

# **FEMALE GENITAL MUTILATION ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1: Offence of female genital mutilation***

6. **Section 1** makes it an offence for a person to perform an FGM operation on a girl (*subsection (1)*). *Subsection (2)* provides a saving for necessary surgical operations and operations carried out in connection with childbirth. However, the saving applies only if the operation is carried out: in the UK by a registered medical practitioner or registered midwife or a person training to be one (*subsection (3)*); or outside the UK by overseas equivalents of such persons (*subsection (4)*). Operations necessary for physical health are likely to be rare but could, for example, include the removal of relevant cancerous areas. Operations necessary for mental health could include, for example, cosmetic surgery resulting from the distress caused by a perception of abnormality or gender reassignment surgery. However, *subsection (5)* provides that in assessing a girl's mental health no account is taken of any belief that the operation is needed as a matter of custom or ritual. So an FGM operation could not legally occur on the ground that a girl's mental health would suffer if she did not conform with the prevailing custom of her community.
7. There is no fixed procedure for determining whether a person carrying out an FGM operation outside the UK is an overseas equivalent of a medical practitioner etc for the purpose of *subsection (4)*. If a prosecution is brought, this will be a matter for the courts (in the UK) to determine on the facts of the case.

#### ***Section 2: Offence of assisting a girl to mutilate her own genitalia***

8. It is not an offence for a girl to carry out an FGM operation on herself but section 2 makes it an offence for another person to help her to do so.

#### ***Section 3: Offence of assisting a non-UK person to mutilate overseas a girl's genitalia***

9. This section makes it an offence for a person in the UK to aid, abet, counsel or procure the performance outside the UK of a relevant FGM operation (as defined by *subsection(2)*) that is carried out by a person who is not a UK national or permanent UK resident (as defined by section 6). By virtue of *subsection (2)*, this offence only applies where the victim of the FGM operation is a UK national or permanent UK resident. So the person who, for example, arranges by telephone from his home in England for his UK national daughter to have an FGM operation carried out abroad by a foreign national (who does not live permanently in the UK) commits an offence.
10. *Subsection (3)* provides that the saving that applies for the purposes of section 1 also applies to this section.

***Section 4: Extension of sections 1 to 3 to extra-territorial acts***

11. **Section 4** extends sections 1, 2 and 3 so that any of the prohibited acts done outside the UK by a UK national or permanent UK resident will be an offence under domestic law and triable in the courts of England and Wales and Northern Ireland.
12. The effect of the extension of section 1 is that it will be an offence for a UK national or permanent UK resident to carry out an FGM operation outside the UK. By virtue of section 8 of the Accessories and Abettors Act 1861, it will also be an offence for a person in the UK (or a UK national or permanent UK resident outside the UK) to aid, abet etc a UK national or permanent UK resident to carry out an FGM operation outside the UK. For example, if a person in the UK advises his UK national brother over the telephone how to carry out an FGM operation abroad, he would commit an offence.
13. The effect of the extension of section 2 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc a person of any nationality to carry out an FGM operation on herself wherever it is carried out.
14. The effect of the extension of section 3 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc a foreign national (who is not a permanent UK resident) to carry out an FGM operation outside the UK on a UK national or permanent UK resident. For example, a permanent UK resident who takes his permanent UK resident daughter to the doctor's surgery in another country so that an FGM operation can be carried out will commit an offence.

***Section 5: Penalties for offences***

15. The penalties for the new offences will be the same, on summary conviction, as those that currently apply under the 1985 Act. However, the maximum penalty, on conviction on indictment, is increased from 5 to 14 years' imprisonment (paragraph (a)).

***Section 6: Definitions***

16. **Sections 1 to 3** above refer to a girl because it seems likely that most victims will be girls but *subsection (1)* of section 6 ensures that women are also covered. *Subsection (2)* defines a UK national and *subsection (3)* a permanent UK resident for the purposes of the Act.

***Section 7: Consequential provision***

17. This section makes consequential provision, including repealing the Prohibition of Female Circumcision Act 1985.

***Section 8: Short title, commencement, extent and general saving***

18. **Section 8** establishes a power for the Secretary of State to make a statutory instrument setting out when the Act will come into force. Subsection (3) allows for the order to contain transitional or saving provisions. The Act does not extend to Scotland. The effect of subsection (5) is to preserve the effect of, for example, section 8 of the Accessories and Abettors Act 1861 (see paragraph 12 above).