

Changes to legislation: There are currently no known outstanding effects for the Female Genital Mutilation Act 2003, PART 1. (See end of Document for details)

[^{F1}SCHEDULE 2 E+W+N.I.]

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 1 E+W+N.I.

ENGLAND AND WALES

Power to make FGM protection order

- 1 (1) The court in England and Wales 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 England and Wales as well as (or instead of) conduct within England and Wales;
 - (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 6).

Applications and other occasions for making orders

- 2 (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 other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
- (a) any other 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 Part 4 of the Family Law Act 1996 (see section 63(1) and (2) of that Act), 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 section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act), and
 - (c) proceedings in which the court has made an order under section 50 of the Children Act 1989 (recovery of abducted children etc);
- “relevant third party” means a person specified, or falling within a description of persons specified, by regulations made by the Lord Chancellor (and such regulations may, in particular, specify the Secretary of State).
- (8) Regulations under sub-paragraph (7) are to be made by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

Power to make order in criminal proceedings

- 3 The court before which there are criminal proceedings in England and Wales 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

- 4 (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) In the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.
- (5) 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 [^{F2}the general limit in a magistrates' court] , or a fine, or both.
- (6) A reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.
- (7) “Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

Textual Amendments

- F2** Words in [Sch. 2 para. 4\(5\)\(b\)](#) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), [Sch. Pt. 1](#)

Ex parte orders

- 5 (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

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- (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.
- (3) The court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).
- (4) The opportunity must be—
 - (a) as soon as just and convenient, and
 - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

- 6 (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 3, 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 2(1)(b) or 3 even though no application under sub-paragraph (1) above has been made to the court.
- (4) Paragraph 5 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).

Arrest under warrant

- 7 (1) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order.
- (2) The relevant judge must not issue a warrant on an application under sub-paragraph (1) unless—
 - (a) the application is substantiated on oath, and
 - (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.
- (3) In this paragraph “interested party”, in relation to an FGM protection order, means—
 - (a) the girl being protected by the order,
 - (b) (if a different person) the person who applied for the order, or
 - (c) any other person;
 but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge.

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Remand: general

- 8
- (1) The court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.
 - (2) Paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph.
 - (3) Sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.
 - (4) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Remand: medical examination and report

- 9
- (1) Any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.
 - (2) If such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.
 - (3) If the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time.
 - (4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.
 - (5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

Remand: further provision

- 10
- (1) Where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.
 - (2) If remanded in custody, the person is to be committed to custody to be brought before the court—
 - (a) at the end of the period of remand, or
 - (b) at such earlier time as the court may require.
 - (3) The court may remand a person on bail—
 - (a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or
 - (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above.
 - (4) Where a person is brought before the court after remand the court may further remand the person.

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- (5) In this paragraph and in paragraphs 11 to 14, references to “the court” includes a reference to a judge of the court or, in the case of proceedings in a magistrates' court, a justice of the peace.
- 11 (1) Where a person is remanded on bail, the court may direct that the person's recognizance be conditioned for his or her appearance—
- (a) before the court at the end of the period of remand, or
 - (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.
- (2) Where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand.
- (3) Nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.
- 12 (1) The court may not remand a person for a period exceeding 8 clear days unless—
- (a) the court adjourns a case under paragraph 9(1), or
 - (b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.
- (2) If sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment.
- (3) Where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.
- 13 (1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence.
- (2) The power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time.
- (3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time.
- (4) The enlargement of a person's recognizance is to be treated as a further remand.
- (5) Paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.
- 14 (1) This paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.
- (2) The recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court).

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Contempt proceedings

- 15 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.

Other protection or assistance against female genital mutilation

- 16 (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 civil remedies under the Protection from Harassment Act 1997;
 - (d) any right to an occupation order or a non-molestation order under Part 4 of the Family Law Act 1996;
 - (e) any right to a forced marriage protection order under Part 4A of that Act;
 - (f) any protection or assistance under the Children Act 1989;
 - (g) any claim in tort.

Interpretation

- 17 (1) In this Part of this Schedule—
- “the court”, except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;
 - “FGM protection order” means an order under paragraph 1;
 - “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 the family court, a judge of that court;
 - (c) where the order was made by a court in criminal proceedings under paragraph 3—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or of the family court.
- (2) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to “the court” (other than in paragraph 2) are to be read as references to that court.
- (3) In paragraph (c)(i) of the definition of “relevant judge” in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates' court, a reference to a justice of the peace.]

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