



BRIEFING PAPER

Number 08510, 7 March 2019

Children Act 1989 (Amendment) (Female Genital Mutilation) [HL], Bill 294 of 2017-19: Briefing for Report Stage

By Hannah Cromarty

1. Summary

The World Health Organisation (WHO) describes Female Genital Mutilation (FGM) as “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons”.¹ FGM is illegal in the UK.

The [Children Act 1989 \(Amendment\) \(Female Genital Mutilation\) \[HL\] Bill 294 of 2017-19](#) is a Private Member’s Bill sponsored by Lord Berkeley of Knighton (Crossbencher) and Zac Goldsmith (Conservative).

The Bill relates to a small, technical amendment to close a gap in the law in relation to proceedings for Female Genital Mutilation Protection Orders (FGMPOs), which are used to protect and safeguard victims and potential victims of FGM. The Bill will mean that when a court is dealing with an application for a FGMPO, it will also have powers under the *Children Act 1989* to make other orders regarding the welfare of the child. This will improve the ability of the court to act quickly to protect children at risk.² The Bill extends to England and Wales only.

The Bill has completed its parliamentary stages in the House of Lords, and has now progressed to Report and Third Reading stages in the House of Commons, which are scheduled for 11 March 2019. The Government supports the Bill.

The current version of the Bill and debates on the Parliamentary stages to date can be found on the [Parliament Bill webpage](#).

2. Progress through Parliament

The Bill was introduced in the House of Lords by Lord Berkeley of Knighton on 3 July 2017 and completed its parliamentary stages in the Lords on 19 November 2018.

The House of Lords Library published a briefing paper for the Bill: [Children Act 1989 \(Amendment\) \(Female Genital Mutilation\) Bill \[HL\]: Briefing for Lords Stages](#) (16 July 2018).

The Bill was introduced in the House of Commons on 20 November 2018. It was scheduled to have its Second Reading in the House of Commons on Friday 8 February

¹ World Health Organisation, ‘[Classification of Female Genital Mutilation](#)’ [Accessed 28 February 2019]

² Explanatory Notes to the *Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL]*, Para 5

2 Children Act 1989 (Amendment) (Female Genital Mutilation) [HL], Bill 294 of 2017-19: Briefing for Report Stage

2019. However, due to an objection from Conservative MP for Christchurch, Sir Christopher Chope, the Bill was denied a Second Reading.³ In response to an urgent question in the House of Commons on 11 February 2019, the Parliamentary Under-Secretary of State for Justice, Lucy Frazer, confirmed that the Government was working to bring the Bill back in Government time.⁴

On 14 February 2019 the Bill was referred to a Second Reading Committee via a Business Motion.⁵ The Committee met on Monday 25 February 2019 and recommended that the Bill ought to be read a Second time.⁶ The Bill received its Second Reading in the Commons on 26 February 2019.⁷ The Public Bill Committee considered the Bill on 5 March 2019 and agreed that the Bill should move to Report stage without amendment.⁸ The Report and Third Reading Stages are scheduled for 11 March 2019.

3. The Bill as brought from the Lords

The purpose of the Bill is to amend section [8\(4\) of the Children Act 1989](#) to add proceedings for Female Genital Mutilation Protection Orders (FGMPOs) in England and Wales (under [Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003](#), other than paragraph 3 of that schedule)⁹ to the list of proceedings which are “family proceedings” for the purpose of the 1989 Act.¹⁰

The effect of the proposed amendment 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 *Children Act 1989*) as part of the same proceedings, rather than having to issue separate proceedings for such orders as at present. It would also enable a judge to exercise certain powers under the 1989 Act within the existing FGMPO proceedings.¹¹

At Second Reading in the House of Lords on 20 July 2018, Baroness Vere of Norbiton confirmed that the Government supported the Bill and explained what it was intended to achieve:

I turn to the Bill, which seeks to amend a small and, we believe, unintentional gap in the law. As the noble Lord, Lord Berkeley, said, there has been an oversight. He explained that the purpose of the Bill is to amend Section 8(4) of the Children Act 1989 to bring proceedings for FGMPOs within the definition of “family proceedings” for the purpose of the 1989 Act. The effect of bringing FGMPO proceedings within this definition would be that a number of powers under the Children Act 1989 would be opened up to the family courts in those proceedings, such as the power to make a care or supervision order.

The Government are pleased to be able to support the Bill at Second Reading...

FGMPOs were introduced in 2015 alongside a series of other legislative measures intended to strengthen the criminal law in this area and to make successful prosecutions more likely. An FGMPO is, however, a civil law measure, designed to

³ [HC Deb 8 February 2019 c586](#)

⁴ [HC Deb 11 February 2019 c642](#)

⁵ [House of Commons Business without Debate 14 February 2019](#)

⁶ [Second Reading Committee, *Children Act 1989 \(Amendment\) \(Female Genital Mutilation\) Bill \[HL\], 25 February 2019*](#)

⁷ [HC Deb 26 February 2019 c304](#)

⁸ [PBC Deb 5 March 2019 c1-6](#)

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 defined as “family proceedings” for the purpose of the 1989 Act.

¹⁰ Explanatory Notes to the *Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL]*, Para 1

¹¹ Explanatory Notes to the *Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL]*, Para 2

protect those at risk of FGM from ever being subjected to this cruel practice. Applications for FGMPOs can be made to the family court or High Court. The family court and High Court can also make an FGMPO of their own volition, as can a criminal court during proceedings for an FGM offence. Between July 2015, when FGMPOs were introduced, and March 2018 the courts have made 220 FGMPOs.

FGMPOs were closely modelled on forced marriage protection orders, introduced in 2007 by means of adding a new Part 4A to the Family Law Act 1996. All proceedings under the Family Law Act 1996 are defined in Section 8 of the Children Act 1989 as “family proceedings” for the purpose of the 1989 Act. However, when FGMPOs were introduced the then Government decided to include the relevant provisions in the Female Genital Mutilation Act 2003, rather than in the Family Law Act, so that all the relevant law on FGM would be in one place. But, one apparently unintended consequence of that approach was that FGMPO proceedings were not included within the definition of “family proceedings” for the purpose of the Children Act 1989. A number of orders can be made to protect children in “family proceedings” under the 1989 Act and the exclusion of FGMPO proceedings from that definition means that, as the law stands, if a local authority applicant for an FGMPO wishes also to apply for, for example, a care or a supervision order, a separate application is required.

Bringing FGMPO proceedings within the definition of “family proceedings” would mean that an application by a local authority or the NSPCC for a care or supervision order relating to a child at risk of significant harm could be made during FGMPO proceedings, thus avoiding the need for a separate application and potential delay. Other powers of the family court, including powers to make, for example, a prohibited steps order, special guardianship order or family assistance order, would also be available to the FGMPO proceedings. The Government believe that this simplification of process that the Bill intends is sensible and we are pleased to support it. It adds to the measures that the Government have brought forward to tackle FGM issues.¹²

The provisions of the Bill extend and apply to England and Wales only, as does section 8 of the *Children Act 1989* which it seeks to amend. The Act will come into force immediately on Royal Assent.¹³

The Explanatory Notes to the Bill state that “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”.¹⁴

4. The law on Female Genital Mutilation (FGM)

FGM became a criminal offence in the UK in 1985 under the [Prohibition of Female Circumcision Act 1985](#). The Act stated that it was illegal to mutilate any part of the labia or clitoris of another person or to help them do this to themselves. The maximum sentence in terms of imprisonment was 5 years.

The 1985 Act was replaced by the [Female Genital Mutilation Act 2003](#) in England, Wales and Northern Ireland and by the [Prohibition of Female Circumcision \(Scotland\) Act 2005](#) in Scotland. These Acts restated and amended the law to include extra-territorial acts by UK nationals or permanent UK residents.

¹² [HL Deb 20 July 2018 c1434](#)

¹³ [Bill 294 of 2017-19 \(as brought from the Lords\)](#), Clause 2

¹⁴ Explanatory Notes to the Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL], Para 18

4 Children Act 1989 (Amendment) (Female Genital Mutilation) [HL], Bill 294 of 2017-19: Briefing for Report Stage

Most recently, the [Serious Crime Act 2015](#) introduced FGM Protection Orders and lifelong anonymity for victims of FGM, extended the reach of the extra-territorial offences, and created a new offence of failing to protect a girl from the risk of FGM.

