paper. The penalties for failing to protect a girl from FGM/C are prescribed in **Section 5(2) of the 2003 Act**. The maximum sentence for failing to protect a girl from FGM/C is *seven years' imprisonment* or a fine for a conviction on indictment. For summary convictions the maximum sentences differ: in England and Wales, *twelve months' imprisonment or a fine* is prescribed; in Northern Ireland, it is *six months' imprisonment or a fine*.

## Protection

### Protecting Uncut Girls and Women

In England, Wales and Northern Ireland, **Section 3A of the 2003 Act** criminalises failing to protect a girl under the age of 16 from FGM/C by each person who is responsible for the girl at the relevant time.

**Section 3A(2)** prescribes that there are two ways in which a person can be responsible for a girl. If a person has parental responsibility for the girl and has frequent contact with her, **Section 3A(3)** applies, or if a person is aged 18 or over and had assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent, **Section 3A(4)** applies.

**Section 3A(5)** prescribes two defences for this offence:

- firstly, that a person can show that he or she did not know that there was a significant risk of FGM/C at the time and could not reasonably have been expected to be aware that there was such a risk; or
- secondly, that the person took all the steps that could have reasonably been expected of him or her to protect the girl from FGM/C.

**Section 4(1A) of the 2003 Act** prescribes that Section 3A also has extraterritorial application. The 2005 Act does not contain a section like Section 3A. Besides that section, both the 2003 and 2005 Acts have provisions for FGMPOs: uncut women also may be protected by FGMPOs, but there are no other specific provisions granting them protection.

### Victims and Witnesses

There is some protection for victims in criminal cases in the UK. **Section 4A of the 2003 Act** provides for anonymity of victims in criminal cases as prescribed in **Schedule 1 of the 2003 Act**. **Section 1(2) of Schedule 1 of the 2003 Act** stipulates that nothing that could lead the public to identify the victim in a case where FGM/C has been alleged may be included in any publication during the victim's lifetime. **Section 1(3) of Schedule 1** specifies that any alleged consent given by the victim does not affect the prohibition of Section 1(2) of Schedule 1. **Section 2(2) of Schedule 1** prescribes that a fine may be given if someone breaches the prohibition. The **2005 Act** does not have a similar provision. There are no specific provisions in either Act to protect witnesses.

### FGM Protection Orders

There is a system of FGM Protection Orders in the UK. Both the **2003 Act** and the **2005 Act** contain an extensive system of FGMPOs. The FGMPO is a civil-law measure that offers the means to protect and safeguard victims or those at risk of FGM/C. Family courts often make such orders to prevent FGM/C from taking place; for example, preventing a girl from leaving the country or ordering a girl to undergo a medical examination to ascertain if FGM/C has been performed. They are injunctive remedies in the form of a civil order. The FGMPO is different from 'care proceedings', in which a child can be removed from her home and put into foster care due to physical or sexual abuse.

**Section 1(1) of Schedule 2 of the 2003 Act** prescribes that an **English or Welsh court** may make an FGMPO to protect a girl from FGM/C or protect a girl who has undergone FGM/C. **Section 18(1) of Schedule 2 of the 2003 Act** contains the same provision for **Northern Irish courts**. **Section 5A(2) of the 2005 Act** prescribes that a **Scottish court** may make an FGMPO to protect from FGM/C a person identified in the order or any other person falling under the description specified in the order; to protect a person identified in the order who has undergone FGM/C; or to otherwise reduce the likelihood of an offence

related to FGM/C being committed. The texts of the Acts do not require a certain threshold for an FGMPO to be issued; there is no requirement for a specific concrete risk.

The scope of FGMPOs is very wide. **Sections 1(3) and 18(3) of Schedule 2 of the 2003 Act** and **Section 5B(1) of the 2005 Act** prescribe that an FGMPO may contain any prohibitions, restrictions, requirements and other provisions that the court considers appropriate for the purposes of the order. This may entail a travel ban for a certain country where the girl might be cut, or it may contain a required medical test after a holiday in such a country, to make sure that the girl has not been subjected to FGM/C while there.

The FGMPO also has **extraterritorial application**. **Sections 1(4)(a) and 18(4)(a) of Schedule 2 of the 2003 Act** and **Section 5B(2)(a) of the 2005 Act** prescribe that the provisions of an FGMPO may relate to conduct in and outside of the UK. An FGMPO can be made to have effect for a specific period or until it is varied or discharged under **Sections 1(6) and 18(6) of Schedule 2 of the 2003 Act and Section 5L(1) of the 2005 Act**.

