



# Prohibition of Female Genital Mutilation (Scotland) Act 2005

2005 asp 8

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 26th May 2005 and received Royal Assent on 1st July 2005**

An Act of the Scottish Parliament to restate and amend the law relating to female genital mutilation and to provide for extra-territorial effect; and for connected purposes.

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

- (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.

## **2 Modification of section 1**

- (1) The Scottish Ministers may by order modify section 1 so as to—
  - (a) add or remove an action to or from those actions for the time being listed in subsection (2) of that section;
  - (b) vary an action for the time being listed in that subsection;
  - (c) add an action to those for the time being listed in subsection (4) of that section and, in relation to that action, define “approved persons”;
  - (d) remove an action added under paragraph (c) and any related definition of “approved persons”; or
  - (e) vary—
    - (i) an action added under paragraph (c); or
    - (ii) any related definition of “approved persons”.
- (2) An order under this section is to be made by statutory instrument.
- (3) No such order is to be made unless a draft of it has been laid before and approved by a resolution of the Scottish Parliament.

## **3 Aiding and abetting female genital mutilation**

- (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 permanent 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 permanent 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.

## **4 Extension of sections 1 and 3 to extra-territorial acts**

- (1) Sections 1 and 3 extend to any act done outside the United Kingdom by a United Kingdom national or permanent 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.

## **5 Penalties for offences**

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).

## **6 Definitions**

In this Act—

“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
- (c) a British protected person within the meaning of that Act;

“permanent United Kingdom resident” is an individual who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 (c. 77)).

## **7 Amendment and repeal**

- (1) In Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c. 46) (offences against children under 17 to which special provisions apply), after paragraph 2 there is inserted—

“2A Any offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005 where the person mutilated or, as the case may be, proposed to be mutilated, is a child under the age of 17 years.”.

- (2) The Prohibition of Female Circumcision Act 1985 (c. 38) is repealed.

## **8 Short title and commencement**

- (1) This Act may be cited as the Prohibition of Female Genital Mutilation (Scotland) Act 2005.
- (2) This Act comes into force at the end of the period of two months beginning with the date of Royal Assent.