

Serious Crime Bill [HL]

AMENDMENTS
TO BE MOVED
ON REPORT

Clause 67

LORD BATES

- 1 Page 50, line 18, at end insert –
“() after section 4 insert –

“4A Anonymity of victims

Schedule 1 provides for the anonymity of persons against whom a female genital mutilation offence (as defined in that Schedule) is alleged to have been committed.”;

Clause 67

LORD BATES

- 2 Page 50, line 21, at end insert –
“(1A) Insert as Schedule 1 to that Act the following Schedule –

“SCHEDULE 1

ANONYMITY OF VICTIMS

Prohibition on the identification of victims in publications

- 1 (1) This paragraph applies where an allegation has been made that a female genital mutilation offence has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime.
- (3) For the purposes of this Schedule, any consent of the person to an act giving rise to the alleged offence is not to be taken as

preventing that person from being regarded as a person against whom the alleged offence was committed.

- (4) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all in England and Wales and Northern Ireland, or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.
- (5) The first condition is that the conduct of a person's defence at a trial of a female genital mutilation offence would be substantially prejudiced if the direction is not given.
- (6) The second condition is that—
 - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
 - (b) it is in the public interest to remove or relax the restriction.
- (7) A direction under sub-paragraph (4) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (8) In this paragraph "the court" means—
 - (a) in England and Wales, a magistrates' court or the Crown Court;
 - (b) in Northern Ireland, a magistrates' court, a county court or the Crown Court.

Penalty for breaching prohibition imposed by paragraph 1(2)

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (3) The persons responsible for a publication are as follows—

<i>Type of publication</i>	<i>Persons responsible</i>
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.

<i>Type of publication</i>	<i>Persons responsible</i>
Relevant programme	Any person who— (a) is a body corporate engaged in providing the programme service in which the programme is included, or (b) has functions in relation to the programme corresponding to those of an editor of a newspaper.
Any other kind of publication	Any person who publishes the publication.

- (4) If an offence under this paragraph is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) a senior officer of a body corporate, or
 - (b) a person purporting to act in such a capacity,
 the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) “Senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (6) Proceedings for an offence under this paragraph—
 - (a) if alleged to have been committed in England and Wales, may not be instituted except by, or with the consent of, the Attorney General;
 - (b) if alleged to have been committed in Northern Ireland, may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

Offence under paragraph 2: defences

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
 - (a) the publication included the matter in question, or
 - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.

- (4) The defence in sub-paragraph (3) is not available if—
 - (a) the victim was under the age of 16 at the time when her consent was given, or
 - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining her consent.
- (5) In this paragraph “the victim” means the person against whom the female genital mutilation offence in question is alleged to have been committed.

Special rules for providers of information society services

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in England and Wales or Northern Ireland).
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales or Northern Ireland.
The offence may for all incidental purposes be treated as having been committed at any place in England and Wales or Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
 - (a) is necessary for the purposes of the public interest objective,
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
 - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.
- 6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
 - (a) initiate the transmission,
 - (b) select the recipient of the transmission, or
 - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
 - (a) providing access to a communication network, and

- (b) transmitting information in a communication network, include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information –
- (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider –
- (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that –
- (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if –
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or
 - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

- 9 (1) In this Schedule –
- “domestic service provider” means a service provider established in England and Wales or Northern Ireland;
 - “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June

2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“female genital mutilation offence” means –

- (a) an offence under section 1, 2, 3 or 3A;
- (b) an offence of attempt or conspiracy to commit any such offence;
- (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to any such offence;

“information society services” –

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

(2) For the purposes of the definition of “publication” in subparagraph (1) –

- (a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;
- (b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.

- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)–
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider –
 - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
 - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
 - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
 - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.”

After Clause 67

LORD BATES

- 3 Insert the following new Clause –

“Offence of failing to protect girl from risk of genital mutilation

- (1) The Female Genital Mutilation Act 2003 is amended as follows.
- (2) After section 3 insert –

“3A Offence of failing to protect girl from risk of genital mutilation

- (1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time is guilty of an offence.
This is subject to subsection (5).
- (2) For the purposes of this section a person is “responsible” for a girl in the following two cases.
- (3) The first case is where the person –
 - (a) has parental responsibility for the girl, and
 - (b) has frequent contact with her.
- (4) The second case is where the person –
 - (a) is aged 18 or over, and
 - (b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent.
- (5) It is a defence for the defendant to show that –
 - (a) at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being

- committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or
- (b) the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.
- (6) A person is taken to have shown the fact mentioned in subsection (5)(a) or (b) if—
- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsection (3)(b), where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.
- (8) In this section—
- “genital mutilation offence” means an offence under section 1, 2 or 3 (and for the purposes of subsection (1) the prosecution does not have to prove which section it is);
- “parental responsibility”—
- (a) in England Wales, has the same meaning as in the Children Act 1989;
- (b) in Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
- “the relevant time” means the time when the mutilation takes place.”
- (3) In section 4 (extension of sections 1 to 3 to extra-territorial acts)—
- (a) in the heading, for “3” substitute “3A” and after “acts” insert “**or omissions**”;
- (b) after subsection (1) insert—
- “(1A) An offence under section 3A can be committed wholly or partly outside the United Kingdom by a person who is a United Kingdom national or a United Kingdom resident.”
- (4) In section 5 (penalties for offences)—
- (a) for “A person guilty of an offence under this Act” substitute—
- “(1) A person guilty of an offence under section 1, 2 or 3”;
- (b) at the end insert—
- “(2) A person guilty of an offence under section 3A is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both),
- (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both),
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).”

After Clause 67

LORD BATES

4 Insert the following new Clause –

“Female genital mutilation protection orders

(1) After section 5 of the Female Genital Mutilation Act 2003 insert –

“5A Female genital mutilation protection orders

- (1) Schedule 2 provides for the making of female genital mutilation protection orders.
- (2) In that Schedule –
 - (a) Part 1 makes provision about powers of courts in England and Wales to make female genital mutilation protection orders;
 - (b) Part 2 makes provision about powers of courts in Northern Ireland to make such orders.”

(2) After Schedule 1 to that Act (inserted by section {f01}(1A)) insert –

“SCHEDULE 2**FEMALE GENITAL MUTILATION PROTECTION ORDERS****PART 1****ENGLAND AND WALES***Power to make FGM protection order*

- 1 (1) The court in England and Wales may make an order (an “FGM protection order”) for the purposes of –
 - (a) protecting a girl against the commission of a genital mutilation offence, or
 - (b) protecting a girl against whom any such offence has been committed.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
- (3) An FGM protection order may contain –
 - (a) such prohibitions, restrictions or requirements, and
 - (b) such other terms,
 as the court considers appropriate for the purposes of the order.
- (4) The terms of an FGM protection order may, in particular, relate to –
 - (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
 - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who

- commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
 - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are –
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
 - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).

Applications and other occasions for making orders

- 2 (1) The court may make an FGM protection order –
- (a) on an application being made to it, or
 - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by –
- (a) the girl who is to be protected by the order, or
 - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including –
- (a) the applicant’s connection with the girl to be protected;
 - (b) the applicant’s knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where –
- (a) any other family proceedings are before the court (“the current proceedings”),
 - (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
 - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.
- (7) In this paragraph –
- “family proceedings” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 63(1) and (2) of that Act), but also includes –

- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
 - (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act), and
 - (c) proceedings in which the court has made an order under section 50 of the Children Act 1989 (recovery of abducted children etc);
- “relevant third party” means a person specified, or falling within a description of persons specified, by regulations made by the Lord Chancellor (and such regulations may, in particular, specify the Secretary of State).
- (8) Regulations under sub-paragraph (7) are to be made by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

Power to make order in criminal proceedings

- 3 The court before which there are criminal proceedings in England and Wales for a genital mutilation offence may make an FGM protection order (without an application being made to it) if –
- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and
 - (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

Offence of breaching order

- 4 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.
- (2) In the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this paragraph is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

- (6) A reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.
- (7) “Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

Ex parte orders

- 5 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—
 - (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,
 - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
 - (c) whether there is reason to believe that—
 - (i) the respondent is aware of the proceedings but is deliberately evading service, and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.
- (3) The court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).
- (4) The opportunity must be—
 - (a) as soon as just and convenient, and
 - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

- 6 (1) The court may vary or discharge an FGM protection order on an application by—
 - (a) any party to the proceedings for the order,
 - (b) the girl being protected by the order (if not a party to the proceedings for the order), or
 - (c) any person affected by the order.
- (2) In the case of an order made in criminal proceedings under paragraph 3, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.

