



Seema Malhotra MP
House of Commons
London
SW1A 0AA

12 FEB 2015

Serious Crime Bill: Commons Report stage – Government amendments

I am writing to let you have details of the Government amendments for Report stage of the Bill which I have tabled today.

Mandatory reporting of FGM and statutory guidance (new clauses “*Duty to notify police of female genital mutilation*” and “*Guidance about female genital mutilation*” and amendments to clause 81 and Schedule 4)

Following announcements the Government made at the Girl Summit last July, the Bill already includes a number of provisions to help tackle female genital mutilation (FGM), including provision for victim anonymity, a new offence of failing to protect a girl from the risk of FGM and the introduction of FGM protection orders. At the Girl Summit the Prime Minister also announced that the Government would introduce a mandatory duty for doctors, teachers and others to report FGM. We believe that doing so will make sure professionals have the confidence to confront FGM, and that it will also help increase the number of referrals to the police, thereby supporting investigations and allowing an appropriate safeguarding response to be put in place for every case referred. Ultimately, we believe that, taken together with the wider package of reforms which the Government has introduced to end FGM, introducing a new duty will play an important role in deterring perpetrators and preventing this appalling crime from happening.

The Home Office launched a consultation on 5 December on how to introduce mandatory reporting for FGM. The consultation closed on 12 January. We received 147 responses from a variety of respondents, including healthcare professionals, education bodies, local authorities, the police and charities.

A majority of respondents (52%) agreed that the duty should apply to cases of ‘known’ FGM, with 61% of respondents agreeing that ‘known’ should be defined as instances which are disclosed by the victim and/or are visually confirmed. Views

were evenly split on whether the duty should be limited to victims who are under 18. A majority of respondents (54%) agreed that the duty should apply to healthcare professionals, teachers, and children's social care professionals. 41% of respondents agreed (as against 31% who disagreed) that reports should be made to the police, and 59% agreed that they should be made at the point of initial disclosure/identification.¹

A number of respondents expressed concern at the proposal to introduce a sanction for failure to report, and in particular only 2% supported the suggestion of a mandatory requirement for the individual to be referred to the Disclosure and Barring Service (DBS) for consideration for inclusion on the 'barred' list. However, there was broad support for failure to report to be dealt with as part of disciplinary sanctions, including involving the relevant employer or professional regulator. This approach may include the employer/regulator referring cases to the DBS where they consider it appropriate/necessary.

Having considered the responses carefully, the Government proposes to proceed with the introduction of a mandatory duty to report. New clause "*Duty to notify police of female genital mutilation*" accordingly inserts new section 5B into the Female Genital Mutilation Act 2003 (the FGM Act) which:

- Places a duty on persons who works in a "regulated profession" in England and Wales, namely healthcare professionals, teachers and social care workers, to notify the police when, in the course of their work, they discover that an act of female genital mutilation appears to have been carried out on a girl under 18 (new section 5B(1), (2) and (5)). The duty does not apply where a previous notification has been made by someone in the same profession in respect of a victim (new section 5B(6)).
- Defines "discovers" in this context to mean circumstances either where the victim specifically discloses to the regulated professional that she has been the subject of FGM, or where the regulated professional has observed the physical signs of FGM (new section 5B(3) and (4)).
- Provides that a notification made under new section 5B of the FGM Act does not breach any duty of confidence or other restriction on the disclosure of information (new section 5B(7)).
- Provides for a regulation-making power (subject to the affirmative procedure) to enable the Secretary of State to add to, remove, or otherwise alter, the description of "regulated profession" (new section (8) to (10)).

Failure to make a notification to the police in line with the mandatory duty will be dealt with through existing professional and employment disciplinary sanctions.

¹ A summary of the responses to the consultation is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380125/MultiAgencyPracticeGuidelinesNov14.pdf

In addition to the proposals on mandatory reporting, the consultation also sought views on the multi-agency practice guidelines on FGM for front-line professionals (teachers, GPs, nurses, police etc). Non-statutory guidelines were published in 2011 and last updated in July 2014². They are intended to provide advice and support to professionals with responsibility for safeguarding children and protecting adults from the abuse associated with FGM.

A clear majority (61%) of consultation respondents agreed that the guidelines should be made statutory and that the relevant professionals should be under a duty to have regard to it. Updating the guidelines to reflect the new provisions of the FGM Act and placing them on a statutory footing would help raise awareness and encourage best practice, as well as increase referrals to the police. New clause "*Guidance about female genital mutilation*", which inserts new section 5C into the FGM Act, accordingly confers power on the Secretary of State to issue such guidance and places a duty on persons exercising public functions to have regard to the guidance when exercising those functions.

The amendments to clause 81 and Schedule 4 provide that the new sections 5B and 5C of the FGM Act extend to England and Wales.

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

Removal of statutory references to child prostitution and child pornography and restricting the offence of loitering or soliciting for the purposes of prostitution to persons aged 18 or over (new clause "*Child sexual exploitation*" and amendments to clauses 80 and 81, Schedule 4 and the long title)

In Committee, the Solicitor General undertook to consider amendments tabled by Ann Coffey which, amongst other things, sought to amend the Sexual Offences Act 2003 (the 2003 Act) to remove anachronistic references to "child prostitution" (Official Report, 20 January, column 206).

As the Solicitor General indicated during the debate in Committee, the Government has been clear that children who are sexually exploited, whether for financial gain or other reasons, should not be referred to as prostitutes and should be recognised as victims. This Government has supported the principle behind the removal of the term 'child prostitution' and we have already taken action to address this issue by updating relevant guidance. Having reflected on the debate in Committee, we agree that the Bill now affords the opportunity to make the necessary changes to primary legislation. Subsections (1) to (6) of new clause "*Child sexual exploitation*" make the necessary amendments to the 2003 Act.

² Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380125/MultiAgencyPracticeGuidelinesNov14.pdf

The terms 'child prostitute' and 'child prostitution' appear in the titles of sections 48 (causing or inciting child prostitution or pornography), 49 (controlling a child prostitute or a child involved in pornography) and 50 (arranging or facilitating child prostitution or pornography) of the 2003 Act, while the terms 'prostitute' or 'prostitution' also appear in the body of those sections (and also in section 51, which defines those terms). Changing the nomenclature used in those sections would not change the scope of the relevant offences but would send an important signal as to how society should treat children exploited in this way. Although not a feature of Ann Coffey's Committee stage amendments, we also intend to amend these three sections so as to remove the references to child pornography where similar considerations apply. Sections 48 to 51 of the 2003 Act are referenced elsewhere in that Act and in a number of other statutes and the amendments to Schedule 4 to the Bill make the necessary consequential amendments. I attach sections 48 to 51 of the 2003 Act in their amended form.

Ann Coffey also proposed an amendment to section 1 of the Street Offences Act 1959 (the 1959 Act) so that the offence of loitering or soliciting for the purposes of prostitution would only apply to adults. Whilst this fits with the overall spirit of the change to the language used in sections 48 to 50 of the 2003 Act, unlike those amendments, an amendment to section 1 of the 1959 Act would have a material impact in terms of criminality and enforcement. It would, in effect, decriminalise under-18s selling sex in the street (buying sex from an under-18 in any circumstances would remain illegal).

In practice, as Ann Coffey indicated in Committee, children and young persons under 18 are rarely arrested for loitering or soliciting. Having considered this matter further in consultation with the relevant national policing leads, the Government agrees that restricting the offence in section 1 of the 1959 Act to person aged 18 or over would be in keeping with a 'child-as-victim' approach; subsection (7) of new clause "*Child sexual exploitation*" amends section 1 of the 1959 Act accordingly. The amendment to clause 80 contains a transitional provision and new paragraph 1A of Schedule 4 makes consequential amendments to the schedule of the Street Offences Act 1959.

The amendment to clause 81 provides that new clause "*Child sexual exploitation*" extend to England and Wales only.

The Solicitor General has written separately to Ann Coffey (copied to other members of the Public Bill Committee) explaining why the Government has concluded that it would not be appropriate to make the other changes proposed in Ann Coffey's Committee stage amendments (new clauses 1 and 2 and amendment 1).

New offence of sexual communication with a child: extra-territorial jurisdiction (amendment to Schedule 4)

You will recall that in agreeing the Government's new clause to provide for a new offence of sexual communication with a child, there was some debate in Committee about whether the new offence should be subject to extra-territorial jurisdiction (Official Report, 15 January, columns 107 to 116). Having reflected carefully on the debate, the Government agrees that the new offence should be subject to extra-territorial jurisdiction in the same way as the existing offences in sections 5 to 19

(amongst others) of the 2003 Act. This amendment accordingly removes paragraph 59 of Schedule 4 to the Bill which would have had the effect of disapplying the extra-territorial jurisdiction provisions in the 2003 Act to the new offence.

Drug cutting agents (amendment to clause 65)

Clauses 60, 61, 63 and 64 provides that an application may be made to the appropriate court (in Scotland, a sheriff) for the continued retention of seized substances suspected of being used as drug-cutting agents, for the forfeiture or return of such substances and for compensation where no forfeiture order is made. This technical amendment provides that, in each case, such applications to a sheriff must be made by summary application (as distinct from other forms of application, such as an initial writ or small claim).

I am copying this letter to all members of the Public Bill Committee, Sir William Cash, Keith Vaz (Chair, Home Affairs Select Committee), Dr Hywel Francis (Chair, Joint Committee on Human Rights), Baroness Thomas of Winchester (Chairman, Delegated Powers and Regulatory Reform Committee), Baroness Smith of Basildon, Lord Rosser, Lord Laming, Baroness Hamwee and Baroness Walmsley. I am also placing a copy in the library of the House and on the Bill page of the Government website.



Karen Bradley

**SECTIONS 48 TO 51 OF THE SEXUAL OFFENCES ACT 2003 AS AMENDED BY
NEW CLAUSE “CHILD SEXUAL EXPLOITATION”**

Deleted text is shown ~~struck through~~; new text is shown in *italics*.

~~Abuse of children through prostitution and pornography~~
Sexual exploitation of children

48 Causing or inciting ~~child prostitution or pornography~~ *sexual exploitation of a child*

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) ~~to become a prostitute, or to be involved in pornography,~~ *to be sexually exploited* in any part of the world, and
 - (b) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

49 Controlling a child ~~prostitute or a child involved in pornography~~ *in relation to sexual exploitation*

- (1) A person (A) commits an offence if—
- (a) he intentionally controls any of the activities of another person (B) relating to B's ~~prostitution or involvement in pornography~~ *sexual exploitation* in any part of the world, and
 - (b) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

50 Arranging or facilitating ~~child prostitution or pornography~~ *sexual exploitation of a child*

- (1) A person (A) commits an offence if—
- (a) he intentionally arranges or facilitates the ~~prostitution or involvement in pornography~~ *sexual exploitation* in any part of the world of another person (B), and
 - (b) either—

- (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
- (ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

51 Sections 48 to 50: interpretation

~~(1) For the purposes of sections 48 to 50, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.~~

~~(2) In those sections “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.~~

(2) For the purposes of sections 48 to 50, a person (B) is sexually exploited if-

- (a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or*
- (b) an indecent image of B is recorded;*

and “sexual exploitation” is to be interpreted accordingly.

(3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.