

CHILDREN ACT 1989 (AMENDMENT) (FEMALE GENITAL MUTILATION) ACT 2019

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Children Act 1989 (Amendment) (Female Genital Mutilation) Act 2019 (c. 10) which received Royal Assent on 15 March 2019.

- These Explanatory Notes have been provided by the Ministry of Justice to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

Purpose and effect of the Act

- 1 The Act amends section 8(4) of the Children Act 1989 (“the 1989 Act”) to add proceedings for Female Genital Mutilation Protection Orders (“FGMPOs”) in England and Wales, under Section 5A of, and Schedule 2 to, the Female Genital Mutilation Act 2003, to the list of proceedings which are “family proceedings” for the purpose of the 1989 Act.
- 2 The effect of the amendment proposed by the Act would be to allow an applicant for an FGMPO to also apply for a care or supervision order (or other such appropriate order under the 1989 Act) as part of the same proceedings, rather than having to make separate applications for such orders as at present. It will also mean that when a court is dealing with a FGMPO, it will also have powers available under the Children Act 1989 to make other orders regarding the welfare of the child. This will increase the ability of the court to protect children at risk.

Policy background

- 3 Female Genital Mutilation (FGM) is an extremely painful and harmful practice that blights the lives of many girls and women. The Government condemns this abusive practice and seeks to eradicate FGM in this country and abroad.
- 4 FGM has been a specific criminal offence in this country since 1985. Other powers are available to the courts including Female Genital Mutilation Protection Orders (FGMPO) which is a civil law measure, designed to protect those at risk of FGM.

Legal background

- 5 The legislation relating to the FGM is contained in the Female Genital Mutilation Act 2003, as amended, in relation to FGMPOs, by the Serious Crime Act 2015.

Territorial extent and application

- 6 The Act extends to England and Wales only, as does section 8 of the 1989 Act which it seeks to amend. The subject matter of the Act is clearly reserved under paragraphs 8 and 179 (and also under paragraphs 177 and 178) of Schedule 7A to the Government of Wales Act 2006 (inserted by the Wales Act 2017).

Commentary on provisions of Bill/Act

Section 1: Amendment to the Children Act 1989

- 7 Section 1 amends section 8 of the Children Act 1989 by inserting a reference to Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 (other than paragraph 3 of that Schedule).
- 8 Schedule 2 to the 2003 Act (at Part 2) makes provision for FGMPOs in Northern Ireland, but the Bill only extends to England and Wales and so it refers only to Part 1 of Schedule 2, the Part which makes provision for FGMPOs in England and Wales.
- 9 Paragraph 3 of Schedule 2 to the 2003 Act provides for circumstances in which FGMPOs may be made by the court during criminal proceedings. The exception in relation to paragraph 3 of Schedule 2 is to make clear that such criminal proceedings are not to be defined as “family proceedings” for the purpose of the 1989 Act.

Section 2: Extent, commencement and short title

- 10 Section 2 provides that the extent of the Bill is England and Wales only.

Commencement

- 11 The Act will come into force on the day on which it is passed.
- 12 The policy and public interest justification for proposing that the Bill should come into force on Royal Assent is to ensure that, if any FGMPO proceedings were ongoing at the time that the legislation was passed, the Family Court and the High Court would have the power to make care and supervision orders in those proceedings, without separate applications having to be made, so that the level of immediately available protection given to any children at risk of significant harm could be increased.

Financial implications of the Act

- 13 FGM protection orders were introduced on 17 July 2015. Since then, family courts have dealt with a relatively small frequency of FGM cases each year.
- 14 It is not known how many cases currently need to be adjourned for care proceedings to commence in the family court. In the 12 months to September 2016, 63 FGMPOs were made, in the 12 months to September 2017, 98 FGMPOs were made and in the 12 months to September 2018, 117 orders were made. It is not possible to estimate the proportion of FGM cases that would be impacted by this policy. However, the relatively low frequency of cases does imply, that regardless of the proportion of these cases impacted by care proceedings, the overall volume of cases impacted is likely to be small.
- 15 We expect that there will be one-off familiarisation costs for the agencies involved in FGM cases in family courts (Local Authorities, LAA, Cafcass, HMCTS, Judges, as well as others involved in FGMPO proceedings).
- 16 For those cases in which this applies, it is expected that family court hearings would be reduced as care proceedings would now be able to be heard alongside FGMPO hearings. This could reduce adjournments and improve timeliness in these cases
- 17 Overall, it is expected that the overall financial impact of this policy is likely to be minimal, given the relatively low frequency of FGMPO cases in family courts.

Subject matter and legislative competence of devolved legislatures

- 18 The subject matter of the Act is clearly reserved under paragraphs 8 and 179 (and also under paragraphs 177 and 178) of Schedule 7A to the Government of Wales Act 2006 (inserted by the Wales Act 2017).
- 19 The subject matter of the Act is also devolved in Scotland and Northern Ireland.

Annex A – Glossary

CAFCASS	Children & Family Court Advisory and Support Service
FGM	Female genital mutilation
FGMPO	Female genital mutilation protection order
HMCTS	Her Majesty's Courts & Tribunals Service
LAA	Legal Aid Agency
1989 Act	Children Act 1989
2003 Act	Female Genital Mutilation Act 2003

Annex B – Hansard references

20 The following table sets out the dates and Hansard references for each stage of the Act’s passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	3 July 2017	Vol 783, Col 679 Bill HL 28 (as introduced)
2nd Reading	20 July 2018	Vol 792, Col 1416
Committee	26 October 2018	Vol 793, Col 1107 (Amended in Committee)
Report Stage	12 November 2018	Vol 793, Col 1697
3rd Reading	19 November 2018	Vol 794, Col 12
<i>House of Commons</i>		
Introduction	20 November 2018	No debate - HC Bill 294 (as introduced)
Public Bill Committee - 1st sitting	25 February 2019	Vol 655, Col 1
Public Bill Committee - 2nd sitting	26 February 2019	Vol 655, Col 304
Public Bill Committee - 3rd sitting	5 March 2019	Vol 655, Col 1
Report and Third Reading	11 March 2019	Vol 656, Col 91
Royal Assent	15 March 2019	Vol 656, Col 665

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Published by TSO (The Stationery Office), part of Williams Lea Tag, and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

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£6.90

ISBN 978-0-10-560160-9



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