- (3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 2(1)(b) or 3 even though no application under sub-paragraph (1) above has been made to the court.
- (4) Paragraph 5 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

Arrest under warrant

- 7 (1) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order.
- (2) The relevant judge must not issue a warrant on an application under sub-paragraph (1) unless –
 - (a) the application is substantiated on oath, and
 - (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.
- (3) In this paragraph “interested party”, in relation to an FGM protection order, means –
 - (a) the girl being protected by the order,
 - (b) (if a different person) the person who applied for the order, or
 - (c) any other person;but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge.

Remand: general

- 8 (1) The court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.
- (2) Paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph.
- (3) Sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.
- (4) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Remand: medical examination and report

- 9 (1) Any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.
- (2) If such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.
- (3) If the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time.
- (4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.
- (5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

Remand: further provision

- 10 (1) Where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.
- (2) If remanded in custody, the person is to be committed to custody to be brought before the court—
- (a) at the end of the period of remand, or
- (b) at such earlier time as the court may require.
- (3) The court may remand a person on bail—
- (a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or
- (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above.
- (4) Where a person is brought before the court after remand the court may further remand the person.
- (5) In this paragraph and in paragraphs 11 to 14, references to “the court” includes a reference to a judge of the court or, in the case of proceedings in a magistrates’ court, a justice of the peace.
- 11 (1) Where a person is remanded on bail, the court may direct that the person’s recognizance be conditioned for his or her appearance—
- (a) before the court at the end of the period of remand, or

- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.
 - (2) Where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand.
 - (3) Nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.
- 12 (1) The court may not remand a person for a period exceeding 8 clear days unless—
- (a) the court adjourns a case under paragraph 9(1), or
 - (b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.
- (2) If sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment.
 - (3) Where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.
- 13 (1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence.
- (2) The power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time.
 - (3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time.
 - (4) The enlargement of a person's recognizance is to be treated as a further remand.
 - (5) Paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.
- 14 (1) This paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.
- (2) The recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court).

Contempt proceedings

- 15 The powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge.

Other protection or assistance against female genital mutilation

- 16 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.
- (2) In particular, it does not affect—
- (a) the inherent jurisdiction of the High Court;
 - (b) any criminal liability;
 - (c) any civil remedies under the Protection from Harassment Act 1997;
 - (d) any right to an occupation order or a non-molestation order under Part 4 of the Family Law Act 1996;
 - (e) any right to a forced marriage protection order under Part 4A of that Act;
 - (f) any protection or assistance under the Children Act 1989;
 - (g) any claim in tort.

Interpretation

- 17 (1) In this Part of this Schedule—
- “the court”, except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;
- “FGM protection order” means an order under paragraph 1;
- “genital mutilation offence” means an offence under section 1, 2 or 3;
- “the relevant judge”, in relation to an FGM protection order, means—
- (a) where the order was made by the High Court, a judge of that court;
 - (b) where the order was made by the family court, a judge of that court;
 - (c) where the order was made by a court in criminal proceedings under paragraph 3—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or of the family court.
- (2) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to “the court” (other than in paragraph 2) are to be read as references to that court.
- (3) In paragraph (c)(i) of the definition of “relevant judge” in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates’ court, a reference to a justice of the peace.

PART 2

NORTHERN IRELAND

Power to make FGM protection order

- 18 (1) The court in Northern Ireland may make an order (an “FGM protection order”) for the purposes of—
- (a) protecting a girl against the commission of a genital mutilation offence, or
 - (b) protecting a girl against whom any such offence has been committed.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
- (3) An FGM protection order may contain—
- (a) such prohibitions, restrictions or requirements, and
 - (b) such other terms,
- as the court considers appropriate for the purposes of the order.
- (4) The terms of an FGM protection order may, in particular, relate to—
- (a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;
 - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
 - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are—
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
 - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 23).

Applications and other occasions for making orders

- 19 (1) The court may make an FGM protection order—
- (a) on an application being made to it, or
 - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by—
- (a) the girl who is to be protected by the order, or
 - (b) a relevant third party.

- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—
 - (a) the applicant’s connection with the girl to be protected;
 - (b) the applicant’s knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in family proceedings or without any family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
 - (a) any family proceedings are before the court (“the current proceedings”),
 - (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
 - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.
- (7) In this paragraph—

“family proceedings” has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (see Article 2(2) and (3) of that Order), but also includes—

 - (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
 - (b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) which includes an exclusion requirement (as defined in Article 63A of that Order), and
 - (c) proceedings in which the court has made an order under Article 69 of the 1995 Order (recovery of abducted children etc);

“relevant third party” means a person specified, or falling within a description of persons specified, by order made by the Department of Finance and Personnel (and any such order may, in particular, specify that Department).