The respondents of an FGMPO will often be the parents or caregivers of a girl. However, besides the respondent, other persons may also be addressed by an FGMPO. **Sections 1(4)(c) and 18(4)(c) of Schedule 2 of the 2003 Act** prescribe that the terms of an FGMPO may relate to other persons who are, or may become, involved in other respects with the (attempted) commission of FGM/C. **Sections 5B(2)(b) and 5B(2)(c) of the 2005 Act** are even broader and prescribe that the terms of an FGMPO may relate to persons who commit or may attempt to commit FGM/C or a related offence, and persons who are, or may become, involved in the commission of those offences in other respects.

### FGMPOs Made on Application

FGMPOs can be made on application under **Sections 2(1)(a) and 19(1)(a) of Schedule 2 of the 2003 Act** and **Section 5C(1) of the 2005 Act**. On the basis of **Sections 2(2), 2(3), 19(2) and 19(3) of Schedule 2 of the 2003 Act** and **Section 5C(2) of the 2005 Act**, an application for FGMPOs may be made by a girl at risk herself, relevant third parties (for example, the authorities) or any other person with leave of the court considering this person's connection to the girl and knowledge about the girl's circumstances (for example, a parent who opposes FGM/C but feels powerless against social pressure).

### FGMPOs Made on Court Discretion

Courts may also make an FGMPO on their own discretion during other proceedings under **Sections 2(1)(b) and 19(1)(b) of Schedule 2 of the 2003 Act** and **Sections 5E and 5J of the 2005 Act**. **Sections 2(6) and 19(6) of Schedule 2 of the 2003 Act** prescribe that English, Welsh and Northern Irish courts may do this during any other family proceedings before the court, where the court considers that an FGMPO should be made to protect a girl, whether or not she is a party to the proceedings, and a person who would be a respondent to any proceedings for an FGMPO is a party to the current family proceedings. These same conditions apply in regard to criminal proceedings as set out in **Sections 3 and 20 of Schedule 2 of the 2003 Act**.

**Section 5E(1) of the 2005 Act** prescribes that a **Scottish court** may make an FGMPO on its own discretion during any other civil proceedings before it, if the court considers that an FGMPO should be made and a person who would be affected by the order, other than a person who would be protected by the order, is a party to the current civil proceedings. **Under Section 5E(2)** a Scottish court may also make an FGMPO during civil proceedings without any person who would be affected by the order being party to those current proceedings. In those cases, **Section 5E(4)** prescribes that the court must give the person who is affected by the FGMPO an opportunity to state his or her case as soon as possible at a hearing of which notice has

been given to all parties. **Sections 5J(1) and 5J(2) of the 2005 Act** prescribe that, when a person has been convicted of FGM/C or offences related to FGM/C under Sections 1 and 3 of the 2005 Act, a court may also make an FGMPO against that person, instead of or in addition to any other sentences.

### Consequences of Breaching an FGMPO

Although an FGMPO is a civil order, breaching an FGMPO is an offence. **Sections 4(1) and 4(5) of Schedule 2 of the 2003 Act** prescribe that a person who, without reasonable excuse, does something that person is prohibited from doing by an FGMPO can be punished with a *maximum sentence of five years' imprisonment and/or a fine for a conviction on indictment or twelve months' imprisonment and/or a fine for a summary conviction* in **England and Wales**. **Section 21 of Schedule 2 of the 2003 Act** applies these same terms for **Northern Ireland**, except the *maximum sentence for a summary conviction is six months' imprisonment and/or a fine*.

Under **Section 5Q(1) of the 2005 Act** it is an offence for a person to knowingly and without reasonable excuse do something this person was prohibited from doing by an FGMPO or fail to do something this person was required to do by an FGMPO. **Under Section 5Q(2)** it is also an offence to aid, abet, counsel, procure or incite another person in doing anything the other person was prohibited from doing by an FGMPO or failing to do something the other person was required to do by an FGMPO. Under **Section 5Q(3)** it is also an offence if someone knows another person is prohibited from doing something by an FGMPO and does this without reasonable excuse, and under **Section 5Q(4)** if someone knows another person is required by an FGMPO to do something and prevents or hinders this person from doing that without reasonable excuse. Under **Section 5Q(7)**, persons who commit such offences may be punished with a *maximum sentence of five years' imprisonment and/or a fine for a conviction on indictment, or twelve months' imprisonment and/or a fine on summary conviction*.

### Government Obligations

The law of the UK does not contain any further obligations for the Government or governmental agencies regarding FGM/C.

