



Home Office

Introducing mandatory reporting for female genital mutilation A consultation

December 2014

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Ministerial Foreword



Female genital mutilation (FGM) is an extremely harmful crime and one this government has put in the forefront of our work to tackle violence against women and girls. FGM is child abuse and violates the fundamental right of all girls and women to live free from violence and discrimination. The consequences of FGM can be felt throughout a victim's life. Not only are the physical consequences serious, including severe pain, problems with menstruation and complications in childbirth, but survivors can also suffer long term emotional and mental health repercussions.

Over the last four years this government has developed and strengthened its response to FGM. In 2011 the Home Office published the multi agency guidelines on how to handle cases of FGM. In 2013 DFID launched a £35million international programme to combat FGM. Most recently at the Girl Summit in July the Prime Minister and Deputy Prime Minister, set out a clear commitment to end FGM both in the UK and across the world within a generation and announced a significant package of domestic measures aimed at tackling FGM. This included the launch of a new FGM unit, a £1.4million NHS FGM prevention programme and a number of legislative changes to ensure that police and practitioners have the powers to protect girls from these terrible crimes.

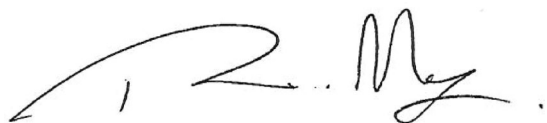
The momentum to end FGM has grown significantly in the last four years. This momentum shift has been made possible by the tremendous campaigners who have worked tirelessly to raise awareness of the issue.

However, there is still more to do. Despite FGM having been a specific criminal offence since 1985 there has only ever been two prosecutions and a small number of police investigations. The government wants to increase the numbers of police investigations for FGM in order to deter perpetrators and in turn prevent this appalling crime from happening. We believe that introducing a new mandatory reporting duty will enable this to happen.

We know that in the past professionals have been uncomfortable with addressing some harmful traditional practices, concerned that they may be labelled as 'politically insensitive' for challenging them. We have worked very hard to shatter this myth and we want to further encourage all groups to speak out about FGM. Introducing mandatory reporting will help to achieve this, bringing FGM out of the shadows and illustrating to perpetrators that they will be tracked down and held responsible for their actions.

The government also appreciate that this is a complex area and a new mandatory reporting duty will impact on many different sectors. That is why we want to consult on how best to introduce the requirement.

The government wants to maintain the momentum on stamping out FGM and all other harmful traditional practices. We must continue to work together and challenge ourselves to think differently, find new ways to protect victims, change attitudes, raise awareness and prevent abuse. We remain determined to eradicate FGM so that no girl or woman has to endure the physical and psychological effects of female genital mutilation.

A handwritten signature in black ink, appearing to read 'R. May', with a large, sweeping initial stroke.

Home Secretary
5 December 2014

Basic information

Why are we consulting?

This public consultation exercise is essential to enable the government to fully scope and explore how to introduce a mandatory reporting requirement on cases of female genital mutilation (FGM).

Scope of this consultation

TOPIC: This consultation seeks views on how to introduce a mandatory reporting requirement on cases of FGM.

SCOPE: This consultation is specifically focused on what and who should be covered by the mandatory reporting requirement: which agencies the requirement should be applied to; how the requirement will work in practice, and; also the sanctions that should be employed if professionals fail to report FGM.

The consultation also seeks views on how the multi-agency practice guidelines on FGM should be placed on a statutory footing most effectively.

GEOGRAPHICAL SCOPE: England and Wales.

IMPACT ASSESSMENT: A consultation stage impact assessment is being finalised and will be available on request.

TO: This consultation is open to the public. We are particularly interested to hear from health care professionals, the police, the judiciary, teachers, social workers, criminal justice practitioners, victims of FGM, organisations representing victims, community groups and leaders, front line workers, service providers, regulatory bodies, the Disclosure and Barring Service and local authorities.

DURATION: 5 weeks.

ENQUIRIES AND RESPONSES: You can submit your responses to the consultation by using the online form <http://www.homeofficesurveys.homeoffice.gov.uk/s/mandatoryreportingoffgm> or in hard copy to: FGM consultation, 5th Floor, Fry Building, 2 Marsham Street, London SW1P 4DF. Email: FGMenquiries@homeoffice.gsi.gov.uk

ADDITIONAL WAYS TO BECOME INVOLVED: This will be an online consultation exercise. Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font, different languages or audio.

