

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 5Q: Offences relating to orders

83. Section 5Q makes it a criminal offence to breach a female genital mutilation protection order (by action or failure to act) under the circumstances described in the section.
84. The section makes it an offence at subsections (3) and (4) to knowingly do a thing which another person is prohibited from doing by a female genital mutilation protection order, or to knowingly hinder a person from carrying out an obligation they are required to do under such an order. Accordingly, where an order prevents a person from allowing a child at risk contact with a known FGM perpetrator it will be an offence for another person to do so if they know that an order is in place prohibiting that contact. Similarly, if an order were to require that a parent take a child to the doctor for a regular check-up, it would be an offence for a grandparent to prevent that if they know that an order is in place requiring that check-up to take place.
85. Subsection (5) sets out that if conduct or failure to act which would constitute an offence takes place outwith Scotland, the offence may be prosecuted in Scotland as if the conduct or failure to act took place in the sheriff court district in which the person is apprehended or in custody, or in a sheriff court district determined by the Lord Advocate.
86. Subsection (6) prevents conduct or failure to act which leads to conviction for an offence under this section from being punished as a contempt of court. As a female genital mutilation protection order will be a form of civil order, a person who knowingly breaches it could be held in contempt of court at common law. This section prevents there being double punishment for the same conduct or failure to act.
87. Subsection (7) sets out the penalties that may be imposed, namely:
 - on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).