Guidance on the relevant offences and prosecution policy is set out on the Crown Prosecution Service website: see [Female Genital Mutilation Prosecution Guidance](#) and [CPS Factsheet: Female Genital Mutilation](#).

A [Government leaflet](#) explains the current law in England and Wales:

The Act covers mutilation of the whole or any part of a girl's or woman's labia majora, labia minora or clitoris. It is an offence for any person (regardless of their nationality or residence status) to:

- perform FGM in England and Wales;
- assist a girl to carry out FGM on herself in England and Wales; and
- assist (from England or Wales) a non-UK person to carry out FGM outside the UK on a UK national or UK resident.

If the mutilation takes place in England or Wales, the nationality or residence status of the victim is irrelevant.

If FGM is committed against a girl under the age of 16, each person who is responsible for the girl at the time the FGM occurred could be guilty of the offence of failing to protect her from the risk of FGM.

It is also an offence for a UK national or UK resident (even in countries where FGM is not illegal) to:

- perform FGM abroad;
- assist a girl to perform FGM on herself outside the UK; and
- assist (from outside the UK) a non-UK person to carry out FGM outside the UK on a UK national or UK resident.

An offence of failing to protect a girl from risk of FGM can be committed wholly or partly outside the UK by a person who is a UK national or UK resident. The extra-territorial offences of FGM are intended to cover taking a girl abroad to be subjected to FGM.

Anyone who commits FGM faces up to 14 years in prison, a fine, or both. Anyone found guilty of failing to protect a girl from risk of FGM faces up to 7 years in prison, a fine, or both.

[...]

The Female Genital Mutilation Act also:

- provides lifelong anonymity for victims of FGM. This means that no information may be published that could identify you as a victim of FGM, even if there is no eventual court case.
- introduces FGM Protection Orders which are new civil orders to protect victims or potential victims of FGM. An order could include, for example, a requirement for a passport to be surrendered to prevent a girl being taken abroad for FGM.
- provides for a mandatory reporting duty which requires regulated health and social care professionals and teachers in England and Wales to report 'known' cases of FGM in under 18s to the police. The duty came into force on 31 October 2015.¹⁵

¹⁵ Home Office, [Female Genital Mutilation: The Facts](#), 2015

The Home Office has published a [Factsheet on FGM Protection Orders](#) (December 2016) which provides further information about FGMPOs.

The first successful FGM prosecution was [announced](#) on 1 February 2019.¹⁶

In the 12 months to September 2016, 63 FGM Protection Orders were made, in the 12 months to September 2017, 98 FGMPOs were made and in the 12 months to 2018, 117 orders were made.¹⁷

5. Family proceedings under the Children Act 1989

Courts can make a number of orders in “family proceedings” under the [Children Act 1989](#) (as amended) in order to safeguard the welfare of a child. There are several possible orders the court can make, including, but not limited to:

- **Care Order** - which places the child in the care of a designated local authority.¹⁸
- **Supervision Order** - which places the child under the supervision of a designated local authority.¹⁹
- **Interim Care Order** or an **Interim Supervision Order** - which place the child temporarily under the care or supervision of the local authority during the proceedings.²⁰
- **Special Guardianship Order** - which places the child in the care of another person such as a family member.²¹

In deciding any question about the upbringing of a child the court must treat his or her welfare as its paramount consideration,²² and have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of that child.²³ In relation to certain decisions,²⁴ the court must have also regard to the factors set out in the ‘welfare checklist’.²⁵

For the purposes of the *Children Act 1989*, “family proceedings” means any proceedings -
(a) under the inherent jurisdiction of the High Court in relation to children; and
(b) under the enactments mentioned in section 8(4).^{26 27}

FGMPO proceedings are currently excluded from the definition of “family proceedings” in the 1989 Act. This means that, as the law stands, if a local authority applicant for an FGMPO wishes also to apply for, for example, a care or a supervision order, a separate application is required, which could delay proceedings.

