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Serious Crime Bill: Government amendments for Lords Report stage - Female Genital Mutilation

I am writing to let you have details of further amendments I have tabled today for the second day of Report stage on 28 October.

Female Genital Mutilation (FGM) (new clauses “*Offence of failing to protect girl from risk of genital mutilation*”, “*Female genital mutilation protection orders*” and amendments to clauses 67, 71, 72 and 73 and Schedule 4)

In Committee (Hansard, 15 July 2014, columns 551 to 552), Baroness Williams of Trafford indicated, in response to Lord Rosser’s amendment 40CA, that the Government was looking favourably at the DPP’s recommendation that the victims of FGM should be afforded anonymity in order to encourage more victims to report the crime to the authorities. You will have seen that the Home Secretary announced at the Girl Summit on 22 July that the Government would bring forward legislation to this end.

The provisions, to be inserted into the Female Genital Mutilation Act 2003 (see new section 4A and new Schedule 1 inserted by the amendments to clause 67), are based on those in the Sexual Offences (Amendment) Act 1992. Where an allegation has been made that an offence in the 2003 Act has been committed, the new provision will prohibit the publication or broadcasting, during the lifetime of the alleged victim, of any matter which would be likely to lead members of the public to identify that person as the alleged victim of the offence. The relevant offences in the current context will be the existing offences in the 2003 Act and the new offence referred to below.

It would be open to the trial judge to lift anonymity where he or she is satisfied that (a) otherwise the defence would be substantially prejudice, or (b) the anonymity imposes a substantial and unreasonable restriction upon the reporting of proceedings at the trial, and that it is in the public interest to remove or relax the restrictions. It would also be open to the alleged victim to consent to their anonymity being lifted. It will be an offence to publish or broadcast material in contravention of the bar on such publication or broadcasting. The offence will be triable summarily and carry a maximum penalty of a fine. Paragraphs 4 to 8 of new Schedule 1 to the 2003 Act ensure that the new offence is consistent with the UK's obligations under the E-Commerce Directive.

The Prime Minister also announced at the Girl Summit the introduction of a new "parental liability" offence, which also followed a recommendation by the DPP; this is provided for in new clause "*Offence of failing to protect girl from risk of genital mutilation*". This offence would make each person who has parental responsibility, or who has assumed responsibility, for a girl who has been mutilated when under 16, liable if he or she knew, or ought to have known, that there was a significant risk of FGM being carried out, but did not take reasonable steps to prevent it from happening. It would be a defence for a defendant to show that he or she did not know there was such a risk, or took such reasonable steps. The offence would be triable either way, and the maximum penalty on conviction on indictment would be seven years' imprisonment, or an unlimited fine, or both.

Finally, the Home Secretary also announced at the Girl Summit that the Ministry of Justice would be consulting on a new civil protection order for FGM. This consultation took place over the summer. The Ministry of Justice received 88 responses, 85% of which agreed that a specific civil measure for FGM, similar to that under Part 4A of the Family Law Act 1996 (which provides for forced marriage protection orders (FMPO)), was a good idea¹. New clause "*Female genital mutilation protection orders*" (which inserts new section 5A and new Schedule 2 into the 2003 Act) accordingly provides for FGM protection orders. The provisions follow closely the FMPO model.

An application for a FGM protection order may be made by the person to be protected (the victim) or a "relevant third party" (specified by the Lord Chancellor) without the leave of the court, or any other person with the leave of the court. In certain circumstances, the court may make an order on its own initiative. An order may contain such prohibitions, restrictions or other requirements as the court considers appropriate for the purposes of the order, that is for the purpose of protecting a girl against the commission of an FGM offence or a girl against whom any such offence has been committed. This could include, for example, provisions to surrender a person's passport or any other travel document; and not to enter into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected. Breach of an order would be a criminal offence with a maximum penalty of five years' imprisonment (but with provision, as an alternative, for a breach to be dealt with in the civil court as a contempt punishable by up to two years' imprisonment).

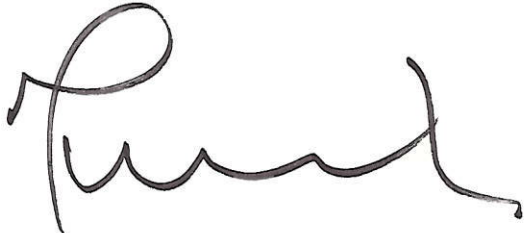
¹ The consultation and summary of responses is available at: https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a/consult_view

With the agreement of the Northern Ireland Department of Justice, the amendments to the Female Genital Mutilation Act 2003 extend to Northern Ireland (see the amendment to clause 72). The application of these provisions to Northern Ireland is subject to the adoption of the necessary legislative consent motion by the Northern Ireland Assembly.

The provisions as to victim anonymity and the offence of failing to protect a girl from FGM will come into force two months after Royal Assent (see amendment to clause 73). The amendment to clause 71 contains appropriate transitional provisions, in particular to ensure that the new offence is not retrospective in its effect.

I attached supplementary delegated powers and ECHR memorandums in respect of these amendments.

I am copying this letter to those Peers who spoke at Committee stage, Lord Laming, Lord Pannick, Baroness Thomas of Winchester (Chairman, Delegated Powers and Regulatory Reform Committee), Keith Vaz (Chair, Home Affairs Select Committee), Dr Hywel Francis (Chair, Joint Committee on Human Rights), Yvette Cooper and Emily Thornberry. I am also placing a copy in the Library of the House and on the Bill page of the Government website.

With best wishes,


Lord Bates