GETTING TO THIS STAGE: The government is committed to tackling FGM. In July, at the Girl Summit the Prime Minister and Deputy Prime Minister, announced a package of measures to tackle FGM. These included proposals to strengthen the law, improve the law enforcement response, support frontline professionals and work with communities to prevent abuse.

We also committed to introduce a mandatory reporting requirement for cases of FGM on professionals in order to increase the number of reports being made to the police. However we recognise that this is a complex and sensitive issue which requires input from a range of agencies. Therefore we are consulting to canvas views on how best to introduce this requirement.

The government has also announced its intention to hold a full public consultation on mandatory reporting of other forms of abuse of children and vulnerable adults. We will consult broadly on the advisability, risk, nature and scope of any such wider reporting duty, including questions on which forms of abuse it should apply to, and to whom it should attach.

PREVIOUS ENGAGEMENT: Key partners have been consulted informally during the development of these options.

Introduction

Female Genital Mutilation (FGM)

- 1.1 Female genital mutilation (FGM) comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the external female genitalia for non-medical reasons. The procedure is also referred to as 'cutting', 'female circumcision' and 'initiation'. The practice is medically unnecessary, extremely painful and has serious health consequences, both at the time when the mutilation is carried out and in later life.
- 1.2 Women who have been cut often suffer from serious medical complications during childbirth as well as severe pain, chronic infections, menstrual problems and damage to the reproductive system. The initial trauma and after effects of FGM can also cause long term emotional and mental health issues such as depression, anxiety, psychosexual disorders and self-harm.
- 1.3 In the UK, FGM has been a specific criminal offence since the Prohibition of Female Circumcision Act 1985. The Female Genital Mutilation Act 2003 replaced the 1985 Act in England, Wales and Northern Ireland¹. Section 1 of the 2003 Act provides that a person is guilty of an offence if he "excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris". The 2003 Act made it an offence for the first time for UK nationals or permanent UK residents to carry out FGM abroad, or to aid, abet, counsel or procure the carrying out of FGM abroad, even in countries where FGM is legal.
- 1.4 FGM is a complex issue. Despite the harm it causes, many women and men from practising communities consider it to be normal to protect their cultural identity. The age at which girls undergo FGM varies enormously according to the 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 of FGM are thought to take place between the ages of 5 and 8, therefore girls within that age bracket are at a higher risk. FGM is usually carried out by the older women in a practising community, for whom it is a way of gaining prestige and can be a lucrative source of income. Increasingly some health professionals are performing FGM in the belief that it offers more protection from infection and pain. However, the practice of FGM by medical professionals is condemned by all international groups, including the World Health Organisation (WHO).

Prevalence of FGM in the UK

- 1.5 FGM's prevalence in the UK is difficult to estimate because of the hidden nature of the crime. However, a new report published in July 2014 by Equality Now and City University² has estimated that:
 - Approximately 60,000 girls aged 0-14 have been born in England and Wales to mothers who had undergone FGM;

1 The Prohibition of Female Genital Mutilation (Scotland) Act 2005 replaced the 1985 Act in Scotland
2 <http://www.equalitynow.org/sites/default/files/FGM%20EN%20City%20Estimates.pdf>

- Approximately 103,000 women aged 15-49, and approximately 24,000 women aged 50 and over who have migrated to England and Wales, are living with the consequences of FGM. In addition, approximately 10,000 girls aged under 15 who have migrated to England and Wales are likely to have undergone FGM;
 - Combining the figures for the three age groups, an estimated 137,000 women and girls with FGM, born in countries where FGM is practised, were permanently resident in England and Wales in 2011.
- 1.6 Further data, disaggregated to a local level, will be published by Equality Now and City University in early 2015. In addition, on 16 October, the Health and Social Care Information Centre published the first ever release of NHS FGM data. This is a crucial first step in understanding the extent of FGM in England as reported to health professionals. For the month of September 2014 1,279 active cases³ and 467 newly identified⁴ cases of FGM were reported nationally.
- 1.7 While referrals to the police have increased in recent years, the numbers still remain small. The Metropolitan Police Service received 186 FGM related referrals between April 2012 and October 2014.⁵ The majority were concerns that a child may be at risk of FGM, prompting a multi-agency safeguarding response before any crime is committed.
- 1.8 The NSPCC's specialist FGM helpline (0800 028 3550) offers confidential advice to anyone who is concerned about FGM and has received 433 calls between its set up in June 2013 and the end of October 2014.⁶
- 1.9 The data about the number of girls or women who have been subjected to FGM while UK residents cannot currently be extracted from the prevalence data that is available. Despite this, the headline data indicates a significant disparity between the estimated prevalence of FGM and the number of referrals to police. The government is clear that this disparity needs to be addressed through a mandatory reporting duty for cases of FGM.

