

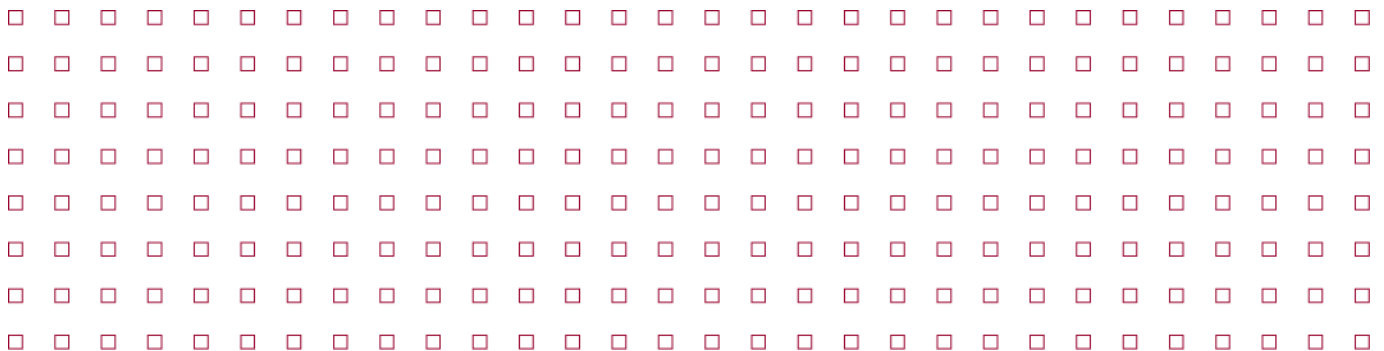


Ministry of
JUSTICE

Female Genital Mutilation Act 2003: Female Genital Mutilation (FGM) Protection Orders

**Interim Guidance for local authorities as a relevant third party
and information relevant to multi-agency partnership working**

**Ministry of Justice – Criminal and Civil Legal Policy Unit
July 2015**



Guidance for local authorities as a relevant third party and information relevant to multi-agency partnership working

Contents

| | |
|---|----|
| Introduction | 3 |
| • Purpose..... | 3 |
| • Audience | 3 |
| Legal context..... | 3 |
| • Female Genital Mutilation Act 2003 | 3 |
| • Relevant third party | 5 |
| Identifying cases and working with victims | 5 |
| • Handling cases where FGM is an issue..... | 7 |
| Do not:..... | 7 |
| • Partnership working..... | 8 |
| FGM Protection Order applications | 8 |
| • Making an application..... | 8 |
| • Court locations | 9 |
| • Special facilities..... | 10 |
| • After a FGM Protection Order has been made..... | 10 |
| Further information..... | 10 |

Introduction

Purpose

1. This guidance is intended to provide additional advice and support to frontline local authority employees when they are considering making an application for a Female Genital Mutilation (FGM) Protection Order as a Relevant Third Party under the Female Genital Mutilation Act 2003¹ (the Act) as amended by section 73, Serious Crime Act 2015. We strongly recommend that those considering making such an application also refer to Multi-agency Practice Guidelines (which can be found at <https://www.gov.uk/government/publications/female-genital-mutilation-guidelines#history>)². In the longer term, we envisage that the content of this guidance will be subsumed into updated Multi-agency Practice Guidelines and/or included in the statutory guidance to be produced under section 75 of the Serious Crime Act 2015.

Audience

2. This guidance should be used by all caseworkers and legal advisers within local authorities who work to:
 - safeguard children and young people from abuse; and
 - protect vulnerable adults - people with support needs - from abuse.
3. Those working in children's social care and adults' social care teams are most likely to come across FGM cases and will therefore need to consider the potential for a FGM Protection Order alongside existing measures of protection in order to discharge their statutory duties. These cases should be brought to the attention of their legal departments. However, it is also important to ensure that those working within education and health services are aware of this guidance in order that they know what needs to be considered should anyone disclose concerns to them.
4. This guidance highlights some of the general issues that need to be considered when making an application to a court. Its contents will be relevant to all those statutory, non-statutory and third sector agencies who may be faced with dealing with a girl or woman³ who has been subjected to FGM or is at risk of becoming a victim of FGM. This includes the police, education, health, housing, benefits and the charitable/voluntary sectors. This guidance may be circulated widely across all agencies.

Legal context

Female Genital Mutilation Act 2003

5. This Act contains a number of FGM related offences, which have been extended by the Serious Crime Act 2015. The Act has not, however, previously contained any specific civil remedy that would assist in protecting potential or actual victims of FGM. Section 73 of the Serious Crime Act 2015 commenced on 17 July 2015. This amended the Female Genital Mutilation Act 2003 by inserting section 5A and Schedule 2, making provision for a new civil law measure – the FGM Protection Order – which can be made by a court to protect a girl who has either been a victim of FGM or is at risk of FGM. The court's powers are wide and orders may contain

¹ <http://www.legislation.gov.uk/ukpga/2003/31/contents>

² This guidance is expected to be updated later this year.

³ FGM can be committed against a girl or woman of any age, but as girls from 5 to 8 are most at risk, 'girl' is used from now on in this guidance to refer to both.

prohibitions, restrictions or requirements or such other terms as the court thinks appropriate to stop or change the behaviour or conduct of those who would seek to subject a girl to FGM or have already arranged for or committed FGM on a victim.

6. Examples of the types of orders the court might make are:
 - to protect a victim or potential victim from FGM from being taken abroad;
 - to order the surrender of passports or any other travel documents, including the passport/travel documentation of the girl to be protected;
 - to prohibit specified persons from entering into any arrangements in the UK or abroad for FGM to be performed on the person to be protected;
 - to include terms in the order which relate to the conduct of the respondent(s) both inside and outside of England and Wales; and
 - to include terms which cover respondents who are, or may become involved in other respects (or instead of the original respondents) and who may commit or attempt to commit FGM against a girl.
7. Orders may also be made against other people, not named as respondents in the application, recognising the complexity of the issues and the numbers of people who might be involved in the wider community.
8. Breach of an order is a criminal offence, and the respondent may be arrested if the police believe there is reasonable cause to suspect there is a breach of the order. The offence of breach of an FGM Protection is subject to a maximum penalty of 5 years imprisonment. As an alternative to prosecution, a breach of an FGM Protection Order can be dealt with through the civil route as a contempt of court, which is punishable by up to 2 years imprisonment. An application can be made to the court for a warrant of arrest where the respondent(s) have failed to comply with the terms of the order or is otherwise in contempt of court in relation to the order
9. Under the Act, the following three categories of person can make an application for a FGM Protection Order:
 - the person to be protected, without leave of the court;
 - a relevant third party, who can make an application on behalf of a victim or potential victim, without the leave of the court; and
 - any other person on behalf of the person to be protected, as long as they obtain the court's permission to make an application.
10. A court can also make an FGM Protection Order, without application being made to it, in certain family proceedings. In addition, a criminal court can also make an FGM Protection Order, without application, in criminal proceedings for a genital mutilation offence, where the person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings. An FGM Order can also be made in such criminal proceedings to protect a girl at risk, whether or not they are the victim of the offence in relation to the criminal proceedings. For example, the younger sister of the victim of a genital mutilation offence could also be protected by the court in criminal proceedings.
11. It should be noted that an application for a FGM Protection Order is not an alternative to the work of the police and Crown Prosecution Service investigating and prosecuting crimes. Crimes may be investigated and offenders prosecuted at the same time as an application is made or an order is in force. It is a criminal offence for someone to commit or commission FGM on a person. Perpetrators (who could be parents, family members or members of the wider community) can be prosecuted for conspiring to commit or attempting to commit an FGM offence. This includes aiding, abetting, counselling, procuring, encouraging or assisting another person to commit or attempting to commit an FGM offence.

12. It should also be noted that referral to an accredited family law practitioner to deal with wider issues of private or public family law where relevant may be equally important to meet the client's needs.

