

Get in on the Act

Serious Crime Act 2015

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Background

The Serious Crime Bill was introduced in the House of Commons on 5 June 2014, completed its parliamentary stages on 2 March 2015 and received Royal Assent, becoming law, on 3 March 2015.

The Serious Crime Act 2015 (the Act) gives effect to a number of proposals and commitments made in the Government's Serious and Organised Crime Strategy. It updates existing law dealing with the proceeds of crime, cyber-crime, serious crime prevention orders, gang injunctions, child cruelty, female genital mutilation (FGM) and the commission of certain terrorism offences abroad. Subject to certain exceptions, the provisions of the Act extend to England and Wales.

The Act is made up of six parts as follows:

- 1. Proceeds of crime.**
- 2. Computer misuse.**
- 3. Organised, serious and gang-related crime.**
- 4. Seizure and forfeiture of drug-cutting agents.**
- 5. Protection of children and others.**
- 6. Miscellaneous and general.**

The Local Government Association (LGA) worked with members of both Houses of Parliament, Government officials and stakeholders during the passage of the legislation raising issues of concern to local government. In particular, we were successful in securing an amendment to the legislation on the offence of participating in the activities of an organised crime gang. This publication aims to provide readers with an introduction to the Act and summarises the main principles of relevance to local government.

The role of the LGA and local government in influencing the legislation

Working on behalf of local government, the LGA played a key role in influencing the legislation during its passage through Parliament. We secured an amendment to the legislation that ensured that local government officers who unwittingly became involved in the activities of an organised crime group in the course of their work providing services, such as housing and licensing, would not be criminalised.

In addition, we used the opportunity afforded by the proceeds of crime provisions in the Bill to campaign for a more equal redistribution of the assets recovered from offenders. We called for a greater share of the amount recovered by investigating and prosecuting authorities to be reinvested in affected communities and an amendment was tabled to this effect. Although the amendment was not successful, the Government said that the LGA would be consulted as part of a review of the Asset Recovery Incentivisation Scheme (ARIS) operated by the Home Office.

The LGA also used the opportunity afforded by the FGM clauses in the Bill to highlight local government's concerns with individuals encouraging or promoting FGM. Local authorities have a role in tackling this issue as a result of their duties to safeguard children. They are also well placed to work with communities to try and reduce the numbers of women and girls at risk of FGM in the UK. This work is, however, frequently being undermined when community and faith leaders and others promote or encourage FGM.

The LGA therefore sought to amend the Bill in order to make it an offence for an individual (likely a community or religious leader) to encourage the practice of FGM, whether to a congregation, a group of parents or an individual parent. Legislating to make it an offence to encourage FGM or stop it being encouraged would also ease the pressure placed on parents by elders and preachers, some of whom tell parents it is their 'duty'.

After a lengthy campaign by the LGA, the Government chose not to create an offence of encouraging FGM. However, the strength of the debate and publicity generated led to the Government introducing tough anti-FGM measures via amendments. These included the new legal duty on parents to protect their daughters from FGM and the granting of anonymity to victims to encourage them to give evidence in court. In addition, the Home Office has also created a specialist FGM unit similar to the Forced Marriage Unit.

The key provisions and their implications for local government

Part 3: Organised, serious and gang-related crime

In the Serious and Organised Crime Strategy, the Government undertook to bring forward proposals to “better tackle people who actively support, and benefit from, participating in organised crime.”¹

Section 45 sets out an offence of participating in activities of an organised criminal group. A person commits the offence if he or she takes part in any activities which are the criminal activities of an organised crime group, or helps an organised crime group to carry out criminal activities. In addition, the person must know or reasonably suspect that he or she was engaging in such activities.

