

## SERIOUS CRIME BILL

### EUROPEAN CONVENTION ON HUMAN RIGHTS

#### SUPPLEMENTAL MEMORANDUM BY THE HOME OFFICE

##### **Introduction**

1. This memorandum addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to Government amendments to the Serious Crime Bill tabled for Commons Report stage. The memorandum has been prepared by the Home Office.

##### **Female genital mutilation**

2. New clause “*Duty to notify police of female genital mutilation*”, which extends to England and Wales, will insert into the Female Genital Mutilation Act 2003 (“the 2003 Act”) a new duty on certain regulated professionals to make a notification to the police if, in the course of his or her work, the professional discovers that an act of female genital mutilation has been carried out on a girl who is aged under 18. The new clause specifically provides that any such notification made will not breach any obligation of confidence or other restriction on the disclosure of information owed by the person making the notification.
3. The requirement to notify the police where an act of female genital mutilation is discovered constitutes an interference by the State into the right to respect for the private life and family of the children who have been subjected to female genital mutilation. In particular, children may wish to disclose this to a doctor, other healthcare professional, teacher or social worker in confidence. Children may fear that a disclosure will result in police action against their parents and hence be deterred from making that disclosure or seeking medical treatment for related or unrelated matters. It is not the case that any of the professionals to whom the duty will apply are currently legally obliged to keep private a disclosure made by a child that she has been subject to female genital mutilation. Currently such professionals can further disclose any such information given to them without breaching any duty of confidence or other restriction on disclosure of information if they are acting in such a way as they consider to be in the public interest or to protect the child in question. The new duty is designed to make clear to professionals that they must notify the police upon discover of an act of female genital mutilation so that there can be no doubt about whether or not they should do so.
4. The Government considers that any interference with Article 8 pursues the legitimate aims set out in Article 8(2): public safety, the prevention of crime, the protection of health and the protection of the rights and freedoms of others.
5. This new duty is part of a number of provisions in the Serious Crime Bill to amend the 2003 Act to strengthen the protection which is afforded to children who have been and who are at risk of female genital mutilation. The Government considers it to be a necessary and proportionate response to the pressing social need to protect children from female genital mutilation and well within the margin of appreciation given to Member

States in the regulation of matters relating to the prevention of crime, the protection of health and the protection of the rights and freedoms of others.

6. Furthermore, the Government considers that the Article 8 rights of children who have suffered or are at risk of suffering female genital mutilation have had, or are at risk of having, their Article 8 rights breached by the carrying out of such an act; these measures are designed, along with the other related clauses, to enhance the protection available to children in respect of their Article 8 rights to be protected from this form of abuse.
7. The Government therefore considers that the new clause is ECHR compliant.

**Home Office**  
**12 February 2015**