Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020

2020 asp 9

Female genital mutilation protection orders

1 Female genital mutilation protection orders

In the Prohibition of Female Genital Mutilation (Scotland) Act 2005 ("the 2005 Act"), after section 5 insert—

"**5A Female genital mutilation protection orders**

(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).

5B Contents of orders

(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.

5C Power to make orders on application

(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.

5D Applications for orders: jurisdiction

(1) The court to which an application for a female genital mutilation protection order is to be made is to be determined in accordance with this section.

(2) The application may be made to the sheriff in whose sheriffdom any person, who would be a protected person were the order made, is ordinarily resident.

(3) Where no person would be a protected person were the order made—

(a) the application may be made to the sheriff in whose sheriffdom any person, on whom prohibitions, restrictions or requirements would be imposed by the order were it made, is ordinarily resident,

(b) where the application is made by a relevant local authority, it may be made to that sheriff or to the sheriff in whose sheriffdom the local authority is situated.

(4) In any other case, the application may be made to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.

(5) Subsections (6) to (9) apply with respect to proceedings relating to an application made in accordance with this section.

(6) A sheriff before whom the proceedings are brought may make an order transferring the proceedings to a sheriff of another sheriffdom if satisfied that it would be more appropriate for the proceedings to be dealt with by a sheriff of the other sheriffdom.

(7) A sheriff may make an order under subsection (6)—

(a) on the application of a party to the proceedings, or

(b) on the sheriff's own initiative.

(8) Where an order is made under subsection (6), a sheriff of the sheriffdom to which the proceedings are to be transferred has jurisdiction and competence to consider and determine the proceedings.

(9) This section does not affect any power that a sheriff has to decline jurisdiction in any case.

5E Power to make orders without application

(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.

Changes to legislation: *There are currently no known outstanding effects for the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020, Cross Heading: Female genital mutilation protection orders. (See end of Document for details)*

5F Interim orders

(1) The court may make an interim female genital mutilation protection order—
- (a) after receiving an application made under section 5C, or
- (b) without an application being made to it, where civil proceedings are before the court.

(2) The court may make an interim female genital mutilation protection order only if it considers, on the balance of convenience, that it is just to do so.

(3) In deciding whether it is, on the balance of convenience, just, the court must have regard to all the circumstances including—
- (a) the risk of significant harm to any person,
- (b) the risk of a person, who would be a protected person were the female genital mutilation protection order made, being taken outside the United Kingdom for a purpose connected with the performance on the person of an act of genital mutilation, and
- (c) in a case where an application has been made under section 5C, the risk that the person who applied for the female genital mutilation protection order will be deterred or prevented from pursuing the application,

if the interim order is not made immediately.

(4) The court may make an interim female genital mutilation protection order under this section—
- (a) in a case where an application has been made under section 5C, in the absence of a person who is, or would be, a party to proceedings for the female genital mutilation protection order (and may do so whether or not the person has been given such notice of the application as would otherwise be required by rules of court),
- (b) in a case where no such application has been made to it, in the absence of a person who would be affected by the order (whether or not such a person is a party to the civil proceedings).

(5) Where an interim female genital mutilation protection order is made by virtue of subsection (4), the court must give a person such as is mentioned in paragraph (a) or, as the case may be, paragraph (b) of that subsection an opportunity to make representations about the interim order—
- (a) as soon after the interim 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.

(6) An interim female genital mutilation protection order—
- (a) has effect only for a fixed period, specified in the order, and
- (b) ceases to have effect, if it has not already done so—
  - (i) in a case where an application has been made under section 5C, on the determination of the application,
  - (ii) in a case where no such application has been made, on the determination of the proceedings, if any, arising by virtue of subsection (5).

(7) In this Act (unless the context otherwise requires), references to female genital mutilation protection orders include references to interim female genital mutilation protection orders.

