

# SERIOUS CRIME ACT 2015

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### Part 5: Protection of Children and Others

#### Commentary on Sections

#### *Section 70: Offence of female genital mutilation: extra-territorial acts*

278. Section 3 of the 2003 Act provides that aiding, abetting, counselling or procuring a person who is not a UK national or permanent UK resident to do a relevant act of female genital mutilation outside the UK in relation to a UK national or permanent resident is an offence. Section 4 of the 2003 Act provides that sections 1 to 3 extend to acts done outside the UK by UK nationals or permanent UK residents.

279. Section 6(3) of the 2003 Act defines a “permanent UK resident” as an individual who is settled in the UK within the meaning of the Immigration Act 1971. Section 33(2A) of the Immigration Act 1971 provides for when a person is to be regarded as settled in the UK. It states:

“Subject to section 8(5) above, references to a person being settled in the United Kingdom are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain.

*Section 33(2)* explains when a person is to be treated as ordinarily resident and states that:

“Except as otherwise provided a person is not to be treated for the purposes of any provision of this Act as ordinarily resident in the United Kingdom or in any of the Islands at a time when he is there in breach of the immigration laws.

280. *Subsection (1)(a) and (b)* amends both sections 3 and 4 of the 2003 Act so that they apply to UK nationals and residents rather than, as now UK nationals and permanent UK residents. *Subsection (1)(c)* replaces the definition of a permanent UK resident in section 6(3) of the 2003 Act with a definition of a UK resident; that definition provides that a UK resident is someone who is habitually resident in the UK. The term habitually resident covers a person’s ordinary residence, as opposed to a short, temporary stay in a country. To be habitually resident in the UK it may not be necessary for all, or any, of the period of residence here to be lawful<sup>1</sup>. Whether a person is habitually resident in the UK will be determined on the facts of a given case. Taken together, paragraphs (a) to (c) of subsection (1) have the effect of broadening the extra-territorial jurisdiction provided for in the 2003 Act so that it will now be possible to prosecute a non-UK national for an offence under sections 1 to 3 of that Act where that person is habitually resident in this country, rather than permanently resident as now. Correspondingly, the section 3 offence will now cover situations where the victim of the FGM procedure is habitually resident. All the offences will continue to apply to UK nationals as is currently the case.

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<sup>1</sup> See *Mark v Mark* [2005] UKHL 42

*These notes refer to the Serious Crime Act 2015 (c.9)  
which received Royal Assent on 3rd March 2015*

281. The Prohibition of Female Genital Mutilation (Scotland) Act 2005 makes similar provision to the 2003 Act. *Subsection (2)* makes similar amendments as subsection (1) to sections 3, 4 and 6 of that Act.