

These notes relate to the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 (asp 9) which received Royal Assent on 24th April 2020

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

EXPLANATORY NOTES

FEMALE GENITAL MUTILATION PROTECTION ORDERS

Section 6: Crown Application of the 2005 Act

102. The Act binds the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA), but that is of no practical consequence as its substantive provisions will be inserted into the 2005 Act and into the Children's Hearings (Scotland) Act 2011. The 2005 Act, being pre-ILRA, did not bind the Crown when enacted, and so any amendment of it will not bind the Crown. Section 6 of the Act therefore inserts a new section into the 2005 Act (section 7B) which provides for Crown application to a limited extent.
103. Subsection (1) of inserted section 7A provides that the sections relating to female genital mutilation protection orders apply to the Crown. Subsection (2) provides that the Crown cannot be held criminally liable for breaching a female genital mutilation protection order or equivalent UK order. Subsection (3) provides that the Court of Session may, on an application by the Lord Advocate, declare unlawful any such breach by the Crown.
104. The Children's Hearings (Scotland) Act 2011 (amended by section 8 of the Act) does not require to be amended in this way as it is governed by ILRA and already applies to the Crown.