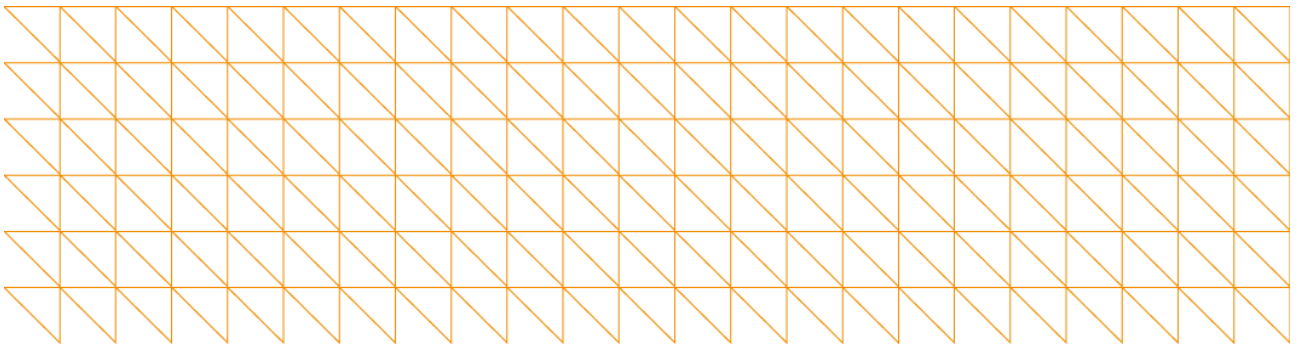




Ministry
of Justice

Female Genital Mutilation: Proposal to Introduce a Civil Protection Order

This response is published on 20 October 2014





Ministry
of Justice

Female Genital Mutilation: Proposal to Introduce a Civil Protection Order

Response to consultation carried out by the Ministry of Justice.

This information is also available on the Ministry of Justice website: www.justice.gov.uk

Contents

| | |
|----------------------------------|----|
| Introduction and contact details | 3 |
| Background | 4 |
| Summary of responses | 5 |
| Responses to specific questions | 6 |
| Conclusion and next steps | 15 |
| Consultation principles | 16 |
| Annex A – List of respondents | 17 |

Introduction and contact details

This document is the summary of responses to the consultation paper, *Female Genital Mutilation: Proposal to Introduce a Civil Protection Order*.

It will cover:

- the background to the report
- a summary of the responses to the report
- responses to the specific questions raised in the report
- the next steps following this consultation.

The consultation paper and the summary of responses are available on the Ministry's website: www.justice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

The consultation paper, *Female genital mutilation: proposal to introduce a civil protection order*, was published on 22 July 2014. This followed the Girl Summit on 22 July hosted by the Prime Minister. The consultation invited comments about whether the introduction of a specific civil law measure could help protect potential victims of female genital mutilation (FGM).

The consultation closed on 19 August 2014 and this report includes a summary of responses to individual questions in the consultation paper.

A list of respondent groups is at Annex A.

Summary of responses

A total of 88 responses to the consultation paper was received. The responses came from a wide variety of respondents including academics, legal professionals, non-government organisations, healthcare professionals, local authorities, victims and members of the public, police, social workers and others.

A significant majority of those who responded (85%) supported the introduction of a civil protection order for potential FGM victims and agreed that the FMPO would be a good model for this purpose. Respondents felt that current criminal legislation was not enough and considered a civil protection order would deter the practice of FGM and provide additional protection to victims.

A majority of respondents (64%) thought that a civil protection order for FGM could protect girls (including babies) or women who had already been subjected to FGM. Most argued for the category of persons who could apply for a FGM protection order to be wide, for the duration of the order to be flexible and for the breach of the order to be a criminal offence.

Responses to specific questions

1. In principle, do you think that a specific civil law measure for FGM is a good idea?

Of the 88 responses received a large majority of respondents (85%) agreed that a specific civil measure for female genital mutilation (FGM), similar to that under Part 4A of the Family Law Act 1996, was a good idea. The respondents gave a number of reasons for their support of the proposal.

Some respondents felt that current criminal legislation was not enough and considered a civil protection order would deter the practice of FGM and offer additional protection to victims. A number of respondents noted that victims were reluctant to report cases of FGM because they feared that family members would be imprisoned. Respondents saw a civil protection order for FGM as a flexible tool which could be tailored to the specific needs of the victim.

One respondent felt that a civil protection order for FGM would complement the existing child protection regime under the Children Act 1989 and give judges dealing with such cases an additional tool to protect children. They saw the focus of the proposed order as being on the protection of victims and the duty on those named in the order (i.e. the child's carers) to desist from any behaviour specified in the order that could cause the victim harm.

