

# Protective measures

*Shabina Begum and Jelina Rahman set out the position as to female genital mutilation in Scotland when compared with England and Wales*



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**F**emale genital mutilation (FGM) has been recognised as a crime throughout the UK since 1985 when the Prohibition of Female Circumcision Act 1985 (PFCA 1985) was passed, yet there still have not been any prosecutions. The Female Genital Mutilation Act 2003 (FGMA 2003) replaced PFCA 1985 in England, Wales and Northern Ireland, and the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (FGM(S)A 2005) replaced PFCA 1985 in Scotland.

## England and Wales

In England and Wales, under FGMA 2003 a person is guilty of an offence where they:

- excise, infibulate or otherwise mutilate the whole or any part of a girl's labia majora, labia minora or clitoris (s1, FGMA 2003); or
- aid, abet, counsel or procure a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris (s2, FGMA 2003).

The provisions applied to acts done by UK nationals and permanent UK residents to girls or women who are also UK nationals or have UK residence (s3, FGMA 2003). In 2015 FGMA 2003 was amended by the Serious Crime Act 2015 (SCA 2015) in England and Wales, and ss1-3, FGMA 2003 was amended to add an extra-territorial aspect, so that the provisions also apply to offences relating to those habitually resident,

rather than only to UK nationals or those with permanent residence.

A new offence of failing to protect girls from risk of genital mutilation was inserted by s72, SCA 2015, and this was inserted into s3A, FGMA 2003. This new offence is in respect of individuals such as parents/guardians or those with *locus parentis* who fail to protect girls under the age of 16 from genital mutilation.

## Scotland

FGM(S)A 2005 re-enacted PFCA 1985 and extended protection by making it a criminal offence to have FGM carried out in Scotland or abroad by giving those offences extra-territorial powers. FGM(S)A 2005 also increased the penalty on conviction on indictment from five to 14 years' imprisonment as a further deterrent.

The Scottish government has worked collaboratively with the UK government to close a loophole in FGM(S)A 2005, extending the reach of the extra-territorial offences in FGM(S)A 2005 to habitual (as well as permanent) UK residents. This strengthening of legislation was included in SCA 2015, and the provisions for Scotland came into force on 3 May 2015.

Unlike FGMA 2003 in England and Wales, whereby detailed insertions were made by virtue of ss72, 73 and 74, SCA 2015 (as noted above), the only amendments and insertions made to FGM(S)A 2005 were by virtue of ss70(2)(a)-(c). The word 'permanent' is now omitted from ss3 and 4, FGM(S)A 2005 (ss70(2)(a)-(b), SCA 2015), and in s6, FGM(S)A 2005 the definition of 'permanent United

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Kingdom resident' was substituted with "'United Kingdom resident'" is an individual who is habitually resident in the United Kingdom' (s70(2)(c), SCA 2015).

Therefore, despite the omitted word 'permanent' and the insertion made as noted above, the FGM(S)A 2005 reads virtually the same as before. The key provisions are:

- **Section 1:** sets out the offence of FGM, and that a person who performs an action in relation to the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of another person is guilty of an offence.
- **Section 3:** a person who aids, abets, counsels, procures or incites FGM under s1, FGM(S)A 2005 commits an offence. An act is a relevant act of genital mutilation if it would, if done by a UK national or UK resident, constitute an offence under s1.
- **Section 4:** extends any act under ss1 and 3 to acts outside the UK where carried out by a UK national or UK resident.
- **Section 5:** provides that a person guilty of an offence under FGM(S)A 2005 is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both), and on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).
- **Section 6:** defines a UK resident as an individual who is habitually resident in the UK.

Note that mandatory reporting of FGM is not a legal requirement in Scotland whereas it is in England and Wales.

### Should Scotland make amendments to implement mandatory reporting?

In 2013 UNICEF recorded that the practice of FGM was most prevalent in 30 countries; these are based in the African and Middle Eastern region

(see: [www.legalease.co.uk/unicef-fgm](http://www.legalease.co.uk/unicef-fgm)). A study carried out by the Scottish Refugee Council (SRC), 'Tackling FGM in Scotland – A Scottish model of intervention' (Helen Baillot, Nina Murray, Elaine Connelly and Dr Natasha Howard, December 2014, see [www.legalease.co.uk/src-fgm](http://www.legalease.co.uk/src-fgm)), found that approximately 23,979 men, women and children were potentially affected by FGM in

sizeable growing community who will require the resources to deal with the risks of FGM.

In respect of accurate data, the SRC study found:

... in Scotland, the recording of data on FGM is not consistent. There is a need for consistent coding and recording of FGM in its different forms across health, child protection

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Scotland, and although they resided in Scotland they were born in one of the 30 countries identified by UNICEF as an 'FGM-practising country'.

The report also stated that:

... the largest community potentially affected by FGM living in Scotland are Nigerians, with 9,458 people resident in Scotland, born in Nigeria.

This was followed by:

... people born in Somalia, Egypt, Kenya, Sudan and Eritrea. There are potentially affected communities living in every local authority area in Scotland, with the largest in Glasgow, Aberdeen, Edinburgh and Dundee respectively.

A closer look at the statistics shows that in 2012:

... 733 children were born in Scotland to mothers from an FGM-practising country, of which, 363 were girls... [therefore] we can approximate a minimum additional 700 children per year born into communities living in Scotland potentially affected by FGM.

The population in Scotland is estimated to be 5.3 million, and given the small population these figures suggest that there is a

and other frontline services in order to better understand the level of risk to girls in Scotland and to inform preventive, protective and response interventions. Training on identification and recording of FGM should be provided to professionals working with affected communities. The Home Office should record and monitor FGM-related asylum claims, and break this data down regionally.