Relevant third party

13. In July 2014, the Government consulted⁴ on the creation of the FGM Protection Order, including asking for views on who should be classified as a relevant third party. The majority of those who responded to this question proposed that local authorities should be specified as such. The Female Genital Mutilation Protection Orders (Relevant Third Party) Regulations 2015⁵ gives effect to this, enabling local authorities to act as relevant third parties from 17 July 2015. This means that when local authorities make an application for a FGM Protection Order, they should complete Form FGM001 (see paragraph 38 below) which enables them to make an application without first needing to apply for the leave of the court to do so.

Identifying cases and working with victims

14. The Multi-agency Practice Guidelines (available at <https://www.gov.uk/government/publications/female-genital-mutilation-guidelines#history>)⁶ provide vital information on the issues around FGM, the motives of those who promote it and the consequences for victims. The following key points should be noted:

- FGM is illegal in the UK. For the purposes of the criminal law in England, Wales and Northern Ireland, FGM is mutilation of the labia majora, labia minora and clitoris. The World Health Organisation has classified FGM into four types:
 - (i) Type 1: Clitoridectomy. This involves partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and, in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).
 - (ii) Type 2: Excision: This involves partial or total removal of the clitoris and the labia minora (the labia are the lips that surround the vagina).
 - (iii) Type 3 – Infibulation. This involves narrowing of the vagina opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner or outer labia, with or without removal of the clitoris.
 - (iv) Type 4 – Other. This involves all other harmful procedures to the female genitalia for non-medical purposes.
- FGM is known by a number of names, including 'female genital cutting', 'circumcision' or 'initiation'. It is practised by families for a variety of complex reasons but often in the belief that it is beneficial for the girl. The reasons given can include:
 - (i) it brings status and respect to the girl;
 - (ii) it preserves a girl's virginity/chastity;
 - (iii) it is part of being a woman;
 - (iv) it is a rite of passage;
 - (v) it gives a girl social acceptance, especially for marriage;

⁴ <https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>

⁵ SI 2015 No. 1422

⁶ This guidance is expected to be updated later this year.

- (vi) it upholds the family honour;
- (vii) it cleanses and purifies the girl;
- (viii) it gives the girl and her family a sense of belonging to the community;
- (ix) it fulfils a religious requirement believed to exist;
- (x) it perpetuates a custom/tradition;
- (xi) it helps girls and women to be clean and hygienic;
- (xii) it is aesthetically desirable;
- (xiii) it is mistakenly believed to make childbirth safer for the infant; and
- (xiv) it rids the family of bad luck or evil spirits.

- FGM constitutes a form of child abuse and violence against women and has significant physical and mental health consequences both in the short and long term. The short term consequences for a girl or woman subjected to FGM include, severe pain, emotional and psychological shock, haemorrhage, infection, urinary retention, damage to other organs or even death. The longer term implications for girls or women who have had FGM Types 1 and 2 are likely to be related to the trauma of the actual procedure, while health problems caused by FGM Type 3 are extremely harmful and cause more severe damage to health and wellbeing, such as damage to the reproduction system, including infertility.
 - The age at which girls or women undergo FGM varies according to the community in which it is practiced. The procedure can be carried out when the girl is new born, during childhood or adolescence, at marriage or during the first pregnancy. However, the majority of cases of FGM are thought to take place between the ages of 5 and 8 and therefore girls within that age bracket are considered to be at a higher risk.
15. Girls of school age who are subjected to FGM overseas are thought to be taken abroad at the start of the school holidays, particularly the summer holidays, in order for there to be sufficient time to recover before returning to school. Although not an exhaustive list, the signs when FGM may be imminent are as follows:
- when a female family elder, visiting from another country, is around (particularly where FGM is a cultural practice);
 - where FGM is heard in conversation by a professional, i.e. where a girl tells other children about it, confides that she is to have a special procedure or attend a special occasion to become a woman;
 - where a girl requests help from a teacher or another adult if she is aware or suspects that she is at immediate risk;
 - where parents state that they or a relative will take the child out of the country for a prolonged period;
 - where a girl talks about a long holiday to her country of origin or another country where FGM is prevalent; or
 - where parents seek to prevent their children from learning about FGM.
16. There are also a number of indications that a girl has already been subjected to FGM. These include the following, although the list below is not exhaustive:
- a girl may have difficulty walking, sitting or standing and may even look uncomfortable. She may specifically talk about pain or discomfort between her legs;
 - a girl may spend longer than normal in the bathroom or toilet due to difficulties urinating. A girl may spend long periods of time away from a classroom during the day with bladder or menstrual problems;
 - a girl may have frequent urinary, menstrual or stomach problems;
 - there may be prolonged or repeated absences from school or college;
 - a prolonged absence from school or college with noticeable behaviour changes (e.g. withdrawal or depression) on the girl's return could be an indication that she has recently undergone FGM;