Another respondent felt that a specific civil law measure could give a clear pathway to professionals for safeguarding potential victims of FGM whilst allowing them to remain within the family unit. The respondent also believed the measure could be useful in facilitating the repatriation of children who had been taken abroad, along the same lines as forced marriage protection orders (FMPOs).

One respondent drew attention to "prohibited steps orders" under the Children Act 1989, noting that such orders had been extremely beneficial in preventing parents from removing children from the country without the permission of the court. According to the response, offences under this legislation were now being reported more frequently. Similarly, the respondent felt that a civil protection order for FGM would allow early intervention to protect children.

The benefits of FMPOs and the challenges in the absence of them (i.e. where the victim has been taken abroad) were also highlighted in the responses. According to one respondent, a civil protection order specifically targeting FGM and preventing behaviour conducive to harm would offer greater protection to victims than currently exists.

"Children do not want to get their parents into trouble but they do need to know that there is a way of influencing their parents to ensure that they are protected without bringing shame on their family".

Source: NHS employee

“If a girl is deemed to be at risk, any measures which might reduce that risk or ensure her safety are a step forward. Safety of the child is paramount”.

Source: Integrate Bristol

One respondent was concerned that a specific civil measure may be a good idea for protecting women over 18 but was not an alternative to existing forms of protection for children. Their response called on the Government to examine why current child protection legislation had not been used. According to the respondent, the real problem was not the law but the failure of professionals to act because of lack of training and awareness of their obligations.

One respondent commented that a specific civil order for FGM could help to protect more children as a useful preventative measure. However, the response also noted that it was important to clarify how a civil protection order might work differently from an interim or full care order.

Only one respondent did not agree that a specific civil law measure for FGM was a good idea because they felt that only the criminal law should apply.

14% of respondents were unsure whether a specific civil law measure was a good idea. One respondent did not understand the implications and asked for more information. Another felt that a comparison with a FMPO was superficial, and it was unclear whether the issues pertaining to cases of forced marriage could properly be aligned to those pertaining to FGM.

2. Do you think that introducing a specific civil law measure for FGM would in any way undermine the efforts that are being made to secure prosecutions?

75% of respondents did not think that a specific civil law measure for FGM would undermine the efforts being made to secure prosecutions.

One respondent said that in appropriate cases, the police could apply to the court for a disclosure of the judgment following, or during, a case in the family court. They felt that this could facilitate prosecutions (e.g. in cases of neglect and child abuse) rather than hinder them.

A number of respondents pointed out that there had not been a conviction to date for FGM and a civil law measure would provide additional protection to potential victims. These respondents also felt that if the breach of any civil protection order was made a criminal offence it might help to secure a prosecution. Others pointed out that it was important to have both criminal and civil sanctions to help potential victims of FGM.

“Rather than undermining prosecutions the introduction of a CPO would sit well alongside and further the reach of the criminal law”.

Source: joint response from the Bar Human Rights Committee and the Family Law Bar Association

A very small number of respondents (5%) felt that introducing a civil law measure would undermine the efforts being made to secure prosecutions. One respondent expressed concern that professionals might fail to act on existing legislation while

waiting for any new measures to be implemented. Others did not explain their answer to this question.

A small number of respondents (19%) were unsure about whether efforts to secure prosecutions would be undermined. Some highlighted that the standard of evidence in the civil and criminal courts was different and that trying to bring them together could cause confusion. One respondent expressed concern that a civil protection order could lead to a victim being ostracised by her family and the community.

3. Do you think that similar provisions to protect against conduct that may lead to a girl being mutilated would cover the range of circumstances in which FGM may take place?

64% of respondents thought that a provision similar to that under Part 4A of the Family Law Act 1996 could help to protect against the range of circumstances in which FGM took place.

One respondent said that given the various methods and means by which FGM can take place, including taking the victim abroad or even bringing ‘cutters’ to the UK, it would be useful for similar provisions to those in forced marriage cases to be considered. They saw this as helpful in protecting against conduct that might lead to a girl being mutilated.

Another respondent pointed out that there had to be capacity to insert case-specific conditions and prohibitions in any new civil order for FGM. It was necessary, the response said, for the order to require specified contact between a potential victim and an agency (e.g. social care, GP, etc) to monitor the child’s safety and wellbeing. The response said that any failure to allow such contact should be deemed a breach of the order.