Government strategy to tackle FGM

- 1.10 The government is unequivocal that under UK law, FGM is a criminal offence and an extremely harmful form of child abuse which we are firmly committed to eradicating. Tackling FGM forms a key commitment in the government's 'Call to End Violence Against Women and Girls: Action Plan'. The government recognises that tackling FGM requires a comprehensive approach including prevention, punishment, enforcement, support and protection measures.
- 1.11 The Girl Summit held in July marked significant progress in the UK's efforts to tackle FGM. At the summit, the UK announced an unprecedented package of measures to tackle FGM aligned to key strategic aims as set out overleaf.

3 Patients identified as having a history of any FGM type prior to the reporting period and still being actively seen/treated for FGM-related conditions or any other non-related condition at the end of the month. Note: does not include those patients with FGM newly identified in the reporting period.

4 Patients first identified during the reporting period as having had FGM. This will include those diagnosed/identified within the provider within the month.

5 Project Azure, Metropolitan Police

6 NSPCC, helpline, November 2014

Girl Summit Announcements

To strengthen law enforcement:

- The introduction of new legislation to:
 - extend the reach of the extra-territorial offences in the Female Genital Mutilation Act 2003 (now provided for in clause 67 of the Serious Crime Bill);
 - confer lifelong anonymity of victims of FGM (see clause 68 of the Serious Crime Bill);
 - make the law clearer on the liability of parents or those responsible for caring for a child for failing to prevent their child being subjected to FGM (see clause 69 of the Serious Crime Bill).
- The publication of new police guidance on FGM;
- A review by Her Majesty's Inspectorate of Constabulary (HMIC) into 'so-called' honour based violence with a focus on FGM to commence in 2015.

To increase protection and support for victims of FGM:

- A consultation on the introduction of civil orders to prevent FGM – so children identified as being at risk can be protected. The consultation has now been completed and legislation to bring in civil orders has been introduced (see clause 70 of the Serious Crime Bill);
- Improved information sharing between midwives, health visitors and social workers;
- An improved social work response to FGM;
- The launch of a new function as part of gov.uk to signpost local FGM services, improved multi agency guidelines, an e learning package and an updated prevalence study;
- A mandatory requirement to report FGM

To prevent FGM happening to women and girls:

- The launch of a £1.4m FGM prevention programme with NHS England;
- Increased community engagement funding for projects to raise awareness of FGM including with girls in at-risk communities;
- The launch a network of community champions / ambassadors to tackle FGM;
- The launch of a declaration of religious leaders and faith community leaders against FGM;
- The roll out of a communications campaign to raise awareness of FGM amongst professionals and practising communities. and
- Increased training of professionals to help them recognise the signs of FGM abuse

Mandatory reporting of FGM

1.12 It is important that this consultation on how to introduce mandatory reporting for FGM is considered against the backdrop of this extensive package of reforms. Mandatory reporting will not, in and of itself, prevent FGM, lead to better support and protection for victims, or to the robust enforcement of the law and the punishment of offenders. However, the government is clear that a mandatory reporting duty for FGM, with an appropriate sanction for failing to report, can support these strategic aims.

1.13 The government believes that mandatory reporting of FGM should lead to a greater number of victims and potential victims being identified to the police and social services. FGM is a crime in this country whether it takes place in the UK, or is committed by or inflicted on a UK national or permanent resident whilst they are abroad. Alerting the police through mandatory reporting of FGM will allow them to investigate the facts of each case and

should increase the number of perpetrators apprehended and prosecuted for this crime. Prosecutions for FGM should in turn act as a deterrent to perpetrators and in turn prevent FGM from occurring. Depending on how the duty is framed, mandatory reporting of FGM could also lead to a greater number of potential victims being identified. This in turn can lead to strengthened risk assessments being carried out and further multi-agency safeguarding interventions being designed and implemented.

- 1.14 To illustrate the importance of needing to improve the response to FGM within the UK, it is important to reflect that it has been a specific crime to carry out FGM in the UK for almost 30 years, but until this year there had not been a single FGM-related prosecution. One of the reasons the Crown Prosecution Service has struggled to bring a prosecution until this year is because there have been very few investigations by the police. The police in turn cite two main reasons for the small number of investigations: a reliance on victims or witnesses to report to the police, where barriers exist due to potential community and family relationships, and; the absence of referrals from health, education and social care professionals. We want to increase the number of reports to the police from such professionals in order to increase investigations and potential prosecutions.
- 1.15 The government is aware that there are risks involved with introducing a mandatory reporting duty for FGM. If improperly implemented the requirement could lead to the trust between victims and service providers being undermined. It could also act as a deterrent to women to access support and vital health and other services, particularly gynaecological and maternity care. There is also a need to strike the right balance between ensuring that professionals appropriately identify victims and potential victims without creating a 'risk averse' system where all possible FGM cases are reported, adversely impacting on the police's ability to prioritise case-loads. It could also lead to stigmatisation of whole communities. A key aim of this consultation is to seek views on how to avoid these consequences. We want to deliver this new duty in the most effective way possible and ensure that the needs of the individual victim remain central.
- 1.16 Any new duty would have to be seen in the context of existing statutory guidance (for example, Working Together to Safeguard Children⁷) which makes it clear that any practitioner who suspects that a child has suffered abuse (of any form), or is at risk of abuse, should make a referral to children's social care. While needing to avoid duplication or confusion, we need to ensure that referral of relevant cases to social care is not delayed, thereby potentially increasing risks. Employers will want to consider what training is suitable for their employees who are subject to the duty, reflecting their context.
- 1.17 This consultation gives professionals and the wider public the opportunity to express their views on how to increase reporting of FGM. It asks how the new duty for professionals to report FGM could be scoped and what the sanctions for failing to report FGM should be.

Multi Agency Guidelines

- 1.18 In 2011, the government launched multi-agency practice guidelines⁸ for front-line professionals such as teachers, GPs, nurses and police. The guidelines seek to provide advice and support to frontline professionals who have responsibilities to safeguard children and protect and support adults from the abuses associated with FGM. As it is unlikely that any single agency will be able to meet the multiple needs of someone affected by FGM, these guidelines set out a multi-agency response and strategies to encourage agencies to cooperate and work together.

7 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281368/Working_together_to_safeguard_children.pdf

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

1.19 The guidelines provide information on: identifying when a girl (including an unborn girl) or young woman may be at risk of FGM and responding appropriately to protect them; identifying when a girl or young woman has had FGM and responding appropriately to support them; and measures that can be implemented to prevent and ultimately eradicate the practice of FGM. The guidelines also set out professional learning requirements, and make clear that:

Raising awareness about the socio-cultural, ethico-legal, sexual health and clinical care implications involved in FGM is essential. Education and training need to be provided for all health and social care professionals who may work with affected women and girls and with their families.

1.20 The guidelines make clear that FGM is child abuse and a form of violence against women and girls, and therefore should be dealt with as part of existing child and adult safeguarding/protection structures, policies and procedures. They are a key development in preventing girls from being harmed by FGM. The guidelines were updated in July 2014.

1.21 We are also consulting on how best to make the FGM multi agency guidelines statutory. A recent Home Office review of the guidelines found that whilst the guidelines are largely deemed to be very useful there is a lack of awareness of them. The government believes that making the guidelines statutory, alongside a mandatory reporting duty, will help to increase awareness of FGM and improve compliance with good practice in order to increase referrals and reports to the police and afford victims of this terrible abuse the greatest possible protection. Putting the guidelines on a statutory footing will also make clear the importance of training, particularly in public sector organisations, to ensure staff have the expertise they need to identify and report these problems as appropriate.

Consultation: Part A

What should be in scope of the mandatory reporting duty?

‘Known’, ‘suspected’ or ‘at risk’ cases of FGM?

- 2.1 There are three principal alternatives for what could be reported under the new duty – whether the duty should apply to ‘known’, ‘suspected’ or ‘at risk’ cases of FGM.
- 2.2 ‘Known’ cases of FGM are defined as those which are visually confirmed and/ or those which are disclosed by the victim (after the abuse had taken place) to a professional. ‘Suspected’ cases of FGM are defined as those where sufficient indicators have been observed by a professional to make them believe that the victim may have been the victim of FGM. ‘At risk’ cases of FGM are defined as potential victims where professionals believe her to be at risk but that the crime not yet happened.
- 2.3 A mandatory reporting duty of only ‘known’ cases of FGM will ensure that there is clarity that abuse has taken place and police can investigate accordingly. Reporting only ‘known’ cases of FGM ought additionally to lead to appropriate safeguarding action being taken in relation to any other family members (e.g. younger female siblings) who are deemed at risk.
- 2.4 A mandatory reporting duty for all ‘suspected’ and ‘at risk’ cases of FGM, will potentially capture more girls who may not have had FGM, and provide the opportunity for a multi disciplinary safeguarding response to be put in place to protect girls for whom the report was made, in advance of the abuse being committed.
- 2.5 However, there are a number of risks with introducing a duty to report ‘suspected’ or ‘at risk’ cases. From other areas of safeguarding, and work already done within the context of FGM, it is clear that it is extremely difficult to compile a definitive list of generic risk factors. Individual circumstances play a critical in risk assessments. For example, for one girl, holidaying to her country of origin could be critical in assessing that she is at higher risk when combined with other factors. For another, such information may not substantively alter her risk at all. Introducing a mandatory reporting duty with a sanction for failing to report, could incentivise professionals to adopt a very wide interpretation of risk leading to:
 - certain communities being targeted which could in turn impact on the positive work the government is doing to support affected communities to bring about change themselves through speaking up against FGM;
 - the system seeing a sharp increase in referrals, which will make it harder for the police to identify high risk cases;
 - disproportionate focus on FGM in relation to other critical areas of safeguarding such as sexual abuse and neglect.

- 2.6 It is also of note that there are some forms of FGM which are very difficult for even expert clinicians to confirm following a physical examination. If we restrict mandatory reporting to 'known' cases of FGM, consideration will need to be given to these types where clinical diagnosis can be extremely difficult and an expert opinion would be required to confirm.

The government propose that the mandatory reporting duty cover 'known' cases of FGM. 'Known' cases would be defined as those which are visually confirmed, or those which are disclosed to a professional by the victim.

The government is clear that this does not alter the current position in respect of referring 'suspected' or 'at risk' cases, which still encourages professionals to refer cases appropriately as set out in the multi-agency guidelines on FGM.

Children and/or adults?

- 2.7 The government is also seeking views on whether the mandatory reporting duty should be limited to 'known' or 'suspected' FGM in under-18s. Applying the duty to all cases of FGM suffered by both women and girls would ensure that the police and safeguarding authorities are aware of all potential victims who have come into contact with public services and have been identified as having had or being 'at risk' of FGM.
- 2.8 For example, the reporting of a mother who has undergone FGM could support a more robust risk assessment being made for any female children the victims has had and allow suitable safeguarding responses to be put in place.
- 2.9 However, a blanket mandatory reporting of FGM duty for adults and children would serve no such purpose for survivors without children and risks placing a disproportionate burden on healthcare professionals (who are the most likely group to routinely identify FGM) with no clear safeguarding benefits. A new duty, if applied to all age groups, would also risk breaching patient confidentiality responsibilities, act as a disincentive to women who have suffered FGM to seek medical advice and assistance, and could damage the trust between clinician and patient.
- 2.10 Applying the duty to under 18s solely would be consistent with existing statutory duties on professionals to report child abuse and would not significantly alter existing patient confidentiality practices.

The government proposes that the FGM mandatory reporting duty be applied to under 18s only.

The government is clear that this does not alter the current position in respect of reporting cases of FGM in adults, which allows professionals to report cases appropriately, particularly where they assess that a crime has been committed, as set out in the multi-agency guidelines on FGM and other professional guidance.

Which professional groups should be under a duty to report? And to whom should referrals be made?

- 2.11 The government also want to use this consultation to consider which agencies the mandatory reporting duty should be placed on. A number of different groups may become aware of 'known', 'suspected' or 'at risk' FGM cases. Applying the new duty to all voluntary sector and statutory agencies would create greater opportunities to capture all potential

cases of FGM. However, such a broad duty could risk women's and children's engagement with vital services, particularly those provided by the voluntary sector.