5G Anonymity: proceedings relating to making of female genital mutilation protection order

(1) Where civil proceedings relating to the making of a female genital mutilation protection order are before the court, the court—
  (a) must consider whether to make an order under subsection (2),
  (b) may make such an order in accordance with subsection (4).

(2) An order under this subsection (an "anonymity order") may order any of the following—
  (a) the withholding of—
    (i) the name of a person who would be a protected person were the female genital mutilation protection order made,
    (ii) the name of any other person,
    (iii) other information,
  from the public in or in connection with proceedings before the court relating to the female genital mutilation protection order,
  (b) the exclusion of the public from such proceedings before the court.

(3) The court may make an anonymity order if it considers that it is just to do so having regard to all the circumstances, including the need to protect the health, safety and well-being of any person who would be a protected person were the female genital mutilation protection order made.

(4) The court must, in complying with subsection (1)(a)—
  (a) seek the views, so far as they are reasonably ascertainable, of—
    (i) any person in respect of whom the court is considering making an anonymity order,
    (ii) any person who would be a protected person were the female genital mutilation protection order made (if not a person mentioned in sub-paragraph (i)), and
  (b) have regard to any such views (taking into account the person's age and understanding).

(5) But the failure of a person mentioned in subsection (4)(a) to provide views is not to be taken as indicating that the person is opposed to an anonymity order being made.

(6) Where the court makes an anonymity order under this section, the court must also consider whether to exercise its power under section 11 of the Contempt of Court Act 1981 (power to prohibit publication of names or other matters in connection with proceedings).

(7) The power to make an anonymity order is without prejudice to any other functions the court has in relation to ordering that names or other information be withheld or that the public be excluded from proceedings.

(8) Subsection (4) does not apply to proceedings relating to the making of an interim female genital mutilation protection order by virtue of section 5F.

(9) The reference in subsection (1) to proceedings relating to the making of a female genital mutilation protection order includes reference to proceedings in which the court is considering whether to make such an order by virtue of section 5E(1).

5H Anonymity: other proceedings relating to female genital mutilation protection order

(1) The court may also make an anonymity order in any other civil proceedings relating to a female genital mutilation protection order—
  (a) on the application of—
    (i) any person who was a party to the proceedings for the female genital mutilation protection order, or
    (ii) any person who, in the case of such an order made by virtue of section 5E or 5F, would have been a party to such proceedings, or
  (b) even though no such application is made to the court.

(2) The court may make an anonymity order if it considers that it is just to do so having regard to all the circumstances, including the need to protect the health, safety and well-being of—
  (a) any protected person, and
  (b) in the case of proceedings relating to the variation of the female genital mutilation protection order, any person who would be a protected person were the order varied.

(3) The court must, before making an anonymity order under this section—
  (a) seek the views, so far as they are reasonably ascertainable, of—
    (i) any person in respect of whom the court is considering making an anonymity order,
    (ii) any protected person and, in the case of proceedings relating to the variation of the female genital mutilation protection order, any person who would be a protected person were the order varied (if not a person mentioned in sub-paragraph (i)), and
  (b) have regard to any such views (taking into account the person's age and understanding).

(4) But the failure of a person mentioned in subsection (3)(a) to provide views is not to be taken as indicating that the person is opposed to an anonymity order being made.

(5) Where the court makes an anonymity order under this section, the court must also consider whether to exercise its power under section 11 of the Contempt of Court Act 1981 (power to prohibit publication of names or other matters in connection with proceedings).

(6) The power to make an anonymity order is without prejudice to any other functions the court has in relation to ordering that names or other information be withheld or that the public be excluded from proceedings.

(7) Subsection (3) does not apply to proceedings relating to the variation or extension of a female genital mutilation protection order on an interim basis by virtue of section 5O(3).

5I Anonymity: variation and discharge

(1) This section applies where the court has made an anonymity order which is in effect.

(2) The court may vary or discharge the anonymity order—
- (a) on the application of—
  - (i) any person who was a party to the proceedings for the female genital mutilation protection order in relation to which the anonymity order was made, or
  - (ii) any person who, in the case of such an order made by virtue of section 5E or 5F, would have been a party to such proceedings, or
- (b) even though no such application is made to the court.

