

FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) (SCOTLAND) ACT 2020

EXPLANATORY NOTES

FEMALE GENITAL MUTILATION PROTECTION ORDERS

Section 1: Female genital mutilation protection orders

Inserted section 5M: Variation and discharge of orders

63. Section 5M provides for the variation and discharge of orders.
64. Subsection (1) sets out the persons who may apply to the court to vary or discharge a female genital mutilation protection order: a party to the proceedings for the order, a protected person, any other person affected by the order, the Lord Advocate, a relevant local authority, the Chief Constable of Police Scotland, or any other person with the permission of the court. “Relevant local authority” takes its meaning from inserted section 5C(6) and will be the local authority in whose area a protected person is present or, in the case of an order protecting a described group, the local authority in whose area any person in that group is present.
65. Subsection (2) provides that any person who may apply to vary or discharge a female genital mutilation protection order can also, with the court’s agreement, join in proceedings relating to an application made by any other person mentioned in subsection (1).
66. Subsection (3) provides that in deciding whether to grant permission to a person to make an application or to join in proceedings, the court must have regard to all the circumstances including (where applicable) the applicant’s connection with and knowledge of the person who is a party to the proceedings for the order, a protected person, or a person affected by the order (as the case may be), the wishes and feelings of that person and any reason why the application is being made by the applicant and not that person.
67. Subsection (4) provides that the court need only consider the wishes and feelings of that person to such an extent as the court considers appropriate, taking into account the person’s age and understanding.
68. Subsection (5) enables a court, if it considers it just to do so, to vary or discharge a female genital mutilation protection order even when no application to vary or discharge the order has been made.
69. Subsection (6) prevents an application to vary an order from being used to extend orders which have been made for a specified period. The extension to orders made for a specified period is dealt with in inserted section 5N.