- 2.12 The professional groups most likely to encounter those with 'known' FGM are healthcare professionals, teachers and children's social care staff. However, teachers and social care staff are unlikely to be in a position to visually confirm FGM. A duty on teachers and children's social care staff to report 'known' FGM could therefore be limited to victim disclosure of FGM, while doctors and other health professionals would have a duty around both observation and victim disclosure. This needs to be balanced against the risks of creating a complex hierarchy of mandatory reporting duties, and while likely to be infrequent there may be occasions when social care staff and teachers are in a position to visually identify FGM particularly when working with very young children. However, we also need to consider situations where a health professional would see FGM, which are not directly linked to the delivery of care relating to the patient's FGM, but in which genitals are seen simply as a result of delivery of standard healthcare.
- 2.13 Whatever form the scope of the duty takes, it would be necessary to make it clear that this is not the introduction of routine / regular examination of girls by practitioners. Practitioners should not be looking for evidence other than when examination is part of the delivery of healthcare i.e. there should be no implied duty to examine girls.
- 2.14 As FGM is sometimes practised on very young girls, consideration must also be given to whether, and how to ensure, the reporting of cases identified in early years settings. Currently the Early Years Foundation Stage Framework requires one person in each setting to be assigned the safeguarding lead, though all staff must be trained in safeguarding matters. Childminders must take the lead themselves. The government would welcome views on how mandatory reporting should apply in the early years sector to ensure that mandatory reporting of FGM works effectively on the ground.
- 2.15 In Wales, from April 2016, under s130 of the Social Services and Well-being Act 2014, 'relevant partners' of a local authority who have reasonable cause to suspect that a child is at risk, it must inform the local authority. It is likely that a victim of FGM would be considered a child at risk. Relevant partners include youth offending team, police, health practitioners and local authorities. The government will ensure that a discordant parallel reporting arrangement is not created in Wales.
- 2.16 The government also wants to consider to which agency mandatory FGM reports should be made. Reports will need to be followed-up from both a criminal and safeguarding perspective. Reports could accordingly be made to either the police and/or children's social care.
- 2.17 However, we consider it important that, as FGM is a criminal act, the mandatory duty to report it should be to the police. In cases where emergency action is needed to protect a child, it would then be for the police to initiate a multi-agency strategy discussion as set out in Working Together to Safeguard Children⁹ statutory guidance. There will also be circumstances which fall short of needing emergency action to protect a child. The government's view is that professionals should not delay a referral to children's social care – made alongside a mandatory referral to the police – if they consider that the child has suffered significant harm (which would be the case in known cases of FGM).

9 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281368/Working_together_to_safeguard_children.pdf

2.18 For the purposes of the consultation visual identification is taken to mean reasonable concern/suspicion of genital abnormality which is likely to be FGM. It is not expected that identification be to a professional clinical standard.

The government proposes that the new duty is placed on healthcare professionals, teachers, and children’s social care staff, and would welcome views on any necessary differentiation between different professional groups on whether the duty should cover disclosure and/or visual identification. A key factor in that differentiation might be whether different groups would have any opportunity to make a visual identification of FGM.

The government proposes that reports made under the new mandatory reporting of FGM duty are made to the police, with guidance that, in cases where emergency action is needed to protect a child, the police initiate a multi-agency strategy meeting. Referrals should also, outside the mandatory reporting requirement, be made to children’s social care.

Timings of referrals and multiple referrals

2.19 As the government is of the view that the mandatory reporting of FGM duty should apply only to known abuse of under 18s, it is our position that FGM should be reported at initial identification/disclosure. This would be consistent with existing duties on professionals to report child abuse and would not significantly impact on existing patient confidentiality practices.

2.20 However, alternative mandatory reporting models premised on ‘suspected’ or ‘at risk’ cases of FGM, or a duty that extends to adults, raise a wider set of issues to consider in relation to issues like patient confidentiality. Alternative mandatory models may require consideration to be given to a duty to report only where the individual concerned has consented. The government recognises that such a qualification may be difficult to achieve and may not lead to the desired effect of increasing the number of referrals made to the police.

2.21 Alternative options include that the report could be made at an appropriate moment within a given time period – for example within one month of initial disclosure, which would allow for the professional to take a judgement of when any potential negative impact to the individual and family could be mitigated. An example of where a small delay may be suitable might be if a girl of 16 was pregnant and disclosed FGM, but the midwife to whom she disclosed felt that a report to the police immediately might lead to the girl opting out of care through pregnancy. The risk to patient and the unborn child would be taken into account and a delay to reporting may be considered justified.

2.22 The government also wants to seek views on circumstances where an individual is in contact with multiple organisations over a period of time. A duty which necessitated repeated reports may have implications for an individual who may be dissuaded from accessing services following repeated, and (if the duty is framed broadly) potentially nugatory, reports to the police. On the other hand, as an individual’s circumstances may change, and they may for example have had children who could subsequently be at risk of abuse, repeated tracking through a duty which supported multiple reports, may be a useful tool.

2.23 The challenge of knowing when, across multiple organisations, an individual has been reported also needs to be addressed. If a duty premised on single reports is preferred, links between the different parts of service providers, across health and education, need to be sufficiently robust to allow future professionals to know a report has already been made.

A model which required repeat reports would need to be supported by engagement with affected individuals which stressed that this was a critical part of a care/support pathway in order to manage risks of deterring them from accessing health and other services. An alternative model to manage these risks would be to create a duty which aimed to limit the report to just once from within each sector. For example, a girl might be reported once by a doctor and once by a teacher, to limit burdens, at the same time as promoting an inter-agency approach.

The government proposes that reports should be made to the police at initial disclosure/ identification.

The government proposes that reports should be made once from within the different sectors of health and education.

Summary of questions for PART A

- Do you agree with the government's proposal that the mandatory reporting duty of FGM should apply to cases of 'known' abuse?
- Do you agree with the government's definition of 'known' abuse, as something which is visually confirmed and/ or disclosed by the victim?
- Do you agree with the government's proposal that the duty be limited to FGM in under 18s?
- Do you agree with the government's proposal that the duty should be placed on health care professionals, teachers and social care professionals?
- Do you have views on any necessary differentiation between different professional groups on whether the duty should cover disclosure and/or visual identification?
- How do you think mandatory reporting of FGM should apply in the early years sector?
- Do you agree with the government's proposal that all reports should be made to the police?
- Do you agree that reports should be made at the point of initial disclosure/ identification?
- If an individual is in contact with multiple organisations, should they be reported once, once from within a sector, or repeatedly throughout life?

Consultation: Part B

Sanctions for failure to report

Sanctions

- 3.1 A key consideration for the mandatory reporting framework for FGM is the sanction which should be applied for failure to report, this is vital to ensure it has a practicable impact. Due consideration also has to be given to how a failure to report will be identified.
- 3.2 The situation that is most likely to arise is where a case of FGM is identified and previous opportunities to report the abuse have not been taken up. This may be identified by the referring agency or the agency to who the case is referred i.e. the police in the course of their investigations. A professional who has failed to comply with the mandatory reporting duty could then have a sanction placed upon them.
- 3.3 The government want to consider the potential sanctions that could be placed upon individuals who fail to report FGM under the new duty. We are not proposing to create a criminal offence for non-reporting, and think there are two main options for alternative sanctions.

Option 1 – Report to Disclosure and Barring Service (DBS)

- 3.4 The penalty for breach of the mandatory reporting of FGM duty could be that the individual would be liable to being placed on the 'barred' list by the DBS. This means that they would be barred from undertaking regulated activity under the Safeguarding Vulnerable Groups Act 2006 (SVGA Act), which means that they would be unable to work or volunteer with children or vulnerable people.
- 3.5 A failure to report FGM could be added to the duties in statute (through primary legislation) to refer information to the DBS contained in the SVGA Act. The DBS will only bar if satisfied that the breach of duty has taken place and that it is appropriate that the person should be placed on the barred list. In reaching a decision on this latter point the DBS will consider criteria such as actual or likely risk to vulnerable persons and the proportionality of barring. A further advantage of this approach would be that it firmly places the decision in the hands of an expert decision making body, who are trained and practised in making assessments about whether it is appropriate to bar someone.

Option 2 – Disciplinary Sanctions

- 3.6 We have also considered how we might ensure professional bodies take robust disciplinary action when their members fail to report. The professional bodies which regulate those we want to capture are: the General Medical Council (GMC), which covers doctors; the Nursing and Midwifery Council (NMC), which covers nurses and midwives; Health and Care Professionals Council (HPC), for social workers and various health professions, and; the National College of Teaching and Leadership (NCTL). These bodies have a statutory basis.