### National Coordinating Committee

There is no national coordinating committee on FGM/C in the UK, nor is there any law obligating this. However, there is a **National FGM Centre**, which is a partnership between the children's charity Barnardo's and the Local Government Association. It was established in 2015 with the aim of achieving system-wide change in the provision of services for children and families affected by FGM/C. The National FGM Centre is funded by the Department of Education as part of its Children's Social Care Innovation Programme.<sup>4</sup>

# Implementation of The Law

## Court Cases

There has been one conviction for FGM/C in the UK in February 2019 in the case *R v N*, concerning a three-year-old girl (*R*) upon whom FGM/C had been performed and her Ugandan mother (*N*). The case concerned Type II FGM/C. *R*'s right labia minora was removed, the left severely severed and nearly all removed. There was an incision line on her clitoris, and a clot formed under it. *R* started to excessively bleed, and *N* took her to the hospital.

Upon arrival at the hospital, *N* stated that *R* had fallen on a sharp object, and she maintained this at the trial, but this was unanimously rejected by the jury. Three separate medical professionals – a gynaecologist, a paediatrician and a paediatric pathologist – concluded that the cuts had been inflicted on purpose and could not have been the result of falling on a sharp object. It remains unknown whether *N* had cut *R* herself or if she only held her down while a cutter, or 'witch-lady', as *R* recalled in her police interview, performed the FGM/C.

In his sentencing the judge remarked that *N* did not come from a culture in which FGM/C is prevalent, and referred to connections with 'witchcraft' made during the trial. **Whatever the role of *N* in the performance of the FGM/C was, she was sentenced to eleven years' imprisonment on indictment for the FGM/C of *R*.**<sup>5</sup>

# Conclusions and Recommendations

## Conclusions

FGM/C is criminalised in the United Kingdom under the **Female Genital Mutilation Act of 2003**, (applicable in England, Wales and Northern Ireland) and the Prohibition of **Female Genital Mutilation (Scotland) Act of 2005** (applicable in Scotland).

The definitions maintained in the Acts correspond fully to the definition of 'FGM' given by the World Health Organization and cover all **types of FGM/C**. **Medicalised FGM/C** is not specifically addressed, but is likely to be covered by the general criminality of FGM/C. However, it must be noted that, according to prosecution guidelines, not all forms of Type IV may amount to mutilation in England, Northern Ireland and Wales.

**Procuring, aiding and abetting** FGM/C against someone in England, Wales and Northern Ireland are not specifically criminalised by the 2003 Act. The 2003 Act does criminalise inciting and assisting someone to mutilate herself and inciting or assisting a foreigner to perform FGM/C outside of the UK. The 2005 Act criminalises procuring, aiding in and abetting FGM/C.

In England, Northern Ireland and Wales, there is an obligation for relevant professionals to **report** FGM/C.

Both Acts extend **extraterritorial application** of the provisions contained in them to the performance of FGM/C abroad, regardless of double criminality, if the perpetrator has British nationality or is a permanent resident of the United Kingdom.

## Recommendations

**We urge** the United Kingdom to ratify the Istanbul Convention.

**We recommend** that England, Northern Ireland and Wales also specifically criminalise procuring or aiding and abetting another person to perform FGM/C on someone in England, Wales and Northern Ireland.

**We recommend** that Scotland instate an obligation for (at least) relevant professionals and institutions to report cases of FGM/C and cases where there are reasonable grounds to believe that FGM/C may be committed imminently.

**We also recommend** that constituent countries of the United Kingdom extend extraterritorial application of the Acts to the performance of FGM/C abroad, regardless of double criminality, in cases where only the *victim* has British nationality or is a resident of the United Kingdom.

**Finally, we recommend** that Scotland take legislative action to bring FGMPOs into force.

# Appendix I: International and Regional Treaties

## UNITED KINGDOM

	Signed	Ratified/ Acceded	Reservations on reporting?
<b>International</b>			
International Covenant on Civil & Political Rights (1966) (ICCPR) <sup>6</sup>	✓ 1968	✓ 1976	No
International Covenant on Economic, Social & Cultural Rights (1966) (ICESCR) <sup>7</sup>	✓ 1968	✓ 1976	No
Convention on the Elimination of All forms of Discrimination Against Women (1979) (CEDAW) <sup>8</sup>	✓ 1981	✓ 1986	No
Convention on the Rights of the Child (1989) (CRC) <sup>9</sup>	✓ 1990	✓ 1991	No
<b>Regional</b>			
Istanbul Convention <sup>10</sup>	✓ 2012	X	N/A
European Convention on Human Rights <sup>11</sup>	✓ 1950	✓ 1951	No