(3) The court may vary or, as the case may be, discharge an anonymity order if it considers that it is just to do so having regard to all the circumstances, including the need to protect the health, safety and well-being of any protected person.

(4) The court must, before varying or, as the case may be, discharging an anonymity order—
- (a) seek the views, so far as they are reasonably ascertainable, of—
  - (i) any person in respect of whom the anonymity order was made,
  - (ii) any person who is a protected person (if not a person mentioned in sub-paragraph (i)), and
- (b) have regard to any such views (taking into account the person's age and understanding).

(5) But the failure of a person mentioned in subsection (4)(a) to provide views is not to be taken as indicating that the person is content with the variation or, as the case may be, discharge of the anonymity order.

5J Power to make orders on sentencing etc.

(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.

5K References by criminal court to the Lord Advocate

(1) Subsection (2) applies where—
(a) criminal proceedings are before the court, and
(b) the court considers that a female genital mutilation protection order should be made.

(2) The court may refer the matter to the Lord Advocate.

(3) Where a matter is referred to the Lord Advocate under subsection (2), the Lord Advocate may—
(a) apply under section 5C for a female genital mutilation protection order,
(b) take such other steps as the Lord Advocate considers appropriate.

5L Duration of orders

(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,
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.

5M Variation and discharge of orders

(1) The court may vary or discharge a female genital mutilation protection order on an application by—
   (a) any person who was or, in the case of an order made by virtue of section 5E or 5F, would have been a party to the proceedings for the order,
   (b) a protected person (if not such a person),
   (c) any other person affected by the order (including a person in respect of whom an order is made under section 5J),
   (d) the Lord Advocate,
   (e) a relevant local authority,
   (f) the chief constable,
   (g) with the leave of the court only, any other person.

(2) The court may permit a person mentioned in subsection (1) to be a party to proceedings relating to an application made by another person mentioned in subsection (1).

(3) In deciding whether to grant a person ("the applicant") leave as referred to in subsection (1)(g) 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 such as is mentioned in subsection (1)(a), (b) or (c),
   (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.

(4) The court need only have regard to a person's wishes and feelings as mentioned in subsection (3)(c) so far as it considers it appropriate, on the basis of the person's age and understanding, to do so.

(5) In addition, the court may, if it considers it just to do so, vary or discharge a female genital mutilation protection order even though no application under subsection (1) has been made to the court.

(6) Where a female genital mutilation protection order specifies a period for which it is to have effect, references in this section to varying an order do not include extending the order.

5N Extension of orders

(1) This section applies where a female genital mutilation protection order specifies a period for which it is to have effect.

(2) Before the expiry of the period, the court may, on the application of a person mentioned in subsection (3), extend the order.

(3) The persons are—

(a) any person who was or, in the case of an order made by virtue of section 5E or 5F, would have been a party to the proceedings for the order,

(b) a protected person (if not such a person),

(c) any other person affected by the order (including a person in respect of whom an order is made under section 5J),

(d) the Lord Advocate,

(e) a relevant local authority,

(f) the chief constable,

(g) with the leave of the court only, any other person.

(4) The court may permit a person mentioned in subsection (3) to be a party to proceedings relating to an application made by another person mentioned in subsection (3).

(5) In deciding whether to grant a person ("the applicant") leave as referred to in subsection (3)(g) 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 such as is mentioned in subsection (3)(a), (b) or (c),

(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.

(6) The court need only have regard to a person's wishes and feelings as mentioned in subsection (5)(c) so far as it considers it appropriate, on the basis of the person's age and understanding, to do so.

(7) In addition, before the expiry of the period, the court may, if it considers it just to do so, extend a female genital mutilation protection order even though no application under subsection (2) has been made to the court.