Power to make order in criminal proceedings

- 20 The court before which there are criminal proceedings in Northern Ireland for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—
- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and

- (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

Offence of breaching order

- 21 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

Ex parte orders

- 22 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—
- (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,
 - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
 - (c) whether there is reason to believe that—
 - (i) the respondent is aware of the proceedings but is deliberately evading service, and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.
- (3) If the court makes an order by virtue of sub-paragraph (1), it must specify a date for a full hearing.
- (4) In sub-paragraph (3), “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

- 23 (1) The court may vary or discharge an FGM protection order on an application by—
- (a) any party to the proceedings for the order,
 - (b) the girl being protected by the order (if not a party to the proceedings for the order), or
 - (c) any person affected by the order.

- (2) In the case of an order made in criminal proceedings under paragraph 20, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.
- (3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 19(1)(b) or 20 even though no application under sub-paragraph (1) above has been made to the court.
- (4) Paragraph 22 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

Jurisdiction of courts

- 24 (1) For the purposes of this Part of this Schedule, “the court” means the High Court, or a county court, in Northern Ireland.
- (2) Sub-paragraph (1) is subject to –
 - (a) sub-paragraph (3), and
 - (b) any provision made by virtue of sub-paragraph (4) or (5).
- (3) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 20, references in this Part of this Schedule to “the court” (other than in paragraph 19) are to be read as references to that court.
- (4) Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (allocation of proceedings to courts etc) applies for the purposes of this Part of this Schedule as it applies for the purposes of that Order but as if the following modification were made.
- (5) The modification is that Article 34(8) is to be read as if there were substituted for it –
 - “(8) For the purposes of paragraphs (3), (4) and (5), there are two levels of court –
 - (a) the High Court; and
 - (b) a county court.”

Power to extend jurisdiction to courts of summary jurisdiction

- 25 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part of this Schedule.
- (2) An order under sub-paragraph (1) may, in particular, make any provision in relation to courts of summary jurisdiction which corresponds to provision made in relation to such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)).
- (3) Any power to make an order under this paragraph (including the power as extended by paragraph 29(2)) may, in particular, be

exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Part of this Schedule or any other enactment.

- (4) In sub-paragraph (3) “enactment” includes Northern Ireland legislation.
- (5) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice’s functions under this Part of this Schedule—
 - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined by section 88 of that Act).

Contempt proceedings

- 26 The powers of the court in relation to contempt of court arising out of a person’s failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge.

Appeals from county courts

- 27 (1) An appeal lies to the High Court against—
 - (a) the making by a county court of any order under this Part of this Schedule, or
 - (b) any refusal by a county court to make such an order, as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases).
- (2) But an appeal does not lie to the High Court under sub-paragraph (1) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)) in the same proceedings.
- (3) Provision must be made by rules of court for an appeal to lie (upon a point of law, a question of fact or the admission or rejection of any evidence) to the Court of Appeal against—
 - (a) the making of any order under this Part of this Schedule, or
 - (b) any refusal to make such an order,by a county court of the type referred to in sub-paragraph (2).
- (4) Sub-paragraph (3) is without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (cases stated).
- (5) On an appeal under sub-paragraph (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal.

- (6) Where an order is made under sub-paragraph (5), the High Court may also make such incidental or consequential orders as appear to it to be just.
- (7) Any order of the High Court made on an appeal under sub-paragraph (1) (other than one directing that an application be reheard by the county court) is to be treated, for the purposes of –
 - (a) the enforcement of the order, and
 - (b) any power to vary, revive or discharge orders,
 as if it were an order of the county court from which the appeal was brought and not an order of the High Court.
- (8) This paragraph is subject to paragraph 28.