One respondent said that it was essential that the order could be enforced abroad. They also suggested that in addition to local authorities (as in forced marriage cases) others should be included in the “relevant third party” list.

“I believe this could be extremely beneficial to restrict activity within this country of certain acts of mutilation, and also to produce passports to restrict movement and travelling”.

Source: Staffordshire Police

“We think that similar provisions to protect against conduct that may lead to a girl being mutilated would cover the range of circumstances in which FGM may take place as long as there is capacity to insert case-specific conditions or prohibitions when applying for the order (as with FMPOs)”.

Source: NSPCC

Some respondents felt that it was difficult to say at this stage whether an order could cover all the circumstances. One asserted that if parents were determined to carry out FGM they would find a way of doing so.

Only 3% of respondents felt that similar provisions would not cover the range of circumstances in which FGM might take place. One respondent who disagreed noted that the circumstances in which FGM took place varied and that relying on young children to report their parents could present challenges.

30% of respondents were unsure about whether provisions similar to those of FMPOs would cover the range of circumstances in which FGM takes place and gave a number of reasons. One of them felt that that it was important that potential victims are monitored and that parents and carers understood the legal position.

One respondent said that while many of the suggested measures could be effective for British nationals, there needed to be clarity in relation to the position of potential victims living in the UK temporarily, for example because their parents were here on short-term visas, or had no legal status.

4. Do you think that there are circumstances in which a civil order could be used to help girls or women who have already been subjected to FGM?

A significant majority (64%) thought that a civil protection order for FGM could protect girls or women who had already been subjected to FGM. Many respondents pointed to the benefits of an order that required relatives or associates to disclose the location of victims who had been taken abroad and forbidden from returning.

One respondent pointed out that as in the case of FMPOs, civil protection orders would work well alongside proper liaison with embassy staff abroad to facilitate the repatriation of victims. A number of respondents felt that a civil order could also have a protective effect on younger siblings and other close family members, as well as community members.

Another respondent felt there could be circumstances where a victim of FGM might choose to obtain the protection of a civil protection order whilst they consider their position, including whether or not they wished to report an offence or attempted offence or to be a witness in a prosecution. The creation of a civil protection order was also seen as helpful to women at risk of FGM again at their husband's request after giving birth.

"It may help to prevent FGM for younger relatives".

Source: Barnardo's

"In principle, we would agree to this as any girl or young woman who has been subjected to FGM should have the right to come forward after the event and still be able to seek the support and protection that she needs".

Source: British Association of Social Workers

9% of respondents disagreed, stating that it was more likely that existing orders, mostly designed for domestic violence and/or harassment cases, would suffice to protect women who had experienced FGM in relation to the issues they faced from partners, ex-partners and family members. One respondent felt that there was nothing to suggest that victims would be subject to further mutilation once the FGM had occurred.

Those who were unsure about their answer (26%) said that where a girl has already been subject to FGM, a civil order could help other girls in the family but not someone who had already been mutilated. One respondent felt that FGM and forced marriage were different issues and that victims of FGM were more likely to want to remain in their family. Another who disagreed felt that this type of application could only succeed if proper awareness campaigns were run concurrently to inform girls of their options at all stages.

5. Given that most victims of FGM are young girls, typically aged 5–8, do you think that similar provisions in relation to FGM would enable vulnerable young victims, including babies, to be protected?

75% of respondents felt that similar provisions in relation to FGM would enable vulnerable victims including babies to be protected.

In one case, a civil protection order for FGM was seen as offering a wide scope of protection to vulnerable victims since the order could place prohibitions on persons other than parents, for example members of the extended family, including those abroad.

However, another respondent emphasised that it was vital that a police protection order or emergency order could still be made where a child was at immediate risk.

One respondent stressed that the NHS needed to be at the forefront of protecting such vulnerable victims and that it was essential that local authorities were able to access data from services which victims were most likely to use such as maternity or accident and emergency services. This would ensure that risks were flagged.

Similarly, another response highlighted the importance of data sharing among front-line professionals such as the police and those in health care and social services, noting that there had to be a coordinated effort from all agencies in light of the vulnerability of young victims.

“Absolutely necessary as they cannot speak for themselves.”

Source: Thames Valley Partnership

“As long as the legislation allows for third parties to apply for the orders on behalf of the girls and also allows for non-disclosure of confidential information and for hearsay evidence to be admitted in court”.

Source: Ayres Waters Family Lawyers

Those who disagreed with the question (8%) cited a number of reasons. One respondent felt that the age group referred to in this question was too narrow, noting that girls born into an FGM practising family were at risk of FGM from the day they are born up to the age of 18 and sometimes beyond.

