



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

2020 asp 9

Consequential modifications

4 Offences: consequential modification

- (1) In section 5 of the 2005 Act, for “this Act” substitute “section 1 or section 3”.
- (2) The title of section 5 of that Act becomes “**Penalties for offences under section 1 or 3**”.

5 Definitions of expressions in the 2005 Act

In section 6 of the 2005 Act, after “Act” where it first occurs, insert—

- ““an act of genital mutilation” has the meaning given by section 5A(8);
- “anonymity order” has the meaning given by section 5G(2);
- “chief constable” means the chief constable of the Police Service of Scotland;
- “court” (except in sections 5J, 5K, 5S and 5T) means the sheriff (as defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010);
- “female genital mutilation protection order” has the meaning given by section 5A(1);
- “interim female genital mutilation protection order” means an order made under section 5F(1);
- “protected person” has the meaning given by section 5A(8);
- “relevant local authority” has the meaning given by section 5C(6);”.

6 Crown application of the 2005 Act

In the 2005 Act, after section 7 insert—

“7A Crown application

- (1) Sections 5A to 5T apply to the Crown.
- (2) But nothing in section 5Q or 5R makes the Crown criminally liable.

- (3) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (2).
- (4) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.”.

7 Ancillary provision under the 2005 Act

In the 2005 Act, after section 7A (as inserted by section 6) insert—

“7B Ancillary provision

- (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
 - (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) are otherwise subject to the negative procedure.”.

8 Amendment of the Children’s Hearings (Scotland) Act 2011

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- (2) In section 62(5) (provision of information by the court)—
 - (a) the word “or” immediately following paragraph (o) is repealed,
 - (b) after paragraph (p) insert—
 - “(q) an application for the making, variation, discharge or extension of—
 - (i) a female genital mutilation protection order (as defined in section 5A(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005), or
 - (ii) an interim female genital mutilation protection order (as defined in section 6 of that Act),
 - (r) proceedings in which a court makes, varies, discharges or extends such an order as is mentioned in paragraph (q)(i) or (ii) by virtue of section 5E, 5F, 5M(5) or, as the case may be, 5N(7) of that Act (power to make, vary, discharge or extend orders without application),
 - (s) proceedings in which a court makes such an order as is mentioned in paragraph (q)(i) by virtue of section 5J(2) of that Act (power to make orders on sentencing etc.),

- (t) proceedings in which a court makes a reference to the Lord Advocate by virtue of section 5K(2) of that Act (references by criminal court to the Lord Advocate), or
- (u) proceedings relating to an offence under section 5Q or 5R of that Act (offences of breaching order or equivalent UK order).”.

9 Jurisdiction of summary sheriff in relation to female genital mutilation protection orders

In schedule 1 of the Courts Reform (Scotland) Act 2014 (civil proceedings in relation to which summary sheriff has competence), after paragraph 5 insert—

“Female genital mutilation protection orders

- 5A Proceedings for or in relation to—
- (a) a female genital mutilation protection order (within the meaning of section 5A(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005),
 - (b) an interim female genital mutilation protection order under section 5F(1) of that Act.”.