

Appendix 2: Legislation on FGM

Prohibition of Female Circumcision Act 1985

Female Genital Mutilation (FGM) has been a specific criminal offence since 1985, with the introduction of the Prohibition of Female Circumcision Act 1985. However a 'loophole' was identified in the legislation, in that taking girls who were settled in the UK abroad for FGM was not a criminal offence. It is this 'loophole' that the FGM Act 2003 intended to close.

FGM Act 2003

The Act was brought into force on 3 March 2004 by the FGM Act 2003 (Commencement) Order 2004. The provisions of the Act only apply to offences committed on or after the date of commencement. For offences committed before 3 March 2004 the Prohibition of Female Circumcision 1985, as re-enacted in the FGM Act 2003, continues to apply.

The Act affirms that it is illegal for FGM to be performed, and that it is also an offence for UK nationals or permanent UK residents to carry out, or aid, abet, counsel or procure the carrying out of FGM abroad on a UK national or permanent UK resident, even in countries where the practice is legal.

Offence of FGM

Section 1 of the Act makes it a criminal offence to excise, infibulate, or otherwise mutilate the whole or any part of a girl's labia majora, labia minora or clitoris. Although the Act refers to "girls", it also applies to women.

Defence

No offence is committed by a registered medical practitioner who performs a surgical operation necessary for a girl's physical or mental health. Nor is an offence committed by a registered midwife or a person undergoing a course of training with a view to becoming a registered medical practitioner or registered midwife, but only if the operation is on a girl who is in any stage of labour, or has just given birth, and is for purposes connected with the labour or birth (see section 1 of the Act).

This applies if the surgical operation is carried out:

- In the UK: or
- Outside the UK, by persons exercising functions corresponding to those of a UK approved person.

Section 1(5) makes it clear that in assessing a girl's mental health, no account is taken of any belief that the operation is needed as a matter of custom or ritual. An FGM operation, therefore, could not legally occur on the ground that a girl's mental health would suffer if she did not conform to the prevailing custom of her community.

There is no fixed procedure for determining whether a person carrying out an FGM operation outside the UK is an overseas equivalent of a medical practitioner etc for the purpose of subsection (4). If a prosecution is brought, this will be a matter for the courts (in the UK) to determine on the facts of the case.

Assisting a girl to mutilate her own genitalia

It is not an offence for a girl to carry out an FGM operation on herself. However, a person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris (see section 2 of the Act).

Assisting a non-UK person to mutilate overseas a girl's genitalia

Section 3 of the Act makes it an offence for a person to aid, abet, counsel or procure the performance outside the UK of a relevant FGM operation (as defined by subsection (2)) that is carried out on a UK national or permanent UK resident by a person who is not a UK national or permanent UK resident (as defined by section 6).

So the person who, for example, arranges by telephone from his/her home in England for his/her UK national daughter to have an FGM operation carried out abroad by a foreign national (who does not live permanently in the UK) is guilty of an offence. The exception for necessary surgical operations that applies for the purposes of section 1 of the Act also applies to section 3.

Extra-territorial acts

The effect of the extension (see section 4) on 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. By virtue of section 8 of the Accessories and Abettors Act 1861, it will also be an offence for a person in the UK (or a UK national or permanent UK resident outside the UK) to aid, abet, etc a UK national or permanent UK resident to carry out an FGM operation outside the UK. For example, if a person in the UK advises his UK national brother over the telephone how to carry out an FGM operation abroad, he would commit an offence.

The effect of the extension of section 2 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc. a person of any nationality to carry out an FGM operation on herself wherever it is carried out.

The effect of the extension of section 3 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc. a foreign national (who is not a permanent UK resident) to carry out an FGM operation outside the UK on a UK national or permanent UK resident. For example, a permanent UK resident who takes his permanent UK resident daughter to the doctor's surgery in another country so that an FGM operation can be carried out will commit an offence

Penalties for offences

A person guilty of an offence under this Act is liable:

- On conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both);
- On summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

See [Section 5 of the Act](#)

Definitions of Girl and UK National

The term 'girl' includes 'woman'.

A United Kingdom national is an individual who is:

- A British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- A person who under the British Nationality Act 1981 is a British subject; or
- A British protected person within the meaning of that Act.
- A permanent United Kingdom resident is an individual who is settled in the United Kingdom (within the meaning of the Immigration Act 1971).

For more information please see [CPS FGM Legal Guidance](#).

Serious Crime Act 2015

There are new legislative measures being brought through the [Serious Crime Act 2015](#) which will strengthen the legislative framework around tackling FGM.

The changes include:

- Introducing 'habitual UK resident' rather than 'permanent UK resident',
- Introducing FGM Protection Orders (similar to Forced Marriage Protection Orders).
- Duty on individuals to report to the police for cases where FGM is identified in under 18's.

New offence of failing to protect a girl from FGM.