Without clear and accurate data, it will be difficult to accurately quantify how many girls are actually potentially at risk in Scotland.

There were some concerns raised in the SRC report over the FGM(S)A 2005 that the law discriminated against African immigrants and communities. Hence the SRC study highlighted that training on identification and recording of FGM should be provided to regulated professionals to avoid prejudice, especially on understanding the background of FGM, cultural identity, beliefs on female reputations, deep-rooted traditions and that FGM is not considered 'barbaric' by most in these communities.

The mandatory reporting implemented in FGMA 2003 in England and Wales places a duty on persons who work in a 'regulated profession'. Section 74, SCA 2015 provides that healthcare professionals, teachers and social care workers are required to

notify the chief officer of police in the area in which the girl resides, if in the course of their work in their profession they discover that an act of FGM appears to have been carried out on a girl under the age of 18. The report must be made within a month.

A perceived disadvantage of the reporting duty is that it may result in women being less willing to speak to healthcare professionals

support or help them access other services.

If mandatory reporting is to be implemented in Scotland then specialist training and guidance should be delivered to all 'regulated professionals' to record and tackle FGM, which in turn should lead to convictions. The reporting procedure should consider utilising interpreters effectively, especially to avoid losing information through translation.

... direct engagement with those at-risk or affected, and better intelligence for border force officers to help them target people taking girls abroad for FGM.

The figures may suggest that mandatory reporting has had an impact, as evidenced by the number of new cases in England.

## Conclusion

It is concerning that since FGM practice was made illegal there have been no convictions, despite the government estimation of 170,000 women and girls in the UK having undergone the procedure. Furthermore, since FGM(S)A 2005 came into force, no accurate Scottish data or recording has been kept to definitively quantify the nature and extent of FGM in Scotland, despite the significant increase in the communities potentially affected by FGM. In order for accurate recordings to be correctly logged, regulated professionals in Scotland need to be equipped to identify the signs of FGM, therefore training and awareness is required.

Mandatory reporting takes away the pressure from vulnerable women and girls who may find it difficult to report their husband or parents. Police will rely on the regulated professions to identify the signs that FGM has taken place and report this within a reasonable period. The figures available suggest that mandatory reporting has shown results in England.

In recent years, organisations in Central Scotland have been working to raise awareness about FGM and to support migrant, refugee and asylum-seeking women resident in Scotland suffering from the consequences of FGM. Scotland's *National Action Plan to Tackle FGM 2016-2020* (see: [www.legalease.co.uk/scot-gov-fgm](http://www.legalease.co.uk/scot-gov-fgm)) represents a comprehensive and ambitious plan for addressing this complex and often hidden abuse, by building on work currently happening across Scotland, and bringing together best practice alongside the national plan. This ensures the necessary steps are taken to protect girls and women from the harm of FGM practice, which cannot be eradicated overnight. ■

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openly, thus deterring them from reporting the FGM.

However the mandatory reporting duty has introduced some practical advantages in England and Wales, as professionals feel more enabled to directly deal with the topic of FGM without appearing culturally insensitive. Many professionals have also been trained on the physical and behavioural signs of FGM. It has changed the way individuals and practitioners are accountable in ensuring that girls are protected from FGM in England and Wales.

Although at present mandatory reporting has not been implemented in Scotland, s7, FGM(S)A 2005 amended Sch 1, Criminal Procedure (Scotland) Act 1995 by adding an offence against s1, FGM(S)A 2005 where the victim is a child under the age of 17 years. Not only does this enhance the powers of the court in sentencing (with a maximum sentence under indictment of 14 years' imprisonment, per s5, FGM(S)A 2005), but by making it a Sch 1 offence, a referral is made to the Scottish Children's Reporter Administration, whereby victims and siblings of FGM survivors can also be safeguarded through the Children's Hearings System. Furthermore in Scotland there are plans to implement named person laws by August 2018. Every single child in Scotland will be assigned a 'named person' who will be available to listen, advise and help the child or young person and their parent(s), provide direct

Despite the provisions of FGMA 2003 and FGM(S)A 2005, the Home Affairs Committee published a report in 2016 highlighting the failure to successfully prosecute a single case of FGM in the UK, calling it a 'national scandal' (see: [www.legalease.co.uk/fgm-inquiry](http://www.legalease.co.uk/fgm-inquiry)). The report stated that 30 years after the practice was made illegal in the UK, no one had been convicted of FGM. The committee said that the poor records on prosecutions and convictions would 'deter those brave enough to come forward' to report FGM and 'result in the preventable mutilation of thousands of girls'.

According to the report, the scale of the problem remains unknown due to the lack of reliable data, but figures from a City University study (part-funded by the Home Office) estimated that 137,000 women and girls in the UK have undergone a FGM procedure (see: [www.legalease.co.uk/city-fgm](http://www.legalease.co.uk/city-fgm)). The first ever recorded figures for FGM (reported in July 2016) highlighted that between April 2015 and March 2016 there were 5,702 new cases in England, whereby most of the women and girls were born in Africa and underwent the procedure there, but at least 18 had been subjected to FGM in the UK. A BBC report noted that Wales, Northern Ireland and Scotland have not collected any figures on FGM (see: [www.legalease.co.uk/bbc-fgm](http://www.legalease.co.uk/bbc-fgm)). The Home Affairs Committee called on the government to adopt a 'more sophisticated, data-driven approach to eradication', to include: