

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 5: Protection of Children and Others

Background

248. Section 1 of the Children and Young Persons Act 1933 (“the 1933 Act”) provides for an offence of child cruelty. The offence is committed where a person over the age of 16, who has responsibility for a child under that age, wilfully assaults, ill-treats, abandons, exposes or neglects that child, in a manner likely to cause unnecessary suffering or injury to health.
249. In April 2012 the charity, Action for Children, launched a campaign calling for a reform of section 1 of the 1933 Act. It published a report, “Keeping children safe: The case for reforming the law on child neglect”¹, which argued that the criminal law on child cruelty was out of date and failed adequately to protect children. In particular, Action for Children argued that the existing offence, as interpreted by front line professionals, only covered physical and not psychological harm.
250. In support of the campaign, the late Paul Goggins MP tabled a new clause for debate at Committee stage of the Crime and Courts Bill on 12 February 2013 (Public Bill Committee, Official Report, column 444 to 456). In response to that debate, the then Minister for Policing and Criminal Justice, Damian Green MP, undertook to consider evidence that the current law is not working. Subsequent to this, Mark Williams MP introduced a Private Member’s Bill – the Child Maltreatment Bill² – in June 2013, but the Bill made no further progress. In October 2013, the Ministry of Justice undertook a targeted engagement exercise seeking views from a range of professionals. In the light of that exercise, the Government accepted that the offence could be more clearly expressed so as to include psychological suffering or injury. Section 66 amends section 1 of the 1933 Act to this end. The section also updates the deeming provision in section 1(2) of the 1933 Act which relates to the suffocation of an infant under three years when the child is in bed with a drunken person.
251. At Lords Third Reading, the Home Office Minister, Lord Bates, undertook to consider further an amendment tabled by Lord Harris of Haringey which sought to enhance the protection of children by creating a new offence to criminalise adults who communicate sexually with children (Hansard, 5 November 2014, columns 1621-1633). Lord Harris’s amendment was prompted by the “Flaw in the Law” campaign by the National Society for the Prevention of Cruelty to Children which argued that a new offence was needed to capture those who communicate sexually with a child or who invite a child to communicate sexually with them.
252. There are a number of existing offences that could be prosecuted in relation to this kind of behaviour, depending on the circumstances. For example:

¹ <http://resourcecentre.savethechildren.se/sites/default/files/documents/5896.pdf>

² <http://services.parliament.uk/bills/2013-14/childmaltreatment.html>

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

- Sections 8 and 10 of the Sexual Offences Act 2003 make it an offence to cause or incite a child under 13 or 16 respectively to engage in sexual activity. These offences could apply where a communication with a child (whether sexual or not) could be shown to have caused or incited some kind of sexual activity by the child including, for example, naked or semi-naked posing.
- Section 127 of the Communications Act 2003 makes it an offence to send a message by means of a public electronic communications network (including the internet) if its content is grossly offensive, indecent, obscene or menacing. Depending on the content of the message, this offence could apply where sexual messages or messages seeking a sexual response are sent to a child by some form of electronic communication, such as text, e-mail or phone (although it would not cover non-electronic written messages or verbal communication, or electronic messages sent by a private network such as a school intranet).
- The publication of sexual material to a child or children may amount to an offence under the Obscene Publications Act 1959.

These existing offences are, however, unlikely to apply if a communication (for example in the form of an e-mail or a text message) sent to a child contains sexual content but does not in any way ask the child to engage in sexual activity and does not contain grossly offensive, indecent, obscene or menacing content. In addition, a conviction for an offence under section 127 of the Communications Act 2003 or under the Obscene Publications Act 1959 does not automatically trigger the notification requirements in Part 2 of the Sexual Offences Act 2003 (that is, to sign on the “sex offenders’ register”).

253. The Prime Minister announced at the ‘WeProtect’ Summit³ on 11 December 2014 that the Government would bring forward an amendment to the Bill that became this Act to provide for a new offence of sexual communication with a child. Section 67 provides for such an offence.
254. The Female Genital Mutilation Act 2003 (“the 2003 Act”), which extends to England and Wales and Northern Ireland, and the Prohibition of Female Genital Mutilation (Scotland) Act 2005, which extends to Scotland, and before them the Prohibition of Female Circumcision Act 1985, provide for an offence of female genital mutilation (“FGM”). FGM involves procedures which include the partial or total removal of the external female genital organs for non-medical reasons. The practice is medically unnecessary, extremely painful and has serious health consequences, both at the time when the mutilation is carried out, and in later life. Section 4 of the 2003 Act provides that the section 1 offence of FGM (and the related offences, in sections 2 and 3 of the 2003 Act, of helping a girl to perform FGM on herself and of assisting a non-UK person to perform FGM overseas) extend to acts done outside of the UK by UK nationals or permanent UK residents. There has not yet been a conviction under the 2003 Act.
255. On 18 December 2013, the Home Affairs Select Committee launched an inquiry into FGM, including the effectiveness of the current legislative framework. The Committee published the written evidence it had received on 25 February 2014⁴. That evidence included separate submissions from the Director of Public Prosecutions, Association of Chief Police Officers and Metropolitan Police which argued for, amongst other things, a change in the law to enable prosecutions under the 2003 Act of non-permanent UK residents.

³ <https://www.gov.uk/government/speeches/weprotect-children-online-global-summit-prime-ministers-speech>

⁴ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/140225-fgm-memos/>. The Home Affairs Select Committee subsequently published its report on the conclusion of its inquiry – “Female genital mutilation: the case for a national action plan”, Second Report of Session 2014-15 (HC 201). The Government response was published in December 2014 (Cm 8979).

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256. On 6 February 2014, the Government announced a **range of measures to combat FGM** to mark the International Day of Zero Tolerance⁵. Those measures included a commitment to consider any recommendation from the Crown Prosecution Service to strengthen the criminal law on FGM. Section 70 amends the 2003 Act (and the Prohibition of Female Genital Mutilation (Scotland) Act 2005) to extend extra-territorial jurisdiction for the offences under that Act to persons habitually resident in the UK.
257. The Government announced further measures to tackle FGM at the “Girl Summit” on 22 July 2014, including granting victims of FGM lifelong anonymity from the time an allegation is made, a new offence so that parents can be prosecuted if they fail to prevent girls being subjected to FGM and, subject to consultation, a new civil protection order and the introduction of a duty on certain professionals to report “known” cases of FGM. The Ministry of Justice launched a consultation on the day of the Girl Summit on whether and how a civil protection order could work alongside the criminal legislation to protect potential victims of FGM. The consultation closed on 19 August 2014; 88 responses were received⁶. The Home Office launched a second consultation on 5 December 2014 on how to introduce mandatory reporting for FGM. The consultation closed on 12 January 2015; 147 responses were received⁷. Sections 71 to 75 give effect to these further proposals.
258. The Home Office launched a consultation on 20 August 2014 seeking views on whether the law on domestic abuse needs to be strengthened. The consultation closed on 15 October 2014; 757 responses were received⁸. On 18 December 2014, the Home Secretary announced in a written ministerial statement (Hansard, columns 132WS-133WS) that the Government would be tabling amendments to the Bill that became this Act to strengthen the protection afforded to the victims of domestic abuse. Section 76 provides for a new domestic abuse offence.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295056/HMG_FGM_Declaration.pdf

⁶ The consultation and summary of responses is available at: https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a/consult_view

⁷ A summary of the responses to the consultation is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380125/MultiAgencyPracticeGuidelinesNov14.pdf

⁸ The consultation response is available at: <https://www.gov.uk/government/consultations/strengthening-the-law-on-domestic-abuse>