

Forced Marriage (Civil Protection) Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice, are published separately as Bill 129 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Vera Baird has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Forced Marriage (Civil Protection) Bill [HL] are compatible with the Convention rights.

Forced Marriage (Civil Protection) Bill [HL]

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TO

Make provision for protecting individuals against being forced to enter into marriage without their free and full consent and for protecting individuals who have been forced to enter into marriage without such consent; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Protection against forced marriage: England and Wales

After Part 4 of the Family Law Act 1996 (c. 27) insert—

“PART 4A

FORCED MARRIAGE

Forced marriage protection orders 5

63A Forced marriage protection orders

- (1) The court may make an order for the purposes of protecting—
 - (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
 - (b) a person who has been forced into a marriage. 10
- (2) In deciding whether to exercise its powers under this section and, if so, in what manner, 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.
- (3) In ascertaining that person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person’s age and understanding. 15

- (4) For the purposes of this Part a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.
- (5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person. 5
- (6) In this Part—
 “force” includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and
 “forced marriage protection order” means an order under this section. 10

63B Contents of orders

- (1) A forced marriage protection order may contain—
 (a) such prohibitions, restrictions or requirements; and
 (b) such other terms; 15
 as the court considers appropriate for the purposes of the order.
- (2) The terms of such orders may, in particular, relate to—
 (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
 (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage; 20
 (c) other persons who are, or may become, involved in other respects as well as respondents of any kind. 25
- (3) For the purposes of subsection (2) examples of involvement in other respects are—
 (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or 30
 (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

63C Applications and other occasions for making orders

- (1) The court may make a forced marriage protection order—
 (a) on an application being made to it; or 35
 (b) without an application being made to it but in the circumstances mentioned in subsection (6).
- (2) An application may be made by—
 (a) the person who is to be protected by the order; or
 (b) a relevant third party. 40
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—
 (a) the applicant’s connection with the person to be protected; 45

- (b) the applicant’s knowledge of the circumstances of the person to be protected; and
- (c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them. 5
- (5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where – 10
- (a) any other family proceedings are before the court (“the current proceedings”);
- (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and 15
- (c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.
- (7) In this section –
- “family proceedings” has the same meaning as in Part 4 (see section 63(1) and (2)) but also includes – 20
- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults;
- (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 (c. 41) which includes an exclusion requirement (as defined in section 44A(3) of that Act); and 25
- (c) proceedings in which the court has made an order under section 50 of the Act of 1989 (recovery of abducted children etc.); and 30
- “relevant third party” means a person specified, or falling within a description of persons specified, by order of the Lord Chancellor.
- (8) An order of the Lord Chancellor under subsection (7) may, in particular, specify the Secretary of State. 35

Further provision about orders

63D Ex parte orders: Part 4A

- (1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court. 40
- (2) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances including –
- (a) any risk of significant harm to the person to be protected or another person if the order is not made immediately; 45

- (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and
 - (c) whether there is reason to believe that—
 - (i) the respondent is aware of the proceedings but is deliberately evading service; and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.
- (3) The court must give the respondent an opportunity to make representations about any order made by virtue of subsection (1). 10
- (4) The opportunity must be—
- (a) as soon as just and convenient; and
 - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court. 15
- 63E Undertakings instead of orders**
- (1) The court may, subject to subsection (3), accept an undertaking from the respondent to proceedings for a forced marriage protection order if it has power to make such an order.
 - (2) No power of arrest may be attached to an undertaking given under subsection (1). 20
 - (3) The court may not accept an undertaking under subsection (1) instead of making an order if a power of arrest would otherwise have been attached to the order.
 - (4) An undertaking given to the court under subsection (1) is enforceable as if the court had made the order in terms corresponding to those of the undertaking. 25
 - (5) This section is without prejudice to the powers of the court apart from this section.
- 63F Duration of orders** 30
- A forced marriage protection order may be made for a specified period or until varied or discharged.
- 63G Variation of orders and their discharge**
- (1) The court may vary or discharge a forced marriage protection order on an application by—
 - (a) any party to the proceedings for the order;
 - (b) the person being protected by the order (if not a party to the proceedings for the order); or
 - (c) any person affected by the order.
 - (2) In addition, the court may vary or discharge a forced marriage protection order made by virtue of section 63C(1)(b) even though no application under subsection (1) above has been made to the court. 40
 - (3) Section 63D applies to a variation of a forced marriage protection order as it applies to the making of such an order.

