

EXPLANATORY MEMORANDUM TO
THE FEMALE GENITAL MUTILATION PROTECTION ORDER (RELEVANT THIRD
PARTY) REGULATIONS 2015

2015 No. 1422

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 To specify local authorities as relevant third parties under section 2(7) of Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 (as amended by the Serious Crime Act 2015). This will allow local authorities, if they choose to do so, to make an application to the family court for a Female Genital Mutilation Protection Order (“FGM Protection Order”), without first having to apply for the leave of the court to do so.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Committee’s attention is drawn to the matter that in making these Regulations, reliance will be placed on section 13 of the Interpretation Act 1978. The reason that this has been considered is that the provision made by these Regulations under paragraph 2(7) of Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 (“paragraph 2(7)”) will be necessary for the purpose both of bringing fully into force, and giving full effect to, Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003, as inserted by section 73 of the Serious Crime Act 2015 when that section comes into force. In essence, the Government believes that to bring the FGM Protection Order provisions fully into force and to give them full effect, local authorities, which have a duty to protect children and investigate the welfare of vulnerable persons in their area, must have the ability from the day the FGM Protection Order provisions are commenced, to apply for such orders without seeking the leave of the court. The anticipatory exercise of the paragraph 2(7) power, is therefore expedient for the purpose of giving full effect to paragraph 2(7) at the time when Part 1 of Schedule 2 to the Female Genital Mutilation Act comes into force.

4. Legislative Context

- 4.1 The Serious Crime Act 2015 (the 2015 Act), inserts a new section 5A and Schedule 2 into the Female Genital Mutilation Act 2003 (the “2003 Act”), making provision for FGM Protection Orders. This includes provision for relevant third parties to apply

for a FGM Protection Order, without the leave of the court, in order to protect a victim or potential victim of female genital mutilation. The Lord Chancellor has the power to specify the persons or description of persons that should be termed as relevant third parties. Only relevant third parties, and potential or actual victims of FGM, are able to apply for FGM Protection Orders without first needing to seek the leave of the court.

4.2 These Regulations are part of a package of statutory instruments to facilitate the implementation of FGM Protection Orders, the other instruments being:

- The Family Procedure (Amendment No.2) Rules 2015;
- The Family Court (Composition and Distribution of Business) (Amendment) Rules 2015; and
- The Serious Crime Act 2015 (Commencement No. 2) Regulations 2015.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 2003 Act (as amended by the 2015 Act) creates a new civil law measure – the FGM Protection Order – which will enable a court to make an order with the purpose of protecting a girl or women against the commission of a genital mutilation offence or protect a girl or woman against whom such an offence has been committed. Applications can be made, without the leave of the court, by the victim or a relevant third party. A relevant third party is defined in sub-paragraph 2(7) of Part 1 to Schedule 2 of the 2003 Act as a person specified, or falling within a description of persons specified, by regulations, made by the Lord Chancellor.

7.2 The FGM Protection Order has been modelled on the Forced Marriage Protection Order (provided for in Part 4A of the Family Law Act 1996). Local authorities are currently specified as relevant third parties for the purpose of applying for Forced Marriage Protection Orders. This supports their duty to protect children and investigate the welfare of vulnerable persons in their area. This reasoning applies equally in the context of FGM Protection Orders. In particular, being able to apply for a FGM Protection Order, without first needing to seek leave of the court, should assist local authorities, through their social services units, in protecting actual or potential victims of FGM.

7.3 This instrument specifies local authorities as relevant third parties for the purposes of the 2003 Act. Being specified as a relevant third party will make it more efficient for local authorities to apply for an FGM Protection Order, particularly in cases where time is of the essence, as there would be no requirement to seek the leave of the court before doing so.

8. Consultation outcome

8.1 In July 2014, after the introduction of the Bill which became the 2015 Act, the Government consulted on the creation of a new civil law measure (the FGM Protection Order), the aim of which would be to provide an additional tool to prevent and/or help eliminate FGM. This consultation, and the Government's response to it, can be found at: <https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>.

8.2 The consultation asked those consulted whether in addition to local authorities, other persons or class of persons should be specified as relevant third parties. Whilst most respondents to the consultation listed several persons or organisations as capable of acting in this capacity, the majority supported local authorities as being assigned to this role. Ministers have decided that, on implementation, only local authorities should be specified as relevant third parties, which as noted above would follow the approach taken with regard to Forced Marriage Protection Orders. Consideration will be given to classifying other groups, such as teachers and health care professionals, at a later stage.

8.3 Since the definition of local authorities includes Welsh local authorities, the Government has also written to Welsh Ministers to inform them.

9. Guidance

9.1 Guidance will be available to local authorities on the coming into force of FGM Protection Orders, the aim of which will be to provide additional advice and support to frontline local authority employees who are considering making an application as a relevant third party under the 2003 Act.

10. Impact

10.1 An overarching Regulatory Impact Assessment was produced for the passage of the 2015 Act through Parliament. This can be found at: <http://services.parliament.uk/bills/2014-15/seriouscrime/documents.html>. This considered the impacts and rationale of introducing the FGM Protection Order.

10.2 This did not expressly consider the effect of specifying local authorities as relevant third parties. Being specified as a relevant third party is not itself a duty; rather, it will enable local authorities (in practice social services) who want to apply for these orders, to give effect to their responsibilities to protect children in their areas, to make

applications speedily. As being specified as relevant third parties will make it easier for local authorities to apply for FGM Protection Orders if they choose to do so, and no obligation is being placed on local authorities, the effect of these regulations is considered to be minimal. An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This legislation does not apply to small businesses.

12. Monitoring & review

12.1 The impact of the relevant third party provisions will be subject to internal review 12 months following implementation. Consideration will be given at that point to whether the list of those specified as relevant third parties should be extended to cover other persons or descriptions of persons.

13. Contact

Please contact Jean McMahon, Ministry of Justice, Tel No: 0203 334 3208 or email: Jean.McMahon@justice.gsi.gov.uk can answer any queries regarding the instrument.