15% of respondents were unsure whether such young victims could be protected by any civil order to prevent FGM. They gave a number of reasons, including doubts about the speed at which an order could be obtained following the birth of a child.

6. If you answered ‘no’ to question 5, what additional or different provisions do you think should be put in place to protect such vulnerable young victims?

Only 8% of respondents thought that similar provisions in relation to FGM would not enable vulnerable young victims, including babies, to be protected. Where explained, they gave various reasons for their answers.

One respondent said that they would be concerned if too much emphasis was placed on victims having to report, especially as victims would effectively be criminalising their parents.

Another felt that where it had been identified that the mother had been mutilated and wished the same for her child, a civil order should be the first step in prevention.

It was also noted that children could be forced to have FGM at any age from 0–18 and that FGM could be performed at the time of birth – where it was likely that an order would not be in place – or when the order ceased. It noted:

“For babies and other vulnerable young children, requirements for ongoing monitoring and examination may be necessary”.

Source: Refuge

7. As indicated above, local authorities, as a specified “relevant third party” may apply on the victim’s behalf for a FMPO without first needing to seek the leave of the court. Which persons or class of persons do you think should be able similarly to apply for an order to protect a potential victim of FGM?

While most respondents listed several persons or organisations as capable of acting as a relevant third party, the majority felt that local authorities and health care professionals should be specified as a “relevant third party” in any civil measure for FGM

In smaller numbers, respondents saw the police, NGOs (particularly front-line support organisations), schools and relatives of the victims as possible relevant third parties under any new civil order for FGM.

8. Given that girls are at risk of FGM from birth until, and even during, adulthood, do you think that similar provisions in relation to FGM would enable long-term protection from mutilation?

56% of respondents thought that provisions similar to FMPOs would enable long-term protection from FGM. However, 30% of respondents were unsure whilst the remainder thought that similar provisions would not offer long-term protection to victims of FGM or did not provide a response. A number of respondents said that provisions similar to those in FMPOs could offer long-term protection not only to the victim but also to other

siblings in the family who could potentially become at risk, thereby offering a wider net of protection.

For example, one respondent felt that in cases where an older sibling had been subjected to FGM, younger siblings should be safeguarded and the police, social services and other agencies informed.

Many of the respondents noted that babies as well as adults were vulnerable to mutilation in FGM practising families and noted that long-term protection had to be a feature of any civil order for FGM.

One respondent was unsure how an order for FGM would provide long-term protection. Whilst pointing out that long-term protection through such an order was a good objective, she expressed doubts about whether the order could be monitored over a period of years to ensure that it was providing long-term protection.

“As with FMPOs, the victim would have the right to choose to discharge the order at any point she feels safe to do so. An in-built review at age 18 could also be considered where the order has been in place for a child.”

Source: NSPCC

“There would need to be a stipulation that the order was permanent or until rescinded by the court.”

Source: North Middlesex University Hospital

9. If a civil order for FGM were introduced, do you think that it should be a criminal offence to breach such an order?

The vast majority of respondents thought that it should be a criminal offence to breach a civil order for FGM if one were introduced. 89% of respondents felt that a civil order for FGM should have criminal sanctions while only 1 respondent thought that any such order should not. The remaining nine respondents were either not sure or did not answer the question.

Many respondents felt that making the breach of such an order a criminal offence would send out a ‘strong message’ that the practice would not be tolerated and underline the severity of the practice.

“Often honour supersedes any legal constraints and the stronger the message the better.”

Source: West Midlands Police

“Yes, we think that the order should come with clear sanctions sending out a strong message to deter those whose intention it is to procure FGM.”

Source: British Association of Social Workers

10. Do you think that, as with FMPOs, victims should be able to use the civil enforcement route if they prefer, even if the breach of an order is a criminal offence?

Of those who answered this question, 58% of the respondents thought that victims of FGM should be able to use the civil enforcement route if they prefer, even if the breach of an order was a criminal offence. 17% of respondents thought that victims should not be able to use a civil route to deal with breaches and significantly, 25% of respondents were unsure. 6% of respondents did not answer the question.

However, many of the respondents who felt that a civil and criminal enforcement route should both exist also noted that there had to be an absence of coercion for victims to be fully empowered to use a civil route. Their responses recognised that victims might come under pressure not to criminalise their families and take the civil route instead.

A number of respondents who disagreed that victims should be able to use the civil enforcement route for breaches if they preferred, felt that the creation of a civil route for dealing with breaches could undermine the criminal legislation and alter perceptions of FGM being a serious criminal offence. They also felt that children should not be forced to decide whether to prosecute their parents.