- (4) Section 63E applies to proceedings for a variation of a forced marriage protection order as it applies to proceedings for the making of such an order.
- (5) Accordingly, references in sections 63D and 63E to making a forced marriage protection order are to be read for the purposes of subsections (3) and (4) above as references to varying such an order. 5
- (6) Subsection (7) applies if a power of arrest has been attached to provisions of a forced marriage protection order by virtue of section 63H.
- (7) The court may vary or discharge the order under this section so far as it confers a power of arrest (whether or not there is a variation or discharge of any other provision of the order). 10

Arrest for breach of orders

63H Attachment of powers of arrest to orders

- (1) Subsection (2) applies if the court – 15
- (a) intends to make a forced marriage protection order otherwise than by virtue of section 63D; and
- (b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order. 20
- (2) The court must attach a power of arrest to one or more provisions of the order unless it considers that, in all the circumstances of the case, there will be adequate protection without such a power.
- (3) Subsection (4) applies if the court – 25
- (a) intends to make a forced marriage protection order by virtue of section 63D; and
- (b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.
- (4) The court may attach a power of arrest to one or more provisions of the order if it considers that there is a risk of significant harm to a person, attributable to conduct of the respondent, if the power of arrest is not attached to the provisions immediately. 30
- (5) The court may provide for a power of arrest attached to any provisions of an order under subsection (4) to have effect for a shorter period than the other provisions of the order. 35
- (6) Any period specified for the purposes of subsection (5) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.
- (7) In this section “respondent” includes any person who is not a respondent but to whom an order is directed. 40

63I Arrest under attached powers

- (1) Subsection (2) applies if a power of arrest is attached to provisions of a forced marriage protection order under section 63H.

- (2) A constable may arrest without warrant a person whom the constable has reasonable cause for suspecting to be in breach of any such provision or otherwise in contempt of court in relation to the order.
- (3) A person arrested under subsection (2) must be brought before the relevant judge within the period of 24 hours beginning at the time of the person's arrest. 5
- (4) In calculating any period of 24 hours for the purposes of subsection (3), Christmas Day, Good Friday and any Sunday are to be ignored.
- 63J Arrest under warrant**
- (1) Subsection (2) applies if the court has made a forced marriage protection order but – 10
- (a) no power of arrest is attached to any provision of the order under section 63H;
- (b) such a power is attached only to certain provisions of the order; or 15
- (c) such a power was attached for a shorter period than other provisions of the order and that period has expired.
- (2) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order. 20
- (3) The relevant judge must not issue a warrant on an application under subsection (2) unless –
- (a) the application is substantiated on oath; and
- (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order. 25
- (4) In this section “interested party”, in relation to a forced marriage protection order, means – 30
- (a) the person being protected by the order;
- (b) (if a different person) the person who applied for the order; or
- (c) any other person;
- but no application may be made under subsection (2) by a person falling within paragraph (c) without the leave of the relevant judge.
- 63K Remand: general** 35
- (1) The court before which an arrested person is brought under section 63I(3) or by virtue of a warrant issued under section 63J may, if the matter is not then disposed of immediately, remand the person concerned.
- (2) Schedule 5 has effect in relation to the powers of the court to remand a person by virtue of this section but as if the following modifications were made to the Schedule. 40
- (3) The modifications are that –
- (a) in paragraph 2(1) of Schedule 5, the reference to section 47 is to be read as a reference to this section; and 45

