

Children Act 1989 (Amendment) (Female Genital Mutilation) Bill [HL] HL Bill 28 of 2017–19

Summary

The [Children Act 1989 \(Amendment\) \(Female Genital Mutilation\) Bill \[HL\]](#) is a private member's bill introduced by Lord Berkeley of Knighton (Crossbench). At present, Female Genital Mutilation Protection Orders (FGMPOs) offer a legal means to protect and safeguard victims and potential victims of Female Genital Mutilation (FGM) under the Female Genital Mutilation Act 2003 (as amended). FGMPOs are explained in more detail in the second part of this Briefing. The purpose of Lord Berkeley's Bill is to enable the courts to make interim care orders under the Children Act 1989 in child cases relating to FGM, in addition to FGMPOs. If a court was satisfied that there were reasonable grounds for believing that the child is suffering, or is likely to suffer, significant harm, an interim care order could be made.¹ The interim care order would mean that a local authority would have shared parental responsibility for the child concerned until a final hearing.²

At present, provisions under the Children Act 1989 only enable interim care orders to be made in certain 'family proceedings' as defined by the Act. These 'family proceedings' do not currently include proceedings under the Female Genital Mutilation Act 2003—which Lord Berkeley's Bill seeks to change. Information regarding interim care orders and 'family proceedings' is set out in more detail in the background section of this Briefing. The Bill is scheduled to have its second reading on 20 July 2018.

Speaking about the purpose of his Bill, Lord Berkeley said:

The power to make FGMPOs is in schedule 2 of the Female Genital Mutilation Act 2003. This is in effect a standalone statutory code. Courts also have the powers under the Children Act 1989 (as amended) to make interim care orders when they are so concerned about a child's welfare that the court wants a local authority to intervene and share parental responsibility. This is a useful way for judges to alert local authorities to children who may have slipped beneath their radar. Crucially though, the Children Act 1989 (as amended) only allows a court to make interim care orders in "family proceedings" as defined in the Act. Section 8(4) defines what is meant by "family proceedings" by listing various statutes. The effect of this section is that where a statute is listed it allows a judge to reach across from one seemingly stand-alone code and use the powers of the Children Act 1989 (as amended) to protect children by granting an interim care order.

The Female Genital Mutilation Act 2003 is not included in the list of statutes at section 8(4) of the Children Act 1989 (as amended) so does not constitute "family proceedings". Thus it is not open to a judge to make an interim care order if they think it appropriate. This is denying judges a useful tool to protect children. The test that a court considers when making an interim care order is that there are reasonable grounds to believe that the child has suffered significant harm or is at risk of suffering significant harm. My view is that if a girl is considered to be at risk of FGM, then there are

reasonable grounds to believe she is at risk of suffering significant harm. As FGM becomes more and more visible, and people become more and more active about doing something about it, so the change we seek will be more and more necessary.³

The Bill would extend to England and Wales only.

Background on Female Genital Mutilation

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”.⁴ The WHO has classified FGM into four major types.⁵ Though the WHO has cautioned that these need to be sub-divided in order to capture the full variety of FGM procedures more closely, these four types are:

- **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.⁶

According to the WHO, FGM is “mostly carried out by traditional circumcisers, who often play other central roles in communities, such as attending childbirths”.⁷ The procedure is nearly always carried out on minors. There are social and cultural factors that influence why FGM is performed—such as social conforming or preparation for adulthood. However, according to the WHO, FGM has “no health benefits” and harms girls and women “in many ways”.⁸ Complications and consequences can include: severe pain; excessive bleeding; infections; urinary problems; shock; death; urinary, vaginal and menstrual problems; sexual problems; psychological problems; an increased risk of childbirth complications; and newborn deaths.⁹

