

# **SERIOUS CRIME ACT 2015**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

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

#### **Commentary on Sections**

#### ***Section 71: Anonymity for victims of female genital mutilation***

282. This section inserts a new section 4A and Schedule 1 into the 2003 Act which make provision for the anonymity of victims of FGM. The provisions are modelled on those in the Sexual Offences (Amendment) Act 1992 which provides for a scheme to protect the anonymity of victims of certain sexual offences, such as rape. Paragraph 1 of new Schedule 1 to the 2003 Act prohibits the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under the 2003 Act (including the new offence provided for in section 72, as well as aiding, abetting, counselling and procuring the “principal offence”). The prohibition lasts for the lifetime of the alleged victim. The prohibition covers not just more immediate identifying information, such as the name and address or a photograph of the alleged victim, but any other information which, whether on its own or pieced together with other information, would help identify the alleged victim. “Publication” is given a broad meaning (see paragraph 9(1) of new Schedule 1) and would include traditional print media, broadcasting and social media such as Twitter or Facebook.
283. Paragraph 1(4) to (8) of new Schedule 1 makes provision for a trial judge to disapply the restrictions on publication. The power to waive the restrictions is limited, in effect, to the circumstances necessary to allow a court to ensure that a defendant receives a fair trial in accordance with Article 6 of the ECHR or to safeguard freedom of expression in accordance with Article 10 of the ECHR.
284. Paragraph 2 of new Schedule 1 makes it a summary offence to contravene the prohibition on publication. The maximum penalty in England and Wales is an unlimited fine (or a level 5 fine (currently £5,000) in Northern Ireland). This is a strict liability offence so it will not be necessary for the prosecution to show that the defendant intended to identify the victim. In relation to newspapers or other periodicals (whether in print form or online editions) and radio and television programmes, the offence is directed at proprietors, editors, publishers or broadcasters rather than individual journalists. Any prosecution for the offence requires the consent of the Attorney General or the Director of Public Prosecutions for Northern Ireland as the case may be.
285. Paragraph 3 of new Schedule 1 provides for two defences. The first is where the defendant had no knowledge of the content of the publication or of the allegation. The second is where the victim (where aged 16 or over) had freely given written consent to the publication. These defences impose a reverse burden on the defendant, that is, it is for the defendant to prove that the defence is made out on a balance of probabilities, rather than imposing a requirement on the prosecution to show, beyond reasonable doubt, that the defence does not apply. The policy aim behind the offence is

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

to encourage victims to report FGM offences committed against them, and to increase the number of prosecutions for FGM, by helping to ensure the victim feels safe in their anonymity if they report a crime against them. There is a strong public interest in achieving this. The reverse burden imposed invites the defendant in a particular case to justify their publication of matter identifying the alleged victim of FGM on the basis that they were not aware and did not suspect or have reason to suspect that an allegation had been made or that the publication contained matter likely to lead members of the public to identify the alleged victim. These matters to be proved on the balance of probabilities are matters within the knowledge of the defendant.

286. Paragraphs 4 to 8 of new Schedule 1 are designed to ensure that the offence provided for in paragraph 2 of the Schedule is consistent with the UK's obligations under the E-Commerce Directive<sup>1</sup>. Under paragraphs 4 to 8 providers of information society services who are established in England and Wales or Northern Ireland are covered by the new offence even when they are operating in other European Economic Area states. Paragraphs 6 to 8 of the new Schedule provide exemptions for internet service providers from the offence in limited circumstances, such as where they are acting as mere conduits for prohibited material or are storing it as caches or hosts.

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<sup>1</sup> [http://ec.europa.eu/internal\\_market/e-commerce/directive/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm)