

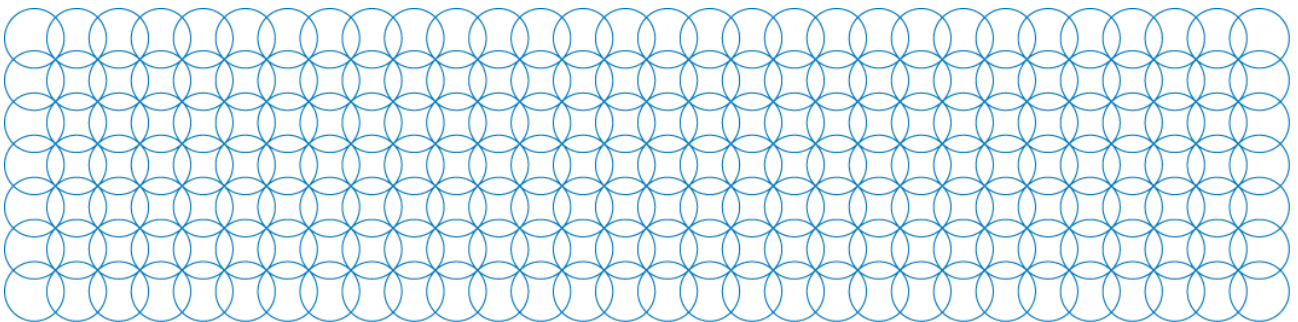


Ministry  
of Justice

# Female genital mutilation: proposal to introduce a civil protection order

This consultation begins on 22 July 2014

This consultation ends on 19 August 2014







Ministry  
of Justice

## Female genital mutilation: proposal to introduce a civil protection order

**A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at <https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>**

## About this consultation

- To:** This targeted consultation is aimed at a broad range of professionals and individuals with an interest in preventing female genital mutilation such as those working in voluntary sector organisations, Government departments, or the legal professions, and including the judiciary and victims.
- Duration:** From 22/07/14 to midnight 19/08/14
- Enquiries (including requests for the paper in an alternative format) to:** FGM Civil protection order consultation  
Criminal and Civil Law Policy Unit  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  
Email: FGM\_consultation@justice.gsi.gov.uk
- How to respond:** The consultation is available on the Justice website using the following link:  
  
<https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>
- If you want to send a written response, please do so by 19<sup>th</sup> August 2014 to:  
FGM Civil protection order consultation  
6<sup>th</sup> Floor (point 6.24)  
Criminal and Civil Law Policy Unit  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  
Email: FGM\_consultation@justice.gsi.gov.uk
- Response paper:** A summary of responses to this consultation will be placed on the [Ministry of Justice consultation platform](#).

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## Executive summary

The Prime Minister hosted the Girl Summit on 22 July 2014, an event aimed at ending female genital mutilation (FGM) and early and forced marriage, within a generation.

At the Summit, the Prime Minister launched this consultation about whether the introduction of a specific civil law measure could help protect potential victims of FGM. This consultation is being led by the Ministry of Justice, as part of cross-government work to tackle and prevent the harmful and unacceptable practice of female genital mutilation.

FGM has been a specific criminal offence since 1985 but there has so far been no conviction for FGM in England and Wales. A number of initiatives have been undertaken to increase reporting of the practice and support prosecutions of those involved in FGM. But the criminal law is only part of tackling the continuing problem of female genital mutilation in this country. Ideally, we want to prevent the mutilation from happening in the first place.

There are general civil law measures that could apply to victims of FGM in some circumstances but none were designed with such victims in mind. Of the more specific civil law measures that exist, we believe that the provisions in Part 4A of the Family Law Act 1996 – under which those who have been, or are at risk of being, forced into marriage can seek a forced marriage protection order (FMPO) - offer a useful model for any specific civil law measure that might be introduced to prevent FGM.

To assist us in considering how effective such a measure might be in practice we are inviting you to submit responses to this consultation.

## **Introduction**

This paper sets out a proposal on whether a specific civil protection order akin to a forced marriage protection order might provide an additional tool to prevent female genital mutilation and could complement the existing criminal law.

This targeted consultation is aimed at a range of professionals and individuals with an interest in preventing female genital mutilation in England and Wales, such as those working in voluntary sector organisations, Government departments, or the legal professions, and including the judiciary and victims.

An email drawing attention to the electronic version of this consultation has been sent to:

NHS England

NHS Wales

Crown Prosecution Service

Royal College of Obstetricians and Gynaecologists

Association of Chief Police Officers

Family Justice Council

Youth Justice Board

Association of High Court Masters

Council of Her Majesty's Circuit Judges

Forum of Tribunal Organisations

Judges Council of England and Wales

NSPCC

African Well Women's Clinic

Daughters of Eve

Victoria Climbe Foundation

Equality Now

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this consultation.



## Female genital mutilation: proposal to introduce a civil protection order

### Overview

Female genital mutilation (FGM) is a form of child abuse and violence against women and girls. It involves procedures which include the partial or total removal of the external female genital organs for non-medical reasons. The practice is extremely painful and has serious health consequences, both at the time the mutilation is carried out, and in later life.

The age at which girls undergo FGM varies enormously according to community. The procedure may be carried out when the girl is newborn, during childhood or adolescence, just before marriage or during the first pregnancy. However, the majority of cases are thought to take place between the ages of 5 and 8.

FGM has been a specific criminal offence since 1985 when the Prohibition of Female Circumcision Act was passed. The Female Genital Mutilation Act 2003, which replaced the 1985 Act, extended significantly the protection that the law affords to victims of this unacceptable practice. It modernised the offence of FGM and the offence of assisting a girl to carry out FGM on herself while also creating extra-territorial offences to deter people from taking girls abroad for mutilation. To reflect the serious harm caused, the Act increased the maximum penalty for any of the female genital mutilation offences from 5 to 14 years. The Director of Public Prosecutions announced the first prosecutions for FGM in March. However, to date no one has been convicted of FGM in England and Wales. At the time of mutilation, however, victims may be too young and vulnerable, or too afraid, to report offences. And they may be reluctant to implicate family members. These barriers to prosecution cannot easily be overcome.

A number of initiatives have been undertaken to increase reporting of the practice and prosecute those involved in FGM. The Home Office is leading cross-government work with communities and frontline practitioners to overcome the barriers to prosecution and improving understanding of the issue in key professions such as health and education in order to facilitate better reporting of the practice. The CPS has also published an Action Plan on FGM with the aim of bringing successful prosecutions in England and Wales.

The criminal law is only part of tackling the continuing problem of female genital mutilation in this country. Whilst we are keen to see the criminal law being used, prosecution after the fact does not relieve the victim of the offence from a lifetime of pain and discomfort. Ideally, we want to prevent the mutilation from happening in the first place. Accordingly, we are seeking views on whether a specific civil law remedy might provide an additional tool to prevent and/or help eliminate FGM and could complement the existing criminal law.

Although there is no specific civil law remedy for potential victims of FGM there are general civil law measures that could apply in some circumstances.

Examples include:

- a “**prohibited steps order**” under section 8 of the Children Act 1989 which could prohibit steps which might be preparatory to FGM - for example, prohibiting parents from removing a girl from the country without the permission of the court. Such an order could not, however, be used to prohibit FGM itself, since the purpose of the order is to prohibit people taking steps in respect of a child which in themselves would be lawful and FGM is not lawful.
- an **Emergency Protection Order** under section 44 of the Children Act 1989 which may be made to safeguard a girl’s welfare if it is not considered appropriate to take her into police protection, or if the situation cannot be resolved during the 72 hours of police protection<sup>1</sup>. However, Emergency Protection Orders are, as the term ‘Emergency’ suggests, intended to be of short duration and would not be appropriate to protect girls from FGM in the longer term – possibly over several years – which might be necessary.

Examples of more specific civil law measures include:

- a **non-molestation order** under Part 4 of the Family Law Act 1996 which is used to protect people who experience domestic violence in a family relationship. A non-molestation order is used to restrain someone from causing or threatening violence to the applicant or to any children, or from molesting them. (The 1996 Act does not define molestation but it can include intimidation, pestering, threats and harassment.) Whilst FGM would constitute violence, the provisions were not designed with FGM cases in mind and could not necessarily be relied upon to protect girls from mutilation.
- a **forced marriage protection order (FMPO)** under Part 4A of the Family Law Act 1996<sup>2</sup> which is used to protect those who have been, or are at risk of being, forced into marriage. A FMPO may contain such prohibitions, restrictions or requirements and any other such terms as the court considers appropriate for the purposes of the order. This could include, for example, provisions not to threaten, harass or use force; to surrender a person’s passport or any other travel document; and not to enter into any arrangements for the engagement or marriage, whether civil or religious, of the person to be protected (the victim) in the UK or abroad.

We believe that the FMPO provisions offer a useful model for any specific civil law measure that might be introduced to prevent FGM. To assist us in considering how effective such a measure might be in practice we invite you to submit responses to the questions below.

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<sup>1</sup> Where there is reasonable cause to believe that a child or young person, under the age of 18 years, is at risk of significant harm, a police officer may (with or without the cooperation of social care) remove them from the parent and use the powers for ‘police protection’ (under section 46 of the Children Act 1989) for up to 72 hours.

<sup>2</sup> Part 4A of the 1996 Act was inserted by the Forced Marriage (Civil Protection) Act 2007.

## Questions

Whereas the criminal law is intended to punish perpetrators after FGM has happened, the civil law would allow for intervention to prevent potential victims from being subjected to FGM in the first place.

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

**Yes/No/Not sure**

**Please explain.**

As indicated above, there is currently a strong focus across Government on overcoming the barriers to prosecution for FGM so that the criminal legislation can more readily be used.

- **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?**

**Yes/No/Not sure**

**Please explain.**

Under the provisions of Part 4A of the Family Law Act 1996, the court may make an order containing any measures that it considers appropriate in order to protect against conduct that may lead to a person being forced into marriage; or to protect a person who has already been forced into a marriage. In deciding whether to make an order, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.

Such orders may prohibit or restrict certain activity or they may require a person to do something, such as produce his or her passport. The court is given a wide discretion to include "such other terms" as may be appropriate. The conduct being regulated or controlled may be within or outside England and Wales. The terms of the order can be directed to respondents who force or attempt to force, or may force or attempt to force, a person into marriage and respondents who are involved in other respects in relation to a forced marriage. Orders may also be made against other people, not named as respondents in the application, recognising the complexity of the issues, the involvement of the wider community and the numbers of people who might be involved.

- **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?**

**Yes/No/Not sure**

**Please explain.**

Forced marriage protection orders can be used to help people who have already been forced into marriage, for example to repatriate victims who have been taken abroad. In the period from January to September 2013 of 134 applications for a FMPO, 9 were made by people who had already been forced into marriage.

- **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?**

**Yes/No/Not sure**

**Please explain.**

The court can make a forced marriage protection order on an application being made to it or, if there are already family proceedings before the court, of its own initiative.

An application may be made by:

- (a) the person who is to be protected by the order; or
- (b) a relevant third party (i.e. a person or class of persons specified by the Lord Chancellor by order) who can make an application on behalf of a potential victim but does need to seek the leave of the court; or
- (c) any other person, as long as it is with the court's permission.

So the potential victim may apply for an order. Local authorities, as a specified "relevant third party", may also apply on the victim's behalf for a FMPO. And others who may be concerned about the victim's welfare, such as friends, relatives and professionals may – with the permission of the court - apply to the court to make a FMPO.

Current figures for FMPO applications indicate that of the 173 applications made in 2013, 72 were made by the person to be protected (or their legal representative); 51 by the relevant third party; 50 by other third parties (i.e. a family member, friend or someone in the community). The figures for this period also show that the majority of applications for FMPOs were made to protect minors (persons age 17 or under). Of the 173 applications made, 112 were to protect persons age 17 or under; 57 to protect persons over 17 and in 4 cases, the age of the person to be protected was unknown.<sup>3</sup>

- **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?**

**Yes/No/Not sure**

**Please explain.**

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<sup>3</sup> Statistics provided by Analytical Services, Ministry of Justice

- **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?**
- **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?**

Please specify.

A forced marriage protection order may be made for a specified period or until varied or discharged. The court may vary or discharge orders on an application from any party to the original proceedings, the person being protected by the order, or anyone else affected by the order. The court may also vary or discharge an order without an application, if the order was made of the court’s own volition.

- **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?**

**Yes/No/Not sure**

**Please explain.**

A breach of a FMPO is treated as a contempt of court and punishable with up to two years imprisonment. Legislation which makes breach of a FMPO a criminal offence with a maximum penalty of 5 years’ imprisonment is now in force<sup>4</sup> . But the civil route of enforcement by way of proceedings for contempt is preserved for those who wish to use it. So victims have a choice of whether the criminal or civil law is used to deal with a breach. They can either call the police to have the breach dealt with as a criminal matter or make an application to the originating county court to have the breach dealt with as a contempt of court.

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

**Yes/No/Not sure.**

**Please explain.**

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<sup>4</sup> Section 63CA of the Family Law Act 1996, inserted by section 120 of the Anti-social Behaviour, Crime and Policing Act 2014.

- **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?**

**Yes/No/Not sure.**

**Please explain.**

The FMPO provisions seem to us to offer a useful model for any specific civil law measure that may be introduced to prevent FGM.

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

**Yes/No/Not Sure.**

**Please explain.**

- **Are there any other points that you wish to add?**

**Yes/No**

## **Related documents**

### **Female Genital Mutilation Act 2003**

<http://www.legislation.gov.uk/ukpga/2003/31/contents>

### **Multi-agency practice guidelines on female genital mutilation**

<https://www.gov.uk/government/publications/female-genital-mutilation-multi-agency-practice-guidelines>

### **Forced Marriage (Civil Protection) Act 2007**

<http://www.legislation.gov.uk/ukpga/2007/20/contents>

**Further information about the Forced Marriage (Civil Protection) Act 2007, including a guide to the court process for making a forced marriage protection order can be found at:**

[http://www.justice.gov.uk/search?collection=moj-matrix-dev-web&form=simple&profile=\\_default&query=forced+marriage](http://www.justice.gov.uk/search?collection=moj-matrix-dev-web&form=simple&profile=_default&query=forced+marriage)

### **Children Act 1989**

<http://www.legislation.gov.uk/ukpga/1989/41/contents>

**This consultation is also available on-line at:**

<https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>

## Summary of consultation questions

1. In principle, do you think that a specific civil law measure for FGM is a good idea?
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 a prosecution?
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?
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?
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?
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?
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?
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?
9. If a civil order for FGM were introduced, do you think that it should be a criminal offence to breach such an order?
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?
11. Do you think that there are alternative ways in which the civil law could be used to protect victims of FGM?
12. Are there any other points that you wish to add?

Thank you for participating in this consultation exercise.



## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details/How to respond

If you can, please respond on-line at:

<https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>

If you want to make a written response, please send it by 19<sup>th</sup> August 2014 to:

### **FGM Civil protection order consultation**

**Ministry of Justice**  
**Criminal and Civil Law Policy Unit**  
**6<sup>th</sup> Floor**

102 Petty France  
London SW1H 9AJ

**Email:** [FGM\\_consultation@justice.gsi.gov.uk](mailto:FGM_consultation@justice.gsi.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.

### **Extra copies**

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>

Alternative format versions of this publication can be requested from [FGM\\_consultation@justice.gsi.gov.uk](mailto:FGM_consultation@justice.gsi.gov.uk)

### **Publication of response**

A summary of responses to this consultation will be placed on the [Ministry of Justice consultation platform](#).

### **Representative groups**

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

### **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## 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.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

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