**‘Signed’:** a treaty is signed by countries following negotiation and agreement of its contents.

**‘Ratified’:** once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

**‘Acceded’:** when a country ratifies a treaty that has already been negotiated by other states.

# Appendix II: National Laws

## Female Genital Mutilation Act 2003

### Section 1

- (1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.
- (2) But no offence is committed by an approved person who performs—
  - (a) a surgical operation on a girl which is necessary for her physical or mental health,
  - or
  - (b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.
- (3) The following are approved persons—
  - (a) in relation to an operation falling within subsection (2)(a), a registered medical practitioner,
  - (b) in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
- (4) There is also no offence committed by a person who—
  - (a) performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, *and*
  - (b) in relation to such an operation exercises functions corresponding to those of an approved person.
- (5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

### Section 2

- (1) A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

### Section 3

- (1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or United Kingdom resident to do a relevant act of female genital mutilation outside the United Kingdom.
- (2) An act is a relevant act of female genital mutilation if—
  - (a) it is done in relation to a United Kingdom national or United Kingdom resident, and
  - (b) it would, if done by such a person, constitute an offence under section 1.
- (3) But no offence is committed if the relevant act of female genital mutilation—
  - (a) is a surgical operation falling within section 1(2)(a) or (b), and
  - (b) is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person.

### Section 3A

- (1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time is guilty of an offence. This is subject to subsection (5).
- (2) For the purposes of this section a person is “responsible” for a girl in the following two cases.
- (3) The first case is where the person—
  - (a) has parental responsibility for the girl, and
  - (b) has frequent contact with her.
- (4) The second case is where the person—
  - (a) is aged 18 or over, and
  - (b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent.
- (5) It is a defence for the defendant to show that—
  - (a) at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or
  - (b) the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.
- (6) A person is taken to have shown the fact mentioned in subsection (5)(a) or (b) if—
  - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsection (3)(b), where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.
- (8) In this section— “genital mutilation offence” means an offence under section 1, 2 or 3 (and for the purposes of subsection (1) the prosecution does not have to prove which section it is); “parental responsibility”—
  - (a) in England Wales, has the same meaning as in the Children Act 1989;
  - (b) in Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 ( S.I. 1995/755 (N.I. 2));“the relevant time” means the time when the mutilation takes place.

### Section 4

- (1) Sections 1 to 3 extend to any act done outside the United Kingdom by a United Kingdom national or United Kingdom resident.
- (1A) An offence under section 3A can be committed wholly or partly outside the United Kingdom by a person who is a United Kingdom national or a United Kingdom resident.
- (2) If an offence under this Act is committed outside the United Kingdom—
  - (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in England and Wales or Northern Ireland.

### Section 4A

Schedule 1 provides for the anonymity of persons against whom a female genital mutilation offence (as defined in that Schedule) is alleged to have been committed.

## Section 5

- (1) A person guilty of an offence under section 1, 2 or 3 is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both),
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).
- (2) A person guilty of an offence under section 3A is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both),
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both),
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

## Section 5B

- (1) A person who works in a regulated profession in England and Wales must make a notification under this section (an “FGM notification”) if, in the course of his or her work in the profession, the person discovers that an act of female genital mutilation appears to have been carried out on a girl who is aged under 18.
- (2) For the purposes of this section—
  - (a) a person works in a “regulated profession” if the person is—
    - (i) a healthcare professional,
    - (ii) a teacher, or
    - (iii) a social care worker in Wales;
  - (b) a person “discovers” that an act of female genital mutilation appears to have been carried out on a girl in either of the following two cases.
- (3) The first case is where the girl informs the person that an act of female genital mutilation (however described) has been carried out on her.
- (4) The second case is where—
  - (a) the person observes physical signs on the girl appearing to show that an act of female genital mutilation has been carried out on her, and
  - (b) the person has no reason to believe that the act was, or was part of, a surgical operation within section 1(2)(a) or (b).
- (5) An FGM notification—
  - (a) is to be made to the chief officer of police for the area in which the girl resides;
  - (b) must identify the girl and explain why the notification is made;
  - (c) must be made before the end of one month from the time when the person making the notification first discovers that an act of female genital mutilation appears to have been carried out on the girl;
  - (d) may be made orally or in writing.
- (6) The duty of a person working in a particular regulated profession to make an FGM notification does not apply if the person has reason to believe that another person working in that profession has previously made an FGM notification in connection with the same act of female genital mutilation. For this purpose, all persons falling within subsection (2)(a)(i) are to be treated as working in the same regulated profession.