- 3.7 Currently, none of these bodies have a specific professional regulation relating to the reporting of FGM. It is possible, under the current systems in place, for practitioners to face sanction from their professional body if they fail to report FGM of children. However, we are not aware of any cases where this has occurred. We could work with professional regulators and take steps to change this.
- 3.8 By using professional bodies, there is scope for proportionality to be exercised in regard to the sanction placed on the individual, depending upon the details of the failure to comply with the duty. In the case of teachers, the only sanction currently available to the NCTL is prohibition from teaching, so we would need to ensure that there is consistency between professions in terms of sanctions. Sanctions can vary depending on a wide variety of factors, but can include requiring periods of re-training, and supervision, or suspension or possible removal from practice. The proceedings through which professionals are taken are rigorous and allow for representation. The decision making panels are also expert, trained and practiced in making assessment about whether or not it is appropriate to place measures upon the professional in question.
- 3.9 We should emphasise that these are only two possible options that we have looked at: we would very much welcome comment on alternatives.

Summary of questions for PART B

- By what mechanism do you think sanctions should be placed upon individuals who fail to report FGM under the new duty?
- What level of sanction do you think should be placed upon individuals who fail to report FGM upon the new duty?

Consultation: Part C

Statutory guidelines

FGM multi agency practice guidelines

- 4.1 In 2011, the government launched multi-agency practice guidelines¹⁰ for front-line professionals such as teachers, GPs, nurses and police. The guidelines were updated in July 2014. The guidelines aim to raise awareness of FGM, highlight the risks that people should be aware of, and set out clearly the steps that should be taken to safeguard children and women from this abuse. The guidelines are a key development in preventing girls from being harmed by FGM. A review that the Home Office carried out on the multi agency guidelines in 2013 found that whilst the guidelines are very well received by professionals, awareness of the guidelines is poor. The government wants to seek views on how best to place the guidelines on a statutory basis in order to improve awareness of and compliance with the guidelines.
- 4.2 Stakeholders have pointed to the statutory underpinning of guidance on forced marriage as a model for FGM. Statutory government guidance on forced marriage is contained in *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage*¹¹. This guidance is for all persons and bodies who exercise public functions in relation to safeguarding and promoting the welfare of children and vulnerable adults. This guidance is prepared and published in accordance with the provisions in section 63Q of the Family Law Act 1996. Section 63Q (2) requires any person exercising public functions to whom the guidance is given to have regard to the guidance in the exercise of those public functions. In addition the government has also published *Multi-agency practice guidelines: Handling cases of Forced Marriage*¹² which provides step-by-step advice for frontline workers.
- 4.3 We want to look at how we could improve compliance with the multi agency guidelines on FGM and whether placing the practice guidelines on a statutory footing, in the same manner as we have done on forced marriage guidance, would improve the number of cases referred on to the police for investigation, and improve the safeguarding response provided to the victim and other potential victims. The guidelines have recently been updated, but will need to be revised to capture any legal changes resulting from provisions in the Serious Crime Bill. We would also welcome views on any other substantive amendments to the guidelines, which would help to prevent FGM and protect and support victims.

The government position is that statutory FGM guidance would be aimed at all persons who exercise public functions in relation to safeguarding. Persons exercising public functions in relation to tackling FGM would be required to have regard to the guidance.

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

11 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322310/HMG_Statutory_Guidance_publication_180614_Final.pdf

12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322307/HMG_MULTI_AGENCY_PRACTICE_GUIDELINES_v1_180614_FINAL.pdf

Questions for PART C

- Do you agree that all persons exercising public functions in relation to tackling FGM should be under a duty to have regard to the statutory guidance?’
- Are there substantive amendments which could be made to the guidelines, which would help to prevent FGM and protect and support victims?

Additional questions

- What evidence or information do you have on the expected increase in reports to the police or social services from introducing mandatory reporting of FGM and how do you think they will vary with the different proposals?
- What evidence or information do you have on the cost of referring FGM to the police or social services? For example, information on the length of time it takes to file a report or the length of time the police spend investigating a case will enable us to better establish the cost of the policy.
- What do you think the expected impact of mandatory reporting of FGM would be on the prevalence of FGM and would this change with the different proposals?

