

Changes to legislation: There are currently no known outstanding effects for the Female Genital Mutilation Act 2003, PART 2. (See end of Document for details)

[^{F1}SCHEDULE 2

FEMALE GENITAL MUTILATION PROTECTION ORDERS

Textual Amendments

- F1** Sch. 2 inserted (17.7.2015) by Serious Crime Act 2015 (c. 9), ss. 73(2), 88(1) (with s. 86(14)(15)); S.I. 2015/1428, reg. 2(a)

PART 2

NORTHERN IRELAND

Power to make FGM protection order

- 18 (1) The court in Northern Ireland may make an order (an “FGM protection order”) for the purposes of—
- (a) protecting a girl against the commission of a genital mutilation offence, or
 - (b) protecting a girl against whom any such offence has been committed.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
- (3) An FGM protection order may contain—
- (a) such prohibitions, restrictions or requirements, and
 - (b) such other terms,
- as the court considers appropriate for the purposes of the order.
- (4) The terms of an FGM protection order may, in particular, relate to—
- (a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;
 - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
 - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
 - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 23).

Applications and other occasions for making orders

- 19 (1) The court may make an FGM protection order—

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- (a) on an application being made to it, or
 - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by—
- (a) the girl who is to be protected by the order, or
 - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—
- (a) the applicant's connection with the girl to be protected;
 - (b) the applicant's knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in family proceedings or without any family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
- (a) any family proceedings are before the court (“the current proceedings”),
 - (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
 - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.
- (7) In this paragraph—
- “family proceedings” has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (see Article 2(2) and (3) of that Order), but also includes—
- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
 - (b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) which includes an exclusion requirement (as defined in Article 63A of that Order), and
 - (c) proceedings in which the court has made an order under Article 69 of that 1995 Order (recovery of abducted children etc);
- “relevant third party” means a person specified, or falling within a description of persons specified, by order made by the Department of Finance and Personnel (and any such order may, in particular, specify that Department).

Power to make order in criminal proceedings

20

The court before which there are criminal proceedings in Northern Ireland for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—

- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and

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- (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

Offence of breaching order

- 21 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

Ex parte orders

- 22 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—
- (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,
 - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
 - (c) whether there is reason to believe that—
 - (i) the respondent is aware of the proceedings but is deliberately evading service, and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.
- (3) If the court makes an order by virtue of sub-paragraph (1), it must specify a date for a full hearing.
- (4) In sub-paragraph (3), “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

- 23 (1) The court may vary or discharge an FGM protection order on an application by—
- (a) any party to the proceedings for the order,
 - (b) the girl being protected by the order (if not a party to the proceedings for the order), or
 - (c) any person affected by the order.
- (2) In the case of an order made in criminal proceedings under paragraph 20, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.
- (3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 19(1)(b) or 20 even though no application under sub-paragraph (1) above has been made to the court.

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- (4) Paragraph 22 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

Jurisdiction of courts

- 24 (1) For the purposes of this Part of this Schedule, “the court” means the High Court, or a county court, in Northern Ireland.
- (2) Sub-paragraph (1) is subject to—
- (a) sub-paragraph (3), and
 - (b) any provision made by virtue of sub-paragraph (4) or (5).
- (3) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 20, references in this Part of this Schedule to “the court” (other than in paragraph 19) are to be read as references to that court.
- (4) Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (allocation of proceedings to courts etc) applies for the purposes of this Part of this Schedule as it applies for the purposes of that Order but as if the following modification were made.
- (5) The modification is that Article 34(8) is to be read as if there were substituted for it—
- “(8) For the purposes of paragraphs (3), (4) and (5), there are two levels of court—
- (a) the High Court; and
 - (b) a county court.”

Power to extend jurisdiction to courts of summary jurisdiction

- 25 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part of this Schedule.
- (2) An order under sub-paragraph (1) may, in particular, make any provision in relation to courts of summary jurisdiction which corresponds to provision made in relation to such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)).
- (3) Any power to make an order under this paragraph (including the power as extended by paragraph 29(1)) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Part of this Schedule or any other enactment.
- (4) In sub-paragraph (3) “enactment” includes Northern Ireland legislation.
- (5) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice's functions under this Part of this Schedule—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined by section 88 of that Act).

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Contempt proceedings

- 26 The powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge.

Appeals from county courts

- 27 (1) An appeal lies to the High Court against—
- (a) the making by a county court of any order under this Part of this Schedule, or
 - (b) any refusal by a county court to make such an order,
- as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases).
- (2) But an appeal does not lie to the High Court under sub-paragraph (1) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)) in the same proceedings.
- (3) Provision must be made by rules of court for an appeal to lie (upon a point of law, a question of fact or the admission or rejection of any evidence) to the Court of Appeal against—
- (a) the making of any order under this Part of this Schedule, or
 - (b) any refusal to make such an order,
- by a county court of the type referred to in sub-paragraph (2).
- (4) Sub-paragraph (3) is without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (cases stated).
- (5) On an appeal under sub-paragraph (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
- (6) Where an order is made under sub-paragraph (5), the High Court may also make such incidental or consequential orders as appear to it to be just.
- (7) Any order of the High Court made on an appeal under sub-paragraph (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of—
- (a) the enforcement of the order, and
 - (b) any power to vary, revive or discharge orders,
- as if it were an order of the county court from which the appeal was brought and not an order of the High Court.
- (8) This paragraph is subject to paragraph 28.

Appeals: transfers and proposed transfers

- 28 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under Article

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34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) as applied by paragraph 24(4) and (5) above.

- (2) Except so far as provided for in any order made under sub-paragraph (1), no appeal may be made against any decision of a kind mentioned in that sub-paragraph.
- (3) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice's functions under this paragraph—
 - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

Orders

- 29 (1) An order made under or by virtue of paragraph 19(7), 24(4) and (5), 25(1) or 28(1)—
 - (a) may make different provision for different purposes;
 - (b) may contain incidental, supplemental, consequential, transitional, transitory or saving provision;
 - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) An order made under or by virtue of paragraph 19(7), 24(4) and (5) or 28(1) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).
- (3) An order under paragraph 25(1) may not be made unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Other protection or assistance against female genital mutilation

- 30 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.
- (2) In particular, it does not affect—
 - (a) the inherent jurisdiction of the High Court;
 - (b) any criminal liability;
 - (c) any right to an occupation order or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6));
 - (d) any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9));
 - (e) any protection or assistance under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
 - (f) any right to a forced marriage protection order under Schedule 1 to the Forced Marriage (Civil Protection) Act 2007;
 - (g) any claim in tort.

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Interpretation

31 In this Part of this Schedule—

- “the court” is to be read in accordance with paragraph 24;
- “FGM protection order” means an order under paragraph 18;
- “genital mutilation offence” means an offence under section 1, 2 or 3;
- “the relevant judge”, in relation to an FGM protection order, means—
 - (a) where the order was made by the High Court, a judge of that court;
 - (b) where the order was made by a county court, a judge or district judge of that or any other county court;
 - (c) where the order was made by a court in criminal proceedings under paragraph 20—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or a judge or district judge of a county court.]

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