- a reluctance to undergo normal medical examinations; and
- a girl may confide in a professional or ask for help but may not be explicit about the problem due to fear or embarrassment.

Handling cases where FGM is an issue

- Local authorities should refer to the Multi-agency Practice Guidelines⁷ as soon as they are alerted to the possibility that a girl is likely to be subjected to FGM or has already been a victim of FGM. Practitioners may have limited time to protect a girl and to take urgent effective action, particularly where there is the possibility that they may be taken out of the country to be subjected to FGM.
- Safeguarding girls at risk of FGM poses specific challenges as the families involved may give no other cause for concern. For example, they may in all other respects be loving and caring parents and have good relationships with their children. However, there remains a duty to act to safeguard girls at risk and practitioners must be aware of the need to do the following:
 - ✓ **always take the issue seriously and recognise the need to protect a girl from potentially significant harm.** Many professionals may find it hard that a parent, for example, will arrange for FGM to be committed on their daughter and have her sent abroad for that purpose. Depending on the cultural practice, young girls may be told by their parents that it is a special procedure that will enable them to become a woman;
 - ✓ **see the girl on their own** in a private place where the conversation cannot be overheard or seen by the person acting on their behalf;
 - ✓ **gather as much information as possible** about the potential victim or victim – it may be the only opportunity;
 - ✓ **remind the potential victim or victims of their rights**, i.e. that FGM is illegal in the UK and that FGM is, depending on the age of the girl, considered to be child abuse; and
 - ✓ **discuss the case with other relevant agencies.** For example, if a girl has already been subjected to FGM, then the police should be informed that an illegal act has been committed.

Do not:

- ✗ send the girl or person acting on her behalf away and dismiss the allegation that FGM could be committed on the basis of little evidence;
 - ✗ inform the girl's family, friends or members of the community that she has sought help; or
 - ✗ attempt to mediate.
- Areas may wish to devise their own localised check-list of hints on handling for front-line staff. We recommend that in all cases, however, practitioners speak to their legal departments so they are fully aware and can advise on the types of legal remedies that might be available to support a girl requiring protection from an early stage. Further information on the full range of legal remedies that are available in addition to the FGM Protection Order can be found in the Multi-Agency Practice Guidelines.
 - Provision has been made for FGM Protection Orders to be made ex parte – without notice of the proceedings being given to the respondent, for example where there is reason to believe that the girl is likely to be harmed by the respondent or be removed from the jurisdiction if they were notified that a hearing was to take place on FGM. Consideration should also be given to whether it may also be appropriate for a FGM

⁷ <https://www.gov.uk/government/publications/female-genital-mutilation-guidelines#history>. This guidance will, however, be updated later this year.

Protection Order to be made alongside other orders of the court (depending upon the facts of each case).