- (7) A disclosure made in an FGM notification does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information.
- (8) The Secretary of State may by regulations amend this section for the purpose of adding, removing or otherwise altering the descriptions of persons regarded as working in a “regulated profession” for the purposes of this section.
- (9) The power to make regulations under this section—
- (a) is exercisable by statutory instrument;
  - (b) includes power to make consequential, transitional, transitory or saving provision.
- (10) A statutory instrument containing regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) In this section—
- “act of female genital mutilation” means an act of a kind mentioned in section 1(1);
- “healthcare professional” means a person registered with any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (bodies within remit of the Professional Standards Authority for Health and Social Care);
- “registered”, in relation to a regulatory body, means registered in a register that the body maintains by virtue of any enactment;
- “social care worker” means a person registered in a register maintained by the Care Council for Wales under section 56 of the Care Standards Act 2000;
- “teacher” means—
- (a) in relation to England, a person within section 141A(1) of the Education Act 2002 (persons employed or engaged to carry out teaching work at schools and other institutions in England);
  - (b) in relation to Wales, a person who falls within a category listed in the table in paragraph 1 of Schedule 2 to the Education (Wales) Act 2014 (anaw 5) (categories of registration for purposes of Part 2 of that Act) or any other person employed or engaged as a teacher at a school (within the meaning of the Education Act 1996) in Wales.
- (12) For the purposes of the definition of “healthcare professional”, the following provisions of section 25 of the National Health Service Reform and Health Care Professions Act 2002 are to be ignored—
- (a) paragraph (g) of subsection (3);
  - (b) subsection (3A).

## Section 6

- (1) Girl includes woman.
- (2) A United Kingdom national is an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or a British protected person within the meaning of that Act.
- (3) A United Kingdom resident is an individual who is habitually resident in the United Kingdom.
- (4) This section has effect for the purposes of this Act.

## Schedule 1

### Section 1

- (1) This paragraph applies where an allegation has been made that a female genital mutilation offence has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.
- (3) For the purposes of this Schedule, any consent of the person to an act giving rise to the alleged offence is not to be taken as preventing that person from being regarded as a person against whom the alleged offence was committed.
- (4) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all in England and Wales and Northern Ireland, or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.
- (5) The first condition is that the conduct of a person's defence at a trial of a female genital mutilation offence would be substantially prejudiced if the direction was not given.
- (6) The second condition is that—
  - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (b) it is in the public interest to remove or relax the restriction.
- (7) A direction under sub-paragraph (4) does not affect the operation of subparagraph (2) at any time before the direction is given.
- (8) In this paragraph " the court " means—
  - (a) in England and Wales, a magistrates' court or the Crown Court;
  - (b) in Northern Ireland, a magistrates' court, a county court or the Crown Court.

## Schedule 2

### Section 1

- (1) The court in England and Wales may make an order (an "FGM protection order") for the purposes of—
  - (a) protecting a girl against the commission of a genital mutilation offence, or
  - (b) protecting a girl against whom any such offence has been committed.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
- (3) An FGM protection order may contain—
  - (a) such prohibitions, restrictions or requirements, and
  - (b) such other terms, as the court considers appropriate for the purposes of the order.
- (4) The terms of an FGM protection order may, in particular, relate to—
  - (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
  - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;

- (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—
  - (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
  - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).

## Section 2

- (1) The court may make an FGM protection order—
  - (a) on an application being made to it, or
  - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by—
  - (a) the girl who is to be protected by the order, or
  - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—
  - (a) the applicant's connection with the girl to be protected;
  - (b) the applicant's knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
  - (a) any other family proceedings are before the court (“the current proceedings”),
  - (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
  - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.
- (7) In this paragraph—
 

“family proceedings” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 63(1) and (2) of that Act), but also includes—

  - (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
  - (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act), and
  - (c) proceedings in which the court has made an order under section 50 of the Children Act 1989 (recovery of abducted children etc); “relevant third party” means a person specified, or falling within a description of persons specified, by regulations made by the Lord Chancellor (and such regulations may, in particular, specify the Secretary of State).
- (8) Regulations under sub-paragraph (7) are to be made by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

## Section 4

- (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.
- (2) In the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this paragraph is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.
- (6) A reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.
- (7) “Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

## Section 18

- (1) The court in Northern Ireland may make an order (an “FGM protection order”) for the purposes of—
  - (a) protecting a girl against the commission of a genital mutilation offence, or
  - (b) protecting a girl against whom any such offence has been committed.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
- (3) An FGM protection order may contain—
  - (a) such prohibitions, restrictions or requirements, and
  - (b) such other terms, as the court considers appropriate for the purposes of the order.
- (4) The terms of an FGM protection order may, in particular, relate to—
  - (a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;
  - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
  - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—
  - (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
  - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 23).

## Section 19

- (1) The court may make an FGM protection order—
  - (a) on an application being made to it, or
  - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by—
  - (a) the girl who is to be protected by the order, or
  - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—
  - (a) the applicant's connection with the girl to be protected;
  - (b) the applicant's knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in family proceedings or without any family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
  - (a) any family proceedings are before the court (“the current proceedings”),
  - (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
  - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.
- (7) In this paragraph—

“family proceedings” has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (see Article 2(2) and (3) of that Order), but also includes—

  - (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
  - (b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) which includes an exclusion requirement (as defined in Article 63A of that Order), and
  - (c) proceedings in which the court has made an order under Article 69 of that 1995 Order (recovery of abducted children etc); “relevant third party” means a person specified, or falling within a description of persons specified, by order made by the Department of Finance and Personnel (and any such order may, in particular, specify that Department).

## Section 21

- (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

# Prohibition on Female Genital Mutilation (Scotland) Act 2005

## Section 1

- (1) A person who performs an action mentioned in subsection (2) in relation to the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of another person is guilty of an offence.
- (2) Those actions are—
  - (a) excising it;
  - (b) infibulating it; or
  - (c) otherwise mutilating it.
- (3) No offence under subsection (1) is committed by an approved person who performs an action mentioned in subsection (4).
- (4) Those actions are—
  - (a) a surgical operation on another person which is necessary for that other person's physical or mental health; or
  - (b) a surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.
- (5) The following are, for the purposes of this Act, approved persons—
  - (a) in relation to an action falling within paragraph (a) of subsection (4), a registered medical practitioner;
  - (b) in relation to an action falling within paragraph (b) of that subsection, a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
- (6) For the purposes of determining whether an operation is necessary for the mental health of a person, it is immaterial whether that or any other person believes that the operation is required as a matter of custom or ritual.

## Section 3

- (1) A person who aids, abets, counsels, procures or incites—
  - (a) a person to commit an offence under section 1;
  - (b) another person to perform an action mentioned in section 1(2) in relation to the whole or any part of that other person's own labia majora, labia minora, prepuce of the clitoris, clitoris or vagina; or
  - (c) a person who is not a United Kingdom national or United Kingdom resident to do a relevant act of genital mutilation outside the United Kingdom, commits an offence.
- (2) An act is a relevant act of genital mutilation if it would, if done by a United Kingdom national or United Kingdom resident, constitute an offence under section 1.
- (3) No offence under subsection (1)(c) is committed if the relevant act of genital mutilation—
  - (a) is an action mentioned in section 1(4); and
  - (b) is performed by a person who, in relation to the action, is an approved person or provides services corresponding to those of an approved person.

## Section 4

- (1) Sections 1 and 3 extend to any act done outside the United Kingdom by a United Kingdom national or United Kingdom resident.
- (2) No offence under section 1 is committed by a person who—

- (a) outside the United Kingdom, performs an action mentioned in subsection (4) of that section; and
  - (b) in relation to the action, provides services corresponding to those of an approved person.
- (3) If an offence under this Act is committed outside the United Kingdom—
- (a) it may be treated as having been committed in any place in Scotland; and
  - (b) proceedings may be taken accordingly.

## Section 5

A person guilty of an offence under this Act is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

## Section 5A

- (1) In this Act, a “female genital mutilation protection order” is an order made for one or more of the purposes mentioned in subsection (2).
- (2) The purposes are—
- (a) to prevent, or reduce the likelihood of, an act of genital mutilation being performed on—
    - (i) a person identified in the order, or
    - (ii) any person falling within a description specified in the order,
  - (b) to protect a person, identified in the order, on whom such an act has been performed,
  - (c) to otherwise prevent, or reduce the likelihood of, an offence under section 1 or section 3 being committed.
- (3) A female genital mutilation protection order may be made—
- (a) on an application made to a court under section 5C,
  - (b) in civil proceedings before a court by virtue of section 5E(1),
  - (c) in criminal proceedings before a court by virtue of section 5J(2).
- (4) In deciding, under or by virtue of a provision mentioned in subsection (3), whether to make a female genital mutilation protection order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of any person who would be a protected person were the order made.
- (5) In ascertaining the well-being of such a person, the court must, in particular, have regard to the person’s wishes and feelings (so far as reasonably ascertainable) to such extent as the court considers appropriate, taking into account the person’s age and understanding.
- (6) Subsection (7) applies where a person who would be a protected person were a female genital mutilation protection order made is not ordinarily resident in Scotland.
- (7) 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 (6) only where the person is in Scotland when the order is applied for or, as the case may be, made.
- (8) In this Act—
- “an act of genital mutilation”—
- (a) means an action mentioned in section 1(2) performed in relation to the whole or any part of a person’s genitals mentioned in section 1(1), other than an action mentioned in section 1(4)—
    - (i) performed by an approved person, or

- (ii) performed outside the United Kingdom by an approved person or by a person who provides services corresponding to those of an approved person,
  - (b) includes an action mentioned in section 1(2) performed by a person in relation to the whole or any part of that person's own genitals mentioned in section 1(1) but only in the circumstances mentioned in section 3(1)(b),
- "protected person" means a person identified in the order as mentioned in subsection (2)(a)(i) or (b).

## Section 5B

- (1) A female genital mutilation protection order may contain such—
  - (a) prohibitions, restrictions or requirements, and
  - (b) other provisions, as the court considers appropriate for the purposes of the order.
- (2) The terms of such an order may, in particular, relate to—
  - (a) conduct outside (as well as, or instead of, conduct within) Scotland,
  - (b) persons who have committed, or may attempt to commit, an offence under section 1 or section 3,
  - (c) persons who are, or may become, involved in the commission of an offence under section 1 or section 3 in other respects.
- (3) A female genital mutilation protection order may, among other things, require a person—
  - (a) to take the protected person to a place of safety designated in the order,
  - (b) to bring the protected person to a court at such time and place as the court making the order may specify,
  - (c) to bring the protected person to any other place at such time and for such purpose as the court making the order may specify,
  - (d) to refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person),
  - (e) who is a person such as is mentioned in subsection (2)(b) or (c), to appear in court,
  - (f) to disclose, if known, the whereabouts of such a person or the protected person,
  - (g) to refrain from taking the protected person from, or to, such place as the court may specify,
  - (h) to facilitate or otherwise enable the protected person or another person to return or go to such place as the court may specify within such period as may be so specified,
    - (i) to submit to the court such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify,
    - (j) to provide the court with such other information as it may specify.
- (4) 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.
- (5) But a requirement mentioned in subsection (4) 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.
- (6) Where a requirement mentioned in subsection (4) 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.

- (7) For the purposes of subsection (2)(c), examples of involvement in other respects are—
- (a) conspiring to commit an offence under section 1 or section 3,
  - (b) aiding, abetting, counselling, procuring or inciting another person to commit an offence under section 3.

## Section 5C

- (1) The court may, on an application to it under this section, make a female genital mutilation protection order.
- (2) The following persons may apply to the court for a female genital mutilation protection order—
- (a) a person on whom there is a risk of an act of genital mutilation being performed,
  - (b) a person on whom such an act has been performed,
  - (c) the Lord Advocate,
  - (d) a relevant local authority,
  - (e) the chief constable,
  - (f) with the leave of the court only, any other person.
- (3) The court may permit a person mentioned in subsection (2) to be a party to proceedings relating to an application made by another person mentioned in subsection (2).
- (4) In deciding whether to grant a person (“the applicant”) leave as referred to in subsection (2)(f) or, as the case may be, to allow the applicant to be a party to proceedings relating to an application made by another person, the court must have regard to all the circumstances including (where applicable)—
- (a) the applicant’s connection with a person who would be a protected person were the order made,
  - (b) the applicant’s knowledge of such a person and the person’s circumstances,
  - (c) the wishes and feelings of such a person so far as they are reasonably ascertainable,
  - (d) in a case where leave to apply is being sought, any reason why the application is being made by the applicant and not such a person.
- (5) The court need only have regard to a person’s wishes and feelings as mentioned in subsection (4)(c) so far as it considers it appropriate, on the basis of the person’s age and understanding, to do so.
- (6) In this Act, a “relevant local authority” is—
- (a) in the case of an application for a female genital mutilation protection order, the local authority in whose area—
    - (i) a person, who would be a protected person were such an order made, is present, or
    - (ii) a person, who would be a person falling within a description specified in such an order (as mentioned in section 5A(2)(a) (ii)) were the order made, is present or is likely to be present,
  - (b) in any other case, the local authority in whose area—
    - (i) a protected person is present, or
    - (ii) a person falling within a description specified in such an order (as mentioned in section 5A(2)(a)(ii)) is present or is likely to be present.

## Section 5E

- (1) The court may make a female genital mutilation protection order without an application being made to it where—
- (a) civil proceedings are before the court,
  - (b) the court considers that such an order should be made, and

- (c) a person who would be affected by the order (other than a person who would be a protected person were the order made) is a party to the civil proceedings.
- (2) The court may also make a female genital mutilation protection order under subsection (1) despite the fact that no person who would be affected by the order is a party to the civil proceedings.
- (3) The court may make a female genital mutilation protection order under this section—
  - (a) at the request of a party to the civil proceedings, or
  - (b) without such a request having been made.
- (4) Where a female genital mutilation protection order is made by virtue of subsection (2), the court must give a person who is affected by the order an opportunity to make representations about the order—
  - (a) as soon after the order is made as is just and convenient, and
  - (b) at a hearing of which notice has been given to all parties in accordance with rules of court.

## Section 5J

- (1) This section applies where a person is—
  - (a) convicted of an offence under section 1 or section 3,
  - (b) acquitted of such an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (criminal responsibility of persons with mental disorder), or
  - (c) found to be unfit for trial under section 53F of that Act and the court determines that the person's actions constitute such an offence.
- (2) The court (whether at first instance, on a remit from another court, or on appeal) may, instead of or in addition to dealing with the person in any other way, make a female genital mutilation protection order in respect of the person.
- (3) The court may make a female genital mutilation protection order—
  - (a) at its own instance, or
  - (b) on the motion of the prosecutor.
- (4) A female genital mutilation protection order made under subsection (2) may be appealed against as if the order were a sentence.
- (5) On such an appeal being made, the court may suspend the order appealed against pending the disposal of the appeal.
- (6) For the purposes of this Act (other than this section), a female genital mutilation protection order made under subsection (2) is to be treated as having been made by the sheriff in civil proceedings by virtue of section 5E(1).
- (7) In this section and in section 5K, "the court" means the High Court, the Sheriff Appeal Court or, as the case may be, the sheriff.

## Section 5L

- (1) A female genital mutilation protection order has effect—
  - (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is discharged under section 5M),
  - (b) where no such period is specified, until the order is discharged under section 5M.
- (2) Where different periods are specified in the order relating to—
  - (a) different provisions of the order, or
  - (b) different persons, the order has effect until the expiry of the latest of those periods.

- (3) Where—
  - (a) one or more periods are specified in the order, and
  - (b) the order contains a provision in respect of which no time period for which it is to have effect is so specified,
  - (c) the order has effect until it is discharged under section 5M (unless the order is varied under that section so as to remove the provision).
- (4) References in this section and in sections 5M and 5N to an order which specifies a period for which it is to have effect include references to—
  - (a) an order varied under section 5M to specify such a period or to shorten a period previously specified, and
  - (b) an order extended under section 5N.

## Section 5Q

- (1) A person commits an offence if the person knowingly and without reasonable excuse—
  - (a) does anything which the person is prohibited from doing by a female genital mutilation protection order, or
  - (b) fails to do something which the person is required to do by such an order.
- (2) A person commits an offence if the person knowingly and without reasonable excuse aids, abets, counsels, procures or incites another person—
  - (a) to do anything the other person is prohibited from doing by a female genital mutilation protection order, or
  - (b) to fail to do something which the other person is required to do by such an order.
- (3) A person commits an offence if the person—
  - (a) knows that another person is prohibited from doing something by a female genital mutilation protection order, and
  - (b) without reasonable excuse, the person does the prohibited thing.
- (4) A person commits an offence if the person—
  - (a) knows that another person is required to do something by a female genital mutilation protection order, and
  - (b) without reasonable excuse, prevents or hinders the person from doing the thing required.
- (5) A person may be prosecuted, tried and punished for an offence under this section in respect of any conduct or failure to act which occurred outside Scotland—
  - (a) in any sheriff court district in which the person is apprehended or in custody, or
  - (b) in such sheriff court district as the Lord Advocate may determine, as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).
- (6) Where a person is convicted of an offence under this section in respect of any conduct or failure to act, the conduct or failure is not punishable as a contempt of court.
- (7) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

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**Cover images:** Image of London from Canva stock library.  
 Head over Heels (undated) *Black haired girl wandering around on the street in blue jacket*. Shutterstock ID 551319196.

Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM/C.

This report analyses and discusses the application of national (criminal) laws to the commission of FGM/c and any possible related crimes. It also explores other legal factors deemed relevant, such as legal obligations to report the commission or likely upcoming commission of FGM, available legal protective measures for girls and women at risk of FGM/C, and any obligations of national governments in relation to FGM/C.

The initial research conducted for this report consisted of a questionnaire developed by 28 Too Many (part of Orchid Project) and Ashurst LLP. The information contained in the responses to that questionnaire was then reviewed by Middelburg Human Rights Law Consultancy, updated and used as the basis of further research from relevant sources. This report is mainly based on primary legal sources such as legislation, case law and authoritative literature, but does use secondary sources such as government documents, journal articles and newspaper articles.

This report has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of the United Kingdom. It does not purport to be complete or to apply to any particular factual or legal circumstance. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Orchid Project, Ashurst LLP and Middelburg Human Rights Law Consultancy nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in August 2021. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

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