

Serious Crime Bill

Delegated Powers – Supplementary Memorandum by the Home Office

The Government has tabled further amendments to the Serious Crime Bill for Commons Report stage; these include two new delegated powers. This supplementary memorandum explains why the powers have been taken and the reason for the procedure selected.

New clause “*Duty to notify police of female genital mutilation*”: Power to make regulations adding to, removing from or otherwise altering the descriptions of “regulated profession”

Power conferred on: The Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative

2. New clause “*Duty to notify police of female genital mutilation*” amends the Female Genital Mutilation Act 2003 (the FGM Act) to place a duty on a person working in a “regulated profession” 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 who is aged under 18. By virtue of subsection (2)(a) of the new clause, the duty will apply to healthcare professionals, teachers and social care workers in Wales on the basis that this range of professionals are most likely to acquire the required direct knowledge that a child has been subjected to FGM either as a result of a visual confirmation or as a result of the victim disclosing to them that she has been subjected to FGM. However, subsection (8) of the new clause confers on the Secretary of State a power to add to, remove from or otherwise alter, the descriptions of “regulated profession” to whom the duty applies.

3. The regulation-making power includes a power to make consequential, transitional, transitory or saving provision (subsection (9)(b)). In particular, it may be necessary to amend, add to or remove definitions in subsections (11) and (12) of the new clause.

4. This regulation-making power would afford the flexibility to extend the categories of professionals to whom the duty applies if, in the light of experience, it is evident that other professionals would have the requisite knowledge as a result of victims making disclosures to them, for example, early years professionals. Such a power is considered appropriate as Parliament would have approved the principle of the mandatory reporting duty and its application to persons working in specified categories of “regulated professions”. The power can only be used to add to, remove from or otherwise alter the descriptions of regulated professions to which the duty is to apply and could not be used to extend (or narrow) the scope of the reporting duty, for example so that it applied in respect of victims over 18 or to

suspected victims in any age group. The power to extend the categories of regulated professionals to whom the duty is applied is therefore narrowly drawn, albeit that the power could, in principle, be used to apply the duty to any class of person operating in a professional capacity and subject to some level of regulation (for example, youth workers).

5. By virtue of subsection (10) of the new clause, the regulation-making power is subject to the affirmative procedure. This is considered appropriate given the 'Henry VIII' nature of the power. It also recognises that in adding the new clause to the Bill Parliament will have agreed a particular set of regulated professions to whom the duty should apply and will ensure that both Houses have the opportunity to consider and approve any changes to the range of regulated professionals before such changes can take effect.

New clause “*Guidance about female genital mutilation*”: Power to issue guidance in relation to the Female Genital Mutilation Act 2003

Power conferred on: Secretary of State

Power exercisable by: Statutory Guidance

Parliamentary procedure None

6. The FGM Act already provides for offences in relation to FGM. Clauses 69 to 72 of the Bill make a number of amendments to the FGM Act to further strengthen the criminal and civil law to tackle FGM. These provisions extend the extra-territorial reach of the offences in the FGM Act so that they apply to offences involving habitual (as well as permanent) UK residents; introduce a new offence of failing to protect a girl at risk of FGM, grant lifelong anonymity to victims, and provide for a civil order (the FGM protection order) to protect potential victims. And, as indicated above, new clause “*Duty to notify police of female genital mutilation*” further amends the FGM Act to place a duty on specified regulated professionals to notify the police when, in the course of their work, they discover that an act of FGM appears to have been carried out on a girl who is aged under 18. To complement these provisions, new clause “*Guidance about female genital mutilation*” enables the Secretary of State to issue guidance about any of the provisions in the FGM Act, as amended, or other matters relating to FGM. In preparing the guidance, the Secretary of State is under a duty to consult the Welsh Ministers so far as the guidance is to a body exercising devolved Welsh functions, and such other persons as she considers appropriate. Persons exercising public functions to whom the guidance is given will be under a duty to have regard to the guidance when exercising such functions.

7. The intention is to place relevant aspects of the existing multi-agency practice guidelines on FGM¹, updated to reflect the provisions in the Bill, on a

¹ Available at:

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

statutory footing. That guidance provides information on identifying when a girl or young women may be at risk of FGM and responding appropriately to protect them, identifying when a girl or young women has been subjected to FGM and responding appropriately to support them, and measures that can be implemented to prevent the practice of FGM. The revised guidance would detail the changes to the FGM Act and, in particular, provide information on applying for FGM protection orders and complying with the statutory duty to report known cases of FGM against girls and young women under 18. Placing the existing guidance on a statutory footing will help promote awareness amongst public authorities of the strategies and powers available to them to tackle FGM.

8. Any guidance issued under the new clause will not be subject to any parliamentary scrutiny, on the grounds that it will provide practical advice on the application of the legislative provisions and will be worked up in consultation with all interested stakeholders and practitioners. The guidance will not conflict with, or alter the scope of, the criminal offences or civil powers in the FGM Act, as amended. Moreover, whilst a person exercising public functions will be required to have regard to the guidance when exercising those functions, the guidance will not be binding to the extent that this requirement falls short of a duty to follow the guidance. The approach taken in the new clause is consistent with other legislative provisions providing for statutory guidance, in particular section 63Q of the Family Law Act 1996 in relation to forced marriage.

Home Office
12 February 2015