

# **PROHIBITION OF FEMALE GENITAL MUTILATION (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

16. **Section 4** extends sections 1 and 3 so that any of the prohibited acts done outside the UK by a UK national or permanent UK resident will be an offence under domestic law and triable in the Scottish courts.
17. The effect of the extension of section 1 is that it will be an offence for a UK national or permanent UK resident to carry out an FGM operation outside the UK.
18. Subsection (2) ensures that the extra-territorial effect given to section 1 does not criminalise those carrying out procedures outside the UK in circumstances which are equivalent to those in which no offence would be committed by virtue of section 1(3), (4) and (5). It is not unlawful for the overseas equivalent of a registered medical practitioner to carry out necessary surgical procedures, or for the equivalents of registered medical practitioner, midwife, or person training to be a registered medical practitioner or midwife to carry out operations in connection with childbirth outside the UK. There is no fixed procedure for determining whether a person carrying out an FGM procedure outside the UK is an overseas equivalent of a medical practitioner etc for the purpose of subsection (2). If a prosecution is brought, this will be a matter for the Scottish courts to determine on the facts of the case.
19. The effect of the extension of section 3(1)(a) is that it will be an offence for a UK national or permanent UK resident outside the UK to aid and abet any person to carry out FGM in Scotland. The extension of section 1 means that it will be an offence for a person in Scotland to aid, abet, counsel, procure or incite a UK national or permanent UK resident to carry out an FGM operation outside the UK. For example, if a person in Scotland advises their UK national brother over the telephone how to carry out an FGM operation abroad, they would commit an offence. It will also be an offence, by virtue of the extension of sections 1 and 3(1)(a), for a UK national or permanent UK resident outside the UK to aid, abet, counsel, procure or incite a UK national or permanent UK resident to carry out an FGM operation outside the UK.
20. The effect of the extension of section 3(1)(b) is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet, counsel, procure or incite a person of any nationality to self-mutilate, wherever that operation is carried out.
21. The effect of the extension of section 3(1)(c) is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet, counsel, procure or incite a foreign national to carry out an FGM operation outside the UK. The nationality and status of the victim is immaterial. For example, a permanent UK resident who takes their daughter to the doctor's surgery in another country so that an FGM operation can be carried out will commit an offence.