Appeals: transfers and proposed transfers

- 28 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under Article 34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) as applied by paragraph 24(4) and (5) above.
- (2) Except so far as provided for in any order made under sub-paragraph (1), no appeal may be made against any decision of a kind mentioned in that sub-paragraph.
- (3) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice's functions under this paragraph –
 - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

Orders

- 29 (1) An order made under or by virtue of paragraph 19(7), 24(4) and (5), 25(1) or 28(1) –
 - (a) may make different provision for different purposes;
 - (b) may contain incidental, supplemental, consequential, transitional, transitory or saving provision;
 - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) An order made under or by virtue of paragraph 19(7), 24(4) and (5) or 28(1) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).
- (3) An order under paragraph 25(1) may not be made unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

- (4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Other protection or assistance against female genital mutilation

- 30 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.
- (2) In particular, it does not affect—
- (a) the inherent jurisdiction of the High Court;
 - (b) any criminal liability;
 - (c) any right to an occupation order or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6));
 - (d) any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9));
 - (e) any protection or assistance under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
 - (f) any right to a forced marriage protection order under Schedule 1 to the Forced Marriage (Civil Protection) Act 2007;
 - (g) any claim in tort.

Interpretation

- 31 In this Part of this Schedule—
- “the court” is to be read in accordance with paragraph 24;
- “FGM protection order” means an order under paragraph 18;
- “genital mutilation offence” means an offence under section 1, 2 or 3;
- “the relevant judge”, in relation to an FGM protection order, means—
- (a) where the order was made by the High Court, a judge of that court;
 - (b) where the order was made by a county court, a judge or district judge of that or any other county court;
 - (c) where the order was made by a court in criminal proceedings under paragraph 20—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or a judge or district judge of a county court.”

Clause 71

LORD BATES

- “() In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, a reference to 12 months in the following provisions is to be read as a reference to 6 months—
- (a) section {m01}(3)(a);
 - (b) in the Prison Act 1952, subsection (4)(b) of the section 40CA inserted by section (*Knives and offensive weapons in prisons*) above;
 - (c) in the Female Genital Mutilation Act 2003, paragraph (b) of the subsection (2) inserted in section 5 by section (*Offence of failing to protect girl from risk of genital mutilation*)(4)(b) above;
 - (d) paragraph 4(5)(b) of the Schedule inserted in that Act by section (*Female genital mutilation protection orders*)(2) above.”

Clause 71

LORD BATES

6 Page 53, line 4, at end insert—

- “() The reference to an offence under section 1, 2 or 3 of the Female Genital Mutilation Act 2003 in section 3A(8) of that Act does not include such an offence committed before the coming into force of section (*Offence of failing to protect girl from risk of genital mutilation*) above (which inserts section 3A in that Act).
- () In proceedings under section 3A of that Act, a defence under subsection (5)(b) of that section may not be negated by reference to steps that the defendant could have taken (but did not) before the coming into force of section (*Offence of failing to protect girl from risk of genital mutilation*) above.”

Clause 72

LORD BATES

7 Page 53, line 16, at end insert “and (1A)”

Clause 72

LORD BATES

8 Page 53, line 16, at end insert—

- “() sections (*Offence of failing to protect girl from risk of genital mutilation*) and (*Female genital mutilation protection orders*).”

Clause 73

LORD BATES

9 Page 53, line 40, leave out “section 67” and insert “sections 67 and (*Offence of failing to protect girl from risk of genital mutilation*)”

Clause 73

LORD BATES

- 10 Page 54, line 20, at end insert—
 “() section (*Female genital mutilation protection orders*).”

Schedule 4

LORD BATES

- 11 Page 76, line 25, at end insert—
 “*Visiting Forces Act 1952 (c. 67)*
 In the Schedule to the Visiting Forces Act 1952 (offences referred to in section 3), in paragraph 1(b)(xi), before “the Female Genital Mutilation Act 2003” insert “sections 1 to 3 of””

Schedule 4

LORD BATES

- 12 Page 76, line 33, at end insert—
 “*Senior Courts Act 1981 (c. 54)*
 In paragraph 3 of Schedule 1 to the Senior Courts Act 1981 (distribution of business to the family division of the High Court), after paragraph (h) insert—
 “(ha) all proceedings under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003;”.”

Schedule 4

LORD BATES

- 13 Page 77, line 26, at end insert—
 “*Courts and Legal Services Act 1990 (c. 41)*
 In section 58A of the Courts and Legal Services Act 1990 (conditional fee agreements: supplementary), in subsection (2), after paragraph (f) insert—
 “(fza) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003;”.”

Schedule 4

LORD BATES

- 14 Page 77, line 38, at end insert—

“Family Law Act 1996 (c. 27)

In section 63 of the Family Law Act 1996 (interpretation of Part 4), in subsection (2), after paragraph (i) insert—

“(ia) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003, other than paragraph 3 of that Schedule;”.