FGM has been illegal in the UK since the Prohibition of Female Circumcision Act 1985—later replaced by the Female Genital Mutilation Act 2003.¹⁰ As raised by the House of Commons Home Affairs Committee in 2016, precise data on the prevalence of FGM in the UK “remains elusive despite improvements to the quality of research that has been undertaken in recent years”.¹¹ However, in July 2017, NHS Digital published experimental statistics on the prevalence of FGM in England for a full year period, which provides some insights. These statistics were based on attendances reported at NHS trusts and GP practices where FGM was identified or a procedure for FGM was undertaken.¹² The data showed that between April 2016 and March 2017 there were 9,179 such attendances recorded in the reporting period, of which 5,391 were newly recorded cases.¹³ This was a slight decrease on the 9,223 attendances recorded in 2015/16, of which 6,080 had been newly recorded cases. According to the latest experimental data published in June 2018, there were 2,320 attendances reported between January and March 2018, of which 1,030 were newly recorded women or girls.¹⁴

Despite the prevalence of FGM, there have been no successful prosecutions for FGM in the UK.¹⁵

Female Genital Mutilation Protection Orders

In an effort to better protect those in the UK at risk of FGM, Female Genital Mutilation Protection Orders (FGMPOs) were introduced as part of the Serious Crime Act 2015, thereby introducing section 5A and schedule 2 to the Female Genital Mutilation Act 2003.¹⁶ According to the Crown Prosecution Service (CPS), an FGMPO may contain “prohibitions, restrictions or requirements” as the court considers appropriate, to protect a girl who has either been, or may become, a victim of FGM.¹⁷ This could include, for example, surrendering passports to prevent the person at risk from being taken abroad for FGM, prohibiting travel, or prohibiting others from making arrangements for FGM to be performed on the person being protected.¹⁸ Guidance from the Government in 2016 set out that FGMPOs “are unique to each case”.¹⁹

FGMPOs can be obtained in either the Family or Criminal Court.²⁰ This is a civil law measure which can be made by a court. The Crown Court can also make a FGMPO without application where there are on-going criminal proceedings for FGM, for example to protect siblings.²¹ In March 2018, the Ministry of Justice (MoJ) said that the number of orders made for FGMPOs has been “very small”, with 109 made in 2017.²² According to the recent figures from the MoJ, there have been 205 orders made up to the end of December 2017 in total, since the introduction of FGMPOs in July 2015.

Interim Care Orders and Family Proceedings

If the court also wished to make an order for a local authority to share parental responsibility for a child—an ‘interim care order’ as set out in the Children Act 1989—this is not currently provided for in these circumstances. An interim care order means that the local authority would have the power to make decisions about where the child lives and the welfare of the child.²³ Such an order can last up to eight weeks on the first occasion, and can be renewed.²⁴ Section 37(1) of the Children Act 1989 sets out that where a court feels a care order (or supervision order) is appropriate it may direct the appropriate authority to undertake an investigation of the child’s circumstances. Should the court give a direction to the local authority under section 37(1) of the Act, the court may then make an interim care order (section 38(1)). However, section 37(1) also sets out that such a direction can only take place in any ‘family proceedings’ in which a question arises with respect to the welfare of any child. These ‘family proceedings’ currently exclude proceedings under the Female Genital Mutilation Act 2003.

Section 8(3) of the Children Act 1989 (as amended) defines what is meant by ‘family proceedings’ for the purposes of the Act. These are any proceedings “under the inherent jurisdiction of the High Court in relation to children” and that take place under a list of statutes which are set out in section 8(4) of the Act.²⁵ Section 8(4) provides the lists of statutes to be defined as ‘family proceedings’. It includes certain laws, such as the Family Law Act 1996, but does not include reference to the Female Genital Mutilation Act 2003. For those acts which are listed in section 8(4) of the Children Act 1989 (as amended), the court may choose to make an interim care order.

To make an interim care order in ‘family proceedings’ under the Children Act 1989 (as amended) a certain test—or ‘threshold’—must be met. The court has to be “satisfied that there are reasonable grounds for believing” that:

- (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.²⁶

Harm is defined in section 31(9) of the Act as “ill-treatment or the impairment of health or development including, for example, “impairment suffered from seeing or hearing the ill-treatment of another”.²⁷ In this statement, ‘development’ means “physical, intellectual, emotional, social or behavioural development”; ‘health’ means “physical or mental health”; and ‘ill-treatment’ includes “sexual abuse and forms of ill-treatment which are not physical”.²⁸

Children Act 1989 (Amendment) (Female Genital Mutilation) Bill.

The Bill would insert section 5A of, and schedule 2 to, the Female Genital Mutilation Act 2003 into section 8 of the Children Act 1989. By doing so, the Bill would amend the Children Act 1989 to state that proceedings under section 5A and schedule 2 of the Female Genital Mutilation Act 2003 are “family proceedings”. The Bill, if enacted, would thereby enable a judge to make an interim care order as well as an FGMPO in cases relating to FGM, with respect to children.

Further Information

- House of Lords Library, [International Day of Zero Tolerance for Female Genital Mutilation](#), 6 February 2018
- House of Commons Home Affairs Committee, [Female Genital Mutilation: Abuse Unchecked](#), 15 September 2016, HC 390 of session 2016–17; and [Government Response](#), December 2016, Cm 9375

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- ¹ Children Act 1989, sections 38(2) and 31(2).
- ² Child Law Advice, '[Care Orders](#)', accessed 4 April 2018.
- ³ Text provided by Lord Berkeley on request from the Lords Library.
- ⁴ World Health Organisation, '[Classification of Female Genital Mutilation](#)', accessed 4 April 2018.
- ⁵ *ibid.*
- ⁶ *ibid.*
- ⁷ World Health Organisation, '[Female Genital Mutilation: Fact Sheet](#)', updated January 2018.
- ⁸ *ibid.*
- ⁹ *ibid.*
- ¹⁰ House of Commons Home Affairs Committee, '[Female Genital Mutilation: Abuse Unchecked](#)', 15 September 2016, HC 390 of session 2016–17, p 5; and Crown Prosecution Service, '[Female Genital Mutilation Prosecution Guidance](#)', accessed 6 April 2018.
- ¹¹ House of Commons Home Affairs Committee, '[Female Genital Mutilation: Abuse Unchecked](#)', 15 September 2016, HC 390 of session 2016–17, p 7.
- ¹² NHS Digital, '[Female Genital Mutilation \(FGM\) Enhanced Dataset: April 2016 to March 2017, England, Experimental Statistics](#)', 4 July 2017, p 9.
- ¹³ *ibid.* Women and girls may have one or more attendances in the stated period. This includes both newly recorded and previously recorded women and girls. An attendance will be when a woman or girl with Female Genital Mutilation (FGM) has had treatment for her FGM or given birth to a baby girl, or when FGM has been identified.
- ¹⁴ NHS Digital, '[Female Genital Mutilation \(FGM\): January 2018 to March 2018—Experimental Statistics Report](#)', 7 June 2018.
- ¹⁵ Hannah Summers, '[Those Involved in FGM Will Find Ways to Evade UK Law](#)', *Guardian*, 7 March 2018.
- ¹⁶ Explanatory Notes to the Serious Crime Act 2015.
- ¹⁷ Crown Prosecution Service, '[Female Genital Mutilation Prosecution Guidance](#)', accessed 4 April 2018.
- ¹⁸ *ibid.*
- ¹⁹ Home Office, '[Female Genital Mutilation \(FGM\) Protection Orders](#)', 1 December 2016, p 1
- ²⁰ Crown Prosecution Service, '[Female Genital Mutilation Prosecution Guidance](#)', accessed 6 April 2018.
- ²¹ *ibid.*
- ²² Ministry of Justice, '[Family Court Statistics Quarterly, England and Wales, Annual 2017 Including October to December 2017](#)', 29 March 2018, p 11.
- ²³ Ringrose Law, '[Interim Care Order](#)', accessed 4 April 2018.
- ²⁴ UK Government website, '[If Your Child is Taken into Care](#)', accessed 4 April 2018; and Child Law Advice, '[Care Orders](#)', accessed 4 April 2018.
- ²⁵ This does not include proceedings on an application for leave under section 100(3).
- ²⁶ Children Act 1989, sections 38(2) and 31(2).
- ²⁷ *ibid.*, section 31(9).
- ²⁸ *ibid.*

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