The LGA was concerned about the scope of the original wording of clause 41 in the Bill and the extent to which, as drafted, the offence would capture the direct or indirect activities of councils and their employees. A great many areas of council activity could potentially have been captured within the scope of clause 41, including the granting of alcohol and public entertainment licences to pubs or clubs, the licensing of businesses such as taxis, tattoo parlours and lap dancing clubs, procurement of care home places or cleaning services within council offices, and the letting of contracts to resurface roads, transport children to and from school or carry out repairs to the council’s housing stock. The LGA was concerned that, under clause 41, a local authority could be prosecuted if, in the course of these activities, it unknowingly entered into a relationship with an organised crime gang or a member of such a gang.

The LGA briefed Peers about its concerns, asking them to seek clarification from the Government as to whether clause 41 would

apply to the activities of local authorities. This led to a series of discussions with Home Office officials which culminated in the Government bringing forward an amendment to replace ‘reasonable cause to suspect’ with ‘reasonably suspects’. This means that the prosecution is required to prove both a subjective test that the defendant genuinely suspected and an objective test that the suspicion was reasonable. A local government officer providing services would therefore no longer be captured by the provision as he or she would not have suspected anything, even though there might have been reasonable grounds for doing so.

Part 5: Protection of children and others

Protection of children

Section 66 updates the law on child cruelty (as set out in section 1 of the Children and Young Persons Act 1933) and makes it explicit that the offence applies regardless of whether the suffering or injury caused to a child was physical or psychological in nature (which was already implicit). The LGA supported this change which brings the criminal law into line with the legislative framework that social workers already follow. Emotional abuse is currently the second most common reason that a child is on a child protection plan.

Section 68 removes the anachronistic references in the Sexual Offences Act 2003 to “child prostitute”, “child prostitution” and “child pornography”. Such terms are replaced with references to ‘child sexual exploitation’ (so recognising children as victims). However, the scope of the relevant offences has not been altered. This section also changes the law (the Street Offences Act 1959) so that it is no longer a criminal offence for under-18s to sell sex in the street (buying sex from an under-18 in any circumstances would remain illegal). This again recognises children as victims in these circumstances, not consenting participants.

¹ HM Government, Oct 2013

Female Genital Mutilation

The Female Genital Mutilation Act 2003 (the 2003 Act) provides for an offence of FGM.

Section 72 of the Serious Crime Act 2015 introduces a new offence of failing to protect a girl under the age of 16 from risk of FGM.

A person is liable for the offence if they are responsible for a girl at the time when an offence under the 2003 Act is committed against the girl (and FGM has actually occurred). A responsible person includes those with parental responsibility for the girl who have frequent contact with her and any adult who has assumed responsibility for caring for the girl in the manner of a parent. A local authority which has assumed parental responsibility as a result of a care order could fall within the second category, becoming a 'responsible person' and therefore liable.

Section 73 enables the High Court or the family court in England and Wales to make a protection order ('an FGM protection order') for the purposes of protecting a girl who is either at risk of having FGM performed on her or to protect a girl against whom FGM has been committed. The court may draw up the order to include whatever terms it considers necessary to protect the girl, including surrendering of passports or other travel documents. Either the victim or a 'relevant third party' (a person, or someone within a class of persons, specified by regulations) may apply to the court for an FGM order. This is likely to include local authorities as FGM orders are based on the legislative framework for forced marriage orders, for which local authorities may apply.

Section 74, which was introduced by the Government at a late stage in the passage of the Bill through Parliament, imposes a mandatory reporting duty on people who work in a "regulated profession" in England and Wales to notify police of known cases of FGM. Such professionals include healthcare workers, teachers and social workers to whom a victim specifically discloses that she has been the subject of FGM, or who had observed the physical signs of FGM. Failure to comply with the duty will be dealt with via existing disciplinary measures, which may include referral to the professional regulator and/or Disclosure and Barring Service as appropriate.

Thank you

Throughout the passage of the legislation through Parliament we worked closely with our Vice-Presidents, as well as other MPs and Peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to all those parliamentarians who supported us and championed the concerns and arguments of the sector.

Useful links

For the full text of the Act, please refer to: www.legislation.gov.uk/ukpga/2015/9/contents/enacted/data.htm

For the Explanatory Notes, please refer to: www.legislation.gov.uk/ukpga/2015/9/notes/contents



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