

FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) (SCOTLAND) ACT 2020

EXPLANATORY NOTES

FEMALE GENITAL MUTILATION PROTECTION ORDERS

Section 1: Female genital mutilation protection orders

Inserted section 5A: Female genital mutilation protection orders

5. Subsections (1) and (2) create the female genital mutilation protection order, which can be made by a court for one or more of the purposes of:
 - preventing, or reducing the likelihood of, an identified person or persons of a certain description being subjected to an act of genital mutilation,
 - protecting an identified person who has been subjected to an act of genital mutilation,
 - otherwise preventing, or reducing the likelihood of, an offence under section 1 or section 3 of the 2005 Act being committed.
6. Subsection (2)(a)(ii) makes clear that in relation to preventing or reducing the likelihood of FGM being performed, an order may be used to protect a described group of persons (who need not be individually identified). This could be used to protect attendees at a communal child care group, at a regular religious service or at a community group, or protect members of a described family unit either in a general age range or who are yet to be born at the time of making the order.
7. The purposes set out in subsection (2)(c) also permit the court to make an order which either deals solely with or includes provisions to prevent or reduce the likelihood of an offence under section 1 or section 3 of the 2005 Act being committed. This allows the court to make provision in an order, otherwise than for the protection of identifiable victims of FGM, or to prevent or reduce the likelihood of an identifiable person or persons of a certain description being subjected to an act of genital mutilation. An example of such a purpose would be a police or local authority intelligence led order, either partly or solely designed to target and disrupt the general FGM related activities of a potential or known perpetrator of FGM, without the need for that order (or the part of the order which relates to that purpose), to identify a victim or described group of victims.
8. As paragraphs (a) and (b) of subsection (2) refer to an act of FGM rather than to an FGM offence, there is therefore no need for the court to undertake a consideration of whether an offence under the 2005 Act will be, is likely to be, or has been committed. For example, if the risk is that of an act of FGM taking place in another jurisdiction and in

*These notes relate to the Female Genital Mutilation (Protection and Guidance)
(Scotland) Act 2020 (asp 9) which received Royal Assent on 24th April 2020*

circumstances which would fall outwith any offence (perhaps because the practitioner is not a UK resident or national), then an order can still be granted in relation to that risk.

9. Subsection (3) refers to the subsequent inserted sections under which an order may be made.
10. Subsection (4) sets out that the court must consider the circumstances surrounding the potential order, including the health, safety and well-being of any person or persons who might become a protected person should the order be made by the court. This applies only to orders made under inserted sections 5C, 5E(1) and 5G(2). Therefore it does not apply when the court is considering whether to make an interim female genital mutilation protection order under inserted section 5F. Section 5F(3) sets out the matters the court must have regard to in relation to interim orders.
11. Subsection (5) provides that the court must consider the wishes and feelings of any protected person to such an extent as the court considers appropriate, taking into account the person's age and understanding.
12. Subsections (6) and (7) provide that, where a person who would be a protected person were a female genital mutilation protection order made is not ordinarily resident in Scotland, the court may make a female genital mutilation protection order only where the person is in Scotland when the order is applied for or made.
13. Subsection (8) defines an "act of genital mutilation" by reference to the existing provisions of the 2005 Act. It refers to the actions mentioned in section 1(2) of the 2005 Act being performed in relation to the whole or any part of a person's genitals mentioned in section 1(1) of the Act (so cumulatively comprising FGM). It:
 - excludes a surgical operation by an approved person as provided for under section 1(4) of the 2005 Act (or by an equivalent person outside the UK), but
 - includes an action performed by a person on themselves when another person aids, abets, counsels, procures or incites them to perform that action under section 3(1)(b) of the 2005 Act.
14. Subsection (8) further defines a "protected person" as being a person identified in a female genital mutilation protection order where that order has been made in respect of a specific person or persons. The definition does not include persons falling within a description of persons where an order is granted for the purpose set out in subsection (2)(a)(ii).