¹⁶ [‘Mother first to be convicted of female genital mutilation’](#), *CPS News*, 1 February 2019

¹⁷ Figures derived from Family Court Statistics and reported in the Explanatory Notes to the *Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL]*, Para 18

¹⁸ Part 4 of the *Children Act 1989*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Sections 14A-14G of the *Children Act 1989*

²² Section 1(1) of the *Children Act 1989*

²³ Section 1(2) of the *Children Act 1989*

²⁴ Where the court is deciding whether to make, vary or discharge a section 8 order and this is disputed; and where the court is deciding whether to make, vary or discharge a special guardianship order or an order under Part 4 of the *Children Act 1989*.

²⁵ At Section 1(3) of the *Children Act 1989*

²⁶ Section 8(3) of the *Children Act 1989*

²⁷ These enactments include Parts 1, 2 and 4 of the *Children Act 1989* itself.

6 Children Act 1989 (Amendment) (Female Genital Mutilation) [HL], Bill 294 of 2017-19: Briefing for Report Stage

The Bill seeks to amend section 8(4) of the *Children Act 1989* to include proceedings for FGMPOs within the definition of “family proceedings” for the purpose of the 1989 Act. This is intended to improve the ability of the court to act quickly to protect children at risk.

Further information about court orders under the *Children Act 1989* is available in the Department for Education statutory guidance: [Court orders and pre-proceedings - For local authorities \(April 2014\)](#).

6. FGM Statistics

NHS Digital publish experimental statistics on FGM related attendance at NHS trusts and GP practices in England.

The latest annual estimates indicate that in 2017/18²⁸ there were 6,195 individual women and girls who had an attendance where FGM was identified or a procedure related to FGM was undertaken. These accounted for 9,490 attendances reported at NHS trusts and GP practices.

The table below gives a further breakdown by the country of birth of the women and the country where FGM was carried out. Where information was recorded, most women were from Eastern and Western Africa and FGM was most frequently reported as having been undertaken in these areas.

FGM RELATED HOSPITAL/GP ATTENDANCES IN ENGLAND				
	Country of birth		Country where FGM undertaken	
	Number	%	Number	%
Eastern Africa	1,715	27.7%	1,155	18.6%
Northern Africa	415	6.7%	305	4.9%
Western Africa	790	12.8%	480	7.7%
Rest of Africa	40	0.6%	10	0.2%
United Kingdom (the)	150	2.4%	85	1.4%
Western Asia	225	3.6%	150	2.4%
Rest of Asia	40	0.6%	35	0.6%
Rest of world	35	0.6%	5	0.1%
Not stated or unknown	1,030	16.6%	1,430	23.1%
Not recorded	1,750	28.2%	2,540	41.0%
Total	6,195	100.0%	6,195	100.0%

Source: [NHS Digital FGM Annual Report 2017/18](#)

²⁸ [NHS Digital FGM Annual Report 2017/18](#)

7. Parliamentary

The Minister of State for the Department for International Development, Harriett Baldwin, responded to an [oral question](#) about FGM and the Bill on 13 February 2019.²⁹

In response to a recent written parliamentary question, the Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability, Victoria Atkins, outlined the steps the Government is taking to tackle FGM:

Asked by Sarah Champion on 21 January 2019: To ask the Secretary of State for the Home Department, what recent steps the Government has taken to develop a cross-departmental strategy on tackling FGM.

Answered by Victoria Atkins on 29 January 2019:

Female Genital Mutilation (FGM) is a crime and it is child abuse. The Government is clear that we will not tolerate a practice that can cause extreme and lifelong suffering to women and girls

The Government has significantly strengthened the law in 2015 to improve protection for victims and those at risk, and to break down the barriers to prosecution.

Work to tackle FGM is an integral part of our cross-Government Violence Against Women and Girls (VAWG) strategy, published in March 2016. The Strategy commits to continue to challenge deep-rooted social norms, attitudes and behaviours that discriminate against and limit women and girls across all communities. As part of our commitment to tackling all forms of VAWG, we have pledged £100 million in funding, including the £17 million VAWG transformation fund. This year, we will refresh the strategy to ensure that we are doing all that we can to tackle crimes which disproportionately affect women.

In July 2017, the National FGM Centre received additional funding through the Department for Education's Social Care Innovation Programme to support its work through to the end of March 2020. The intention was for this funding to be time limited, with the Centre to be self-sustaining from April 2020. Therefore, the Home Office have no plans to contribute to the funding of the Centre beyond March 2020.