(8) In this section, references to a period for which a female genital mutilation protection order is to have effect include a period for which a particular provision of the order is to have effect (and accordingly references to extending the order are to be read as references to extending the provision in question).

5O Variation, discharge and extension of orders: further provision

(1) Section 5A(4) and (5) apply to the court's consideration—

(a) under section 5M as to whether to vary or discharge a female genital mutilation protection order, and

(b) under section 5N as to whether to extend such an order,

as they apply to the court's consideration as to whether to make such an order, with the modification that the reference to a person who would be a protected person were the order made is to be read as including a reference to a person who is a protected person under the order.

(2) Section 5D applies to—

(a) an application under section 5M to vary or discharge a female genital mutilation protection order, and

(b) an application under section 5N to extend such an order,

as it applies to an application under section 5C for such an order, with the modification that references to a person who would be a protected person were the order made are to be read as including references to a person who is a protected person under the order.

(3) The court may—

(a) on an application under section 5M to vary a female genital mutilation protection order, or

(b) on an application under section 5N to extend such an order,

vary or, as the case may be, extend the order on an interim basis pending determination of the application.

(4) Where the court varies or extends a female genital mutilation protection order on an interim basis, subsections (2) to (5) of section 5F apply as they apply to an application under section 5C for such an order, with the modifications that—

(a) references to an application for a female genital mutilation protection order are to be read as references to an application to vary or, as the case may be, extend such an order,

(b) references to making an interim female genital mutilation protection order are to be read as references to a female genital mutilation protection order being varied or, as the case may be, extended on an interim basis, and

(c) the reference to a person who would be a protected person were the order made is to be read as including a reference to a person who is a protected person under the order.

5P Notification of applications and orders

(1) The court must notify the persons mentioned in subsection (2) of the following—

(a) the making of an application under section 5C(2) for a female genital mutilation protection order,

(b) the making of a female genital mutilation protection order under section 5C(1), 5E(1) or 5J(2),

(c) the making of an interim female genital mutilation protection order under section 5F(1),

(d) the making of an application under section 5M(1) to vary or discharge a female genital mutilation protection order,

(e) the court's decision under subsection (1) or (5) of section 5M (including a decision to vary the order on an interim basis),

(f) the making of an application under section 5N(2) to extend a female genital mutilation protection order,

(g) the court's decision under subsection (2) or (7) of section 5N (including a decision to extend the order on an interim basis).

(2) The persons are—

(a) the chief constable, and

(b) where the application or order relates to a purpose mentioned in section 5A(2)(a)(i) or (b), the relevant local authority within the meaning of section 5C(6)(a)(i) or (b)(i),

unless the chief constable or, as the case may be, the local authority is already a party to proceedings in respect of the application or, as the case may be, order.

(3) This section does not affect any rules of court otherwise requiring notification of applications, the making of orders or other decisions such as are mentioned in subsection (1).

5Q Offences relating to orders

(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).

5R Offences relating to UK orders

(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 relevant UK 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 relevant UK 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 under this section only if the conduct or failure to act would have constituted an offence under the law of the country applicable to the relevant UK order concerned.

(4) A relevant UK order is—
- (a) an FGM protection order under schedule 2 of the Female Genital Mutilation Act 2003,
- (b) any other order under the law of England and Wales or Northern Ireland which—
  - (i) appears to the Scottish Ministers to be equivalent or similar to a female genital mutilation protection order, and
  - (ii) is of a type specified in regulations made by the Scottish Ministers.

(5) 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).

(6) The power of the Scottish Ministers to make regulations under subsection (4)(b)(ii) includes the power—
- (a) to make different provision for different purposes,
- (b) to make any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate.

(7) Regulations under subsection (4)(b)(ii) are subject to the affirmative procedure. Guidance".

Commencement Information

I1 S. 1 in force at 25.4.2020 for specified purposes, see s. 11(1)(a)

Changes to legislation:
There are currently no known outstanding effects for the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020, Cross Heading: Female genital mutilation protection orders.