Partnership working

21. Multi-agency working to achieve an effective co-ordinated local response to protect a potential victim or victim of FGM will be essential, particularly in sharing information in order to provide the necessary protection in a timely and effective way.
22. We strongly recommend that local authorities take steps to forge links with local schools, health services, the police and the voluntary sector and agree an appropriate local system for referrals, support and response. These linkages are vital as cases progress through the courts and also following the making of a FGM Protection Order, when contact with the victim needs to be maintained not just to monitor their welfare but also to ensure the terms of the order remain effective.
23. Local areas should agree with partners the best referral routes for cases. Information Sharing and Referral Protocols should be implemented as soon as possible between all agencies. It is also important to take into account the network that exists among extended families and communities and how quickly information may be passed among them. The reality is that this latter network could include anyone working in any number of agencies made aware of a referral or an application. Professionals could be put under enormous pressure to divulge information and face conflict where professional duties are compromised by very strong community ties. Protocols must ensure appropriate steps are in place prevent potential victims from being at immediate risk.
24. An order made by a court could include provisions that an individual should surrender their passport, and that of the potential victim, in order to prohibit them from being taken abroad to be subjected to FGM. It would therefore be essential to alert the relevant agency, for example the police or border control authorities, particularly where there is an imminent threat of a person being taken abroad.

FGM Protection Order applications

Making an application

25. Applications for a FGM Protection Order made by a Local Authority should be made via its legal department, in close liaison with the relevant frontline practitioner. Caseworkers and social workers should not pursue an application themselves.
26. All the relevant information about making an application for a FGM Protection Order is contained in HM Courts & Tribunals Service leaflet FGM700. The application itself is made on Form FGM001. This form enables an application to be made by a relevant third party and to include background information (i.e. evidence in support of the application) about what they know about the circumstances of the person to be protected. Links to all the court forms are listed at the end of this guidance. Further background and guidance from the court perspective is also attached.
27. It is possible, in emergency situations, to make an application *ex parte*, that is, without notice to the respondent(s). This may be necessary in situations where the girl to be protected is in immediate danger or at risk of being taken abroad. Such applications should be supported by a witness statement, verified by a statement of truth. The court can tell you how to do this.
28. The courts can also direct that certain information be withheld in order to protect the victim or any other person who may be at further risk if certain facts were known, or for any other good reason.

29. A FGM Protection Order can be made in other proceedings, for example, where there are any other family proceedings before the court, where the court considers that an FGM protection should be made to protect a girl (whether or not she is a party to the proceedings) or where a person is a respondent to any proceedings for an FGM Protection Order and is also a party to the current family proceedings. A court can also make an order, without an application being made to it, in criminal proceedings for a genital mutilation offence. A court can make an order to protect a girl, whether or not the girl is the victim of the offence in relation to the criminal proceedings, or where the person, who is a respondent to any proceedings for a FGM Protection Order, is a defendant in the criminal proceedings.
30. Applications can also be made to the family court to vary, extend or discharge a FGM Protection Order.

Court locations

31. Given the specialist nature of these cases, 23 family courts have been designated to deal with applications for FGM Protection Orders in order to build up expertise in this area. Applications may also be heard at the High Court in London (RCJ) and wherever there is High Court jurisdiction elsewhere. Those making an application, may wish to draw the court's attention to any particular factors as to why a specific court may be more appropriate, e.g. where the victim wishes to remain anonymous. The family courts included are:
 - Central Family Court
 - Birmingham Civil and Family Justice Centre
 - Bradford Combined Court
 - Brighton Family Court Hearing Centre
 - Bristol Civil and Family Justice Centre
 - Cardiff Civil and Family Justice Centre
 - Derby Combined Court
 - East London Family Court
 - Leeds Combined Court
 - Leicester County Court and Family Centre
 - Liverpool Civil and Family Court Hearing Centre
 - Luton County Court and Family Court
 - Manchester County Court and Family Court
 - Newcastle upon Tyne Combined Court Centre
 - Norwich Combined Court and Family Hearing Centre
 - Oxford Combined Court and Family Court Hearing Centre,
 - Plymouth Combined Court
 - Portsmouth Combined Court Centre
 - Preston Family Court
 - Reading County Court and Family Court Hearing Centre
 - Sheffield Combined Court Centre
 - Teeside Combined Court
 - West London Family Court
32. The contact details for these courts can be found in the HM Courts & Tribunals Service leaflet FGM700.
33. The courts have generally assigned specific court staff to liaise on emergency applications. Specific judges have also been assigned to deal with applications, including those cases where special facilities are required. In cases that involve a woman considered to be an adult with support needs who lacks capacity or who may have learning disabilities, practitioners may wish to check that the judge is able to deal with both the FGM and capacity issues.