Some of those unsure of whether victims should be able to use the civil route thought that minors – unlike adults – were not capable of making a decision about whether to take a civil or criminal route.

“It is absolutely vital that there must be a civil enforcement route that does not deter enforcement through the concern of criminalising the victim’s own family.”

Source: Office of the Police and Crime Commissioner

11. Do you think that there are alternative ways in which the civil law could be used to protect victims of FGM?

72% of respondents were not sure about whether there were alternative ways in which the civil law could be used to protect victims of FGM. A significant number of them expressed difficulty in answering the question, noting that knowledge of the legal measures to tackle FGM was not their “area of expertise.” 18% thought there were alternative ways, whilst 10% thought there were no alternative civil measures to protect victims of FGM. 8% of respondents did not answer the question.

Some of the respondents gave examples of the ways in which they had used the civil law measures in FGM cases. A solicitor said there was no reason why a civil protection order for FGM could not run concurrently with other provisions such as wardship, protection of vulnerable adults under inherent jurisdiction and court of protection proceedings.

Those who thought there were no alternative ways in which civil measures could be used to protect FGM victims did not explain their answer.

“I have been using non-molestation orders to prevent FGM...these are currently the most effective way of preventing FGM. The order is enduring i.e. indefinite and any

breach is an arrestable offence. This means perpetrators can be detained at the airport if necessary.”

Source: Ayres Waters Family Lawyers

12. Are there any other points that you wish to add?

Only 59% of those who responded to the consultation gave additional views on the proposal to introduce a civil protection order for FGM.

Some respondents felt that the introduction of a civil protection order of this kind would send out a “powerful message” to communities in which the practice took place and provide greater protection for victims. Some respondents reiterated that for a provision of this kind to work in FGM cases, there had to be a “joined up” approach to information sharing involving key front-line professionals such as health care professionals, social services and the police.

Whilst it is envisaged that any new civil order would encourage others, as well as the victim, to apply to the court for a protective order, one response stressed the need for caution in expecting children to want or be capable of taking action against their family. The respondent emphasised that communities played a major role in tackling the issues.

Some respondents commented on the response to FGM more generally. One respondent suggested that the introduction of any civil protection order for FGM should be accompanied by a specialised anti-FGM unit for victims. The respondent noted that such a unit would not only be useful in raising awareness of civil orders and fielding calls from the public but would also provide training and support to bodies who could apply for civil orders.

Additionally, it was suggested that there was a need for Government to target awareness-raising of the practice on persons arriving in the UK from abroad. It was suggested that there had to be “targeted policies” for people arriving in the UK and different policies for those resident in the UK, with people arriving in the UK being given information in their own language setting out the legal position on FGM.

“All the action taken has to make a difference. It is no good making a law that is unenforceable and one that protects no one. We have to stop it and that means being tough and not accepting this cruelty. We also need to be targeting everyone not just the ordinary person in the street, this cuts across all parts of society”.

Source: NHS employee

Conclusion and next steps

1. The Government is committed to eradicating FGM. Criminal law is only part of tackling the continuing problem of FGM in this country. Ideally, we want to prevent the mutilation from happening in the first place
2. The Government is taking forward a number of provisions in the Serious Crime Bill to tackle FGM. This includes provisions for a specific civil measure, similar to the Forced Marriage Protection Order (under Part 4A of the Family Law Act 1996), to help protect actual or potential victims of FGM.
3. The draft provisions being taking forward in the Serious Crime Bill, which would amend the Female Genital Mutilation Act 2003, were developed in light of the consultation responses. The provisions are available at the Serious Crime Bill webpage on the parliament website <http://services.parliament.uk/bills/2014-15/seriouscrime.html>.
4. Of course legislation alone cannot eradicate FGM. The provisions for the FGM civil protection order are part of the Government's wider work to tackle FGM, with victims, communities and professionals. The FGM civil protection measure will strengthen the protection for victims or potential victims of FGM and help prevent FGM from happening in the first place.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex A – List of respondents

The responses received fall into one of the following representative groups:

Academics (including institutions)

Central Government (e.g. Forced Marriage Unit)

Legal profession

Local Authorities

Members of the public

Non-Government Organisations (including charities)

Police

Representative bodies – Social workers

Representative bodies – Police

Representative bodies – Academic

Representative bodies – Legal

Schools

Victims of FGM

© Crown copyright 2014
Produced by the Ministry of Justice

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.2. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2/ or email PSI@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from FGM_consultation@justice.gsi.gov.uk