The Home Office does not hold information on the average cost of supporting an FGM victim in the UK. However, we are committed to continuing our work to protect and support victims and those at risk of this terrible crime.³⁰

Other issues that have been recently raised via written parliamentary questions in relation to FGM include:

- The number of cases of alleged FGM that have been investigated in the last five years.³¹
- The events the Department for International Development held to mark the United Nations Day for Zero Tolerance of FGM.³²
- The number of people that have been convicted of FGM offences in the last three years.³³
- What analysis the Government has conducted into the prevalence of FGM in England.³⁴

²⁹ [HC Deb 13 February 2019 c866](#)

³⁰ [PO 210637, 29 January 2019](#)

³¹ [PO 220275, 18 February 2019](#)

³² [PO 220087, 18 February 2019](#)

³³ [PO 216995, 13 February 2019](#)

³⁴ [PO HL12848, 29 January 2019](#)

7.1 Home Affairs Committee Inquiry 2016

The Home Affairs Select Committee conducted an inquiry into FGM in 2016. On publication of the Committee's report the Interim Chair of the Committee, Tom Loughton, said:

FGM can leave women and girls with significant lifelong health and psychological consequences. We intend to continue to draw attention to this horrific crime to improve the safeguarding of at-risk girls.

We are dismayed that there have been no convictions for FGM-related offences. When we next review FGM, the new laws against the practice will have 'bedded in' and we expect to see a number of successful prosecutions.

We welcome many of the steps that the Government has taken to prevent FGM and our report calls for that work to be enhanced and strengthened with adequate resources and support for frontline professionals and other groups which work directly with practicing communities.³⁵

The Committee report and the Government's response are available on the [Parliament website](#).³⁶

8. Background on FGM

The World Health Organisation (WHO) describes FGM as "all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons".³⁷ The WHO has classified FGM into four broad types:³⁸

- **Type 1:** Partial or total removal of the clitoris and/or the prepuce (Clitoridectomy).
- **Type 2:** Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (Excision).
- **Type 3:** Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (Infibulation).
- **Type 4:** All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.³⁹

The WHO website explains:

Female genital mutilation has no known health benefits. On the contrary, it is known to be harmful to girls and women in many ways. First and foremost, it is painful and traumatic. The removal of or damage to healthy, normal genital tissue interferes with the natural functioning of the body and can cause several immediate and long-term health consequences. For example, FGM can cause excessive bleeding, swelling of genital tissue and problems urinating, and severe infections that can lead to shock and in some cases, death, as well as complications in childbirth and increased risk of perinatal deaths.

³⁵ Home Affairs Select Committee, [Ongoing failure to tackle "national scandal" of female genital mutilation](#), 1 September 2016

³⁶ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/inquiry8/> [Accessed 7 March 2019]

³⁷ World Health Organisation, '[Classification of Female Genital Mutilation](#)' [Accessed 7 March 2019]

³⁸ Sub-divisions are used to capture more closely the variety of procedures.

³⁹ World Health Organisation, '[Classification of Female Genital Mutilation](#)' [Accessed 7 March 2019]

Communities that practice female genital mutilation report a variety of sociocultural reasons for continuing with it. Seen from a human rights perspective, the practice reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women.

Female genital mutilation is nearly always carried out on minors and is therefore a violation of the rights of the child. The practice also violates the rights to health, security and physical integrity of the person, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.⁴⁰

The Gov.uk website provides a [collection of FGM resources](#) published by the Home Office, which include further details of some of the Government policies above (such as mandatory reporting and FGMPOs). The Home Office FGM: resource pack provides [links to support organisations, clinics and helplines](#).

The charity NSPCC has published information on [Female genital mutilation \(FGM\): What is FGM](#) and provides a FGM Helpline (email: fgmhelp@nspcc.org.uk. Telephone: 0800 028 3550).

The [National FGM Centre](#) is a partnership between Barnardo's and the Local Government Association to achieve a systems change in the provision of services for children and families affected by FGM.

The Foundation for Women's Health Research & Development ([FORWARD](#)) works in the UK, Europe and Africa to safeguard girls at risk of FGM and support women affected.

⁴⁰ World Health Organisation, '[Classification of Female Genital Mutilation](#)' [Accessed 28 February 2019]

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).