Special facilities

34. Those making an application for a FGM Protection Order will need to consider as part of the application form whether there is a need for any special facilities if the potential victim or victim is going to attend court hearings. The court may be able to offer separate court waiting rooms, separate court entrances and exits or parking on court premises to facilitate easy access to the court building for intimidated witnesses. Witness protection facilities may also be available in some courts. There could also be facilities available to screen the witness, or to allow evidence to be given by live video link from a remote location or in private. It is recommended that enquiries be made with the relevant court as soon as possible after an application has been made.
35. HM Courts & Tribunals Service can provide an interpreter if required. This is irrespective of whether solicitors are involved or public funding is available. An interpreter will generally be available for the applicant. Contact should be made with the relevant court to make the necessary arrangements.

After a FGM Protection Order has been made

36. Once a FGM Protection Order is in place, it is essential that local authorities work closely with the victim and the relevant support service if there is one, to ensure it offers the level of protection that was envisaged. The earlier section on partnership working is relevant here. Links need to be established with other agencies, in particular the police, to ensure ongoing support is available to victims as needed.
37. If an FGM Protection Order is breached, it can either be dealt with in the Family Court (as contempt of court proceedings) or in a criminal court (as a criminal matter). If the police investigate a possible breach as a criminal offence, they can arrest those suspected of breaching the terms of the order. Following a police investigation, the Crown Prosecution Service will decide whether to proceed with a prosecution for the breach and / or any other offences that might be disclosed. Where the decision is taken, however, to pursue breach as a contempt of court matter, an application should be made to the Family Court for an arrest warrant. This should be supported by a statement setting out how the order has been breached. The order will need to be served on the respondents.

Further information

38. For further information on FGM please see below:

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| Ministry of Justice | Jean McMahon Criminal and Civil Law Policy Unit | Jean.McMahon@justice.gsi.gov.uk Tel No: 0203 334 3208 |
| HM Courts & Tribunals Service Forms | FGM001 Application form for FGM Protection Order FGM002 Notice of Proceedings for a FGM Protection Order FGM003 Application to vary, extend or discharge FGM Protection Order | hmctsformfinder.justice.gov.uk |

| | | |
|---|--|---|
| | <p>FGM004 FGM Protection Order</p> <p>FGM005 Application for a warrant of arrest for a FGM Protection Order</p> <p>FGM006 Application for leave to apply for a FGM Protection Order</p> <p>FGM007 Application to join/cease to be a party to a FGM Protection Order</p> <p>FGM700 FGM Protection Orders – Court leaflet</p> | |
| Multi-Agency Practice Guidelines | The current guidance is available at the weblink shown in the column opposite. However, this guidance is being updated (anticipated to be available later this year). | https://www.gov.uk/government/publications/female-genital-mutilation-guidelines#history |
| Legislation | <ul style="list-style-type: none"> • Female Genital Mutilation Act 2003 • Section 73, Serious Crime Act 2015 • Explanatory notes to Serious Crime Act 2015 (section 73) | http://www.legislation.gov.uk/ukpga/2003/31/contents http://www.legislation.gov.uk/ukpga/2015/9/section/73 http://www.legislation.gov.uk/ukpga/2015/9/notes/division/3/5/2/8 |
| Government website | | https://www.gov.uk/female-genital-mutilation |
| NSPCC | Contact the NSPCC anonymously if you're worried that a girl or young woman is at risk of FGM or is a victim of FGM. | <p>FGM Helpline Email: fgmhelp@nspcc.org.uk Telephone: 0800 028 3550 Find out about call charges</p> |

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