



# Female Genital Mutilation and Family Law

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## Key Changes

# Serious Crime Act 2015

## Offence of failing to protect a girl from risk of FGM

- A new offence of failing to protect a girl under the age of 16 from risk of FGM is introduced into the 2003 Act.
- A person is liable for the offence if they are responsible for a girl at the time when an offence is committed against her AND when FGM has actually occurred.
- The term "responsible" covers two classes of person:
  - first, a person who has 'parental responsibility' for the girl and has 'frequent contact' with her, and,
  - second, any adult who has assumed responsibility for caring for the girl in the manner of a parent, for example, grandparents who might be caring for the girl during the school holidays.

## Defence

It is a defence for a defendant to show that:

- a. at the relevant time, the defendant did not think that there was a significant risk of FGM being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk; or
- b. the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of an FGM offence.

A person is taken to have shown the fact mentioned above if:

- a. sufficient evidence of the fact is adduced to raise an issue with respect to it, and
- b. the contrary is not proved beyond reasonable doubt.

Where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.



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## Duty to notify police of FGM



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- A duty is placed on persons who work in a 'regulated profession' in England and Wales, namely healthcare professionals, teachers and social care workers, to notify the police when, in the course of their work, they discover that an act of FGM appears to have been carried out on a girl who is under 18.
- The term 'discover' would refer to circumstances where the victim discloses to the professional that she has been subject to FGM, or where the professional observes the physical signs of FGM.
- **The section does not apply to girls or women who might be at risk of FGM or cases where professionals discover a woman who is 18 or over has endured FGM.**

## Further recommendations for legal change

Further recommendations and legislative changes were identified in the House of Commons Home Affairs Committee's report and the Bar Human Right's report including:

1. The introduction of a legal requirement for mandatory training for regulated professions.
2. The need to examine whether section 1(2)(a) of the 2003 Act provides a loophole for FGM to be performed under the guise of female genital cosmetic surgery on the basis that the surgery is 'necessary for physical or mental health' reasons.



# Female Genital Mutilation Protection Orders

**Section 5A and  
Schedule 2 Female Genital Mutilation Act 2003**

## FGMPOs

- FGM Protection Orders modelled on Forced Marriage Protection Orders.
- High Court or Family Court can make an order.
- An order can be made to protect either a girl at risk of FGM or to protect a girl when FGM has been committed.
- Order can include prohibitions/restrictions and other requirements to protect a girl.
- Order may relate to conduct outside England & Wales as well as within the country.
- Consider all the circumstances inc health, safety, and well-being of the girl.
- Named respondents can be broad.
- Order for specified period of time or until varied or discharged.
- Ex parte orders can be sought.
- Breach/warrant of arrest.

## FGMPOs

*Re E (Children) (Female Genital Mutilation Protection Orders) [2015] EWHC  
2275 (Fam)*

A female genital mutilation protection order was made in respect of three children originally from Nigeria on 24 July 2015 by their mother.



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# FGM and Care Proceedings s.31 Children Act 1989



## *B and G (Children) (No 2) [2015] EWFC 3*

- First reported case of FGM in care proceedings.
- Girl aged three allegedly undergone Type IV FGM.
- Three medical expert reports.
- Starting point: **Definition of FGM**
  - ***Section 1(1)** A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.*

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## Three issues

1. Was the girl subjected to FGM as alleged?
2. If the girl was subjected to FGM as alleged, did this amount to significant harm?

Section 31(2) Children Act 1989 provides as follows:

*A court may only make a care order or supervision order if it is satisfied –*

*(a) that the child concerned is suffering, or is likely to suffer, **significant harm**; and*

*(b) that the harm, or likelihood of harm, is attributable to –*

*(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be **reasonable to expect a parent** to give to him; or*

*(ii) the child's being beyond parental control.*

3. What are the implications?

# Medical Examinations in Cases of FGM



# Medical Examination Case Study

- Mother and father have four daughters aged 12, 10, 8, and 4 months old.
- They are Sudanese nationals. The family do not have immigration status. Their asylum application was refused; they intend to appeal.
- The midwife referred the family to social care after the mother gave birth to the 4 month old. The midwife discovered the mother had been cut, and she was concerned that the mother's daughters might be at risk of FGM.
- The social worker undertook an initial assessment. The mother stated that her elder three daughters had been cut.
- At a Child Protection Conference, the mother said the the social worker is lying, the children have not been cut.
- The parents do not consent to the children undergoing a medical examination.



## Medical Examination

- The local authority does not have parental responsibility and cannot consent to either examination or treatment unless this power has been delegated by the parent in writing or in an emergency.
- When a child needs treatment and the parent(s) and/or the child(ren) refuse(s) consent, consider the following...

### Specific Issue Order, Section 8 Children Act 1989

Gives directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

### Child Assessment Order, Section 43 Children Act 1989

(1) *On the application of a local authority or authorised person for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—*

*(a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;*

*(b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and*

*(c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.*

### Interim Care Order/Emergency Protection Order, Children Act 1989

#### FGM Protection Orders

Section 1 (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.*



**Thank you**