- (b) in paragraph 2(5)(b) of the Schedule, the reference to section 48(1) is to be read as a reference to section 63L(1).
- (4) Subsection (5) applies if a person remanded under this section is granted bail under Schedule 5 as modified above.
- (5) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the relevant judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice. 5
- 63L Remand: medical examination and report**
- (1) Any power to remand a person under section 63K(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required. 10
- (2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judge remands the accused in custody. 15
- (3) If the relevant judge remands the accused in custody, the adjournment must not be for more than 3 weeks at a time.
- (4) Subsection (5) applies if there is reason to suspect that a person who has been arrested – 20
- (a) under section 63I(2); or
- (b) under a warrant issued on an application made under section 63J(2);
- is suffering from mental illness or severe mental impairment.
- (5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (c. 20) (remand for report on accused’s mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section. 25

Jurisdiction and procedure

- 63M Jurisdiction of courts: Part 4A** 30
- (1) For the purposes of this Part “the court” means the High Court or a county court.
- (2) Subsection (1) is subject to any provision made by virtue of subsections (3) and (4).
- (3) Section 57(3) to (12) (allocation of proceedings to courts etc.) apply for the purposes of this Part as they apply for the purposes of Part 4 but as if the following modification were made. 35
- (4) The modification is that section 57(8) is to be read as if there were substituted for it –
- “(8) For the purposes of subsections (3), (4) and (5), there are two levels of court – 40
- (a) the High Court; and
- (b) any county court.”

63N Power to extend jurisdiction to magistrates' courts

- (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order provide for magistrates' courts to be included among the courts who may hear proceedings under this Part.
- (2) An order under subsection (1) may, in particular, make any provision in relation to magistrates' courts which corresponds to provision made in relation to such courts by or under Part 4. 5
- (3) Any power to make an order under this section (including that power as extended by section 65(2)) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Part or any other enactment. 10
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise the Lord Chief Justice's functions under this section.

63O Contempt proceedings: Part 4A 15

The powers of the court in relation to contempt of court arising out of a person's failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the relevant judge.

63P Appeals: Part 4A 20

- (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under section 57(5) as applied by section 63M(3) and (4). 25
- (2) Except so far as provided for in any order made under subsection (1), no appeal may be made against any decision of a kind mentioned in that subsection.
- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice's functions under this section. 30

*Supplementary***63Q Guidance**

- (1) The Secretary of State may from time to time prepare and publish guidance to such descriptions of persons as the Secretary of State considers appropriate about— 35
 - (a) the effect of this Part or any provision of this Part; or
 - (b) other matters relating to forced marriages.
- (2) A person exercising public functions to whom guidance is given under this section must have regard to it in the exercise of those functions. 40
- (3) Nothing in this section permits the Secretary of State to give guidance to any court or tribunal.

63R Other protection or assistance against forced marriage

- (1) This Part does not affect any other protection or assistance available to a person who—
- (a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or 5
 - (b) has been forced into a marriage.
- (2) In particular, it does not affect—
- (a) the inherent jurisdiction of the High Court;
 - (b) any criminal liability;
 - (c) any civil remedies under the Protection from Harassment Act 1997 (c. 40); 10
 - (d) any right to an occupation order or a non-molestation order under Part 4 of this Act;
 - (e) any protection or assistance under the Children Act 1989 (c. 41);
 - (f) any claim in tort; or 15
 - (g) the law of marriage.

63S Interpretation of Part 4A

In this Part—

- “the court” is to be read with section 63M;
- “force” (and related expressions), in relation to a marriage, are to be read in accordance with section 63A(4) to (6); 20
- “forced marriage protection order” has the meaning given by section 63A(6);
- “marriage” means any religious or civil ceremony of marriage (whether or not legally binding); and 25
- “the relevant judge”, in relation to any order under this Part, means—

 - (a) where the order was made by the High Court, a judge of that court; and
 - (b) where the order was made by a county court, a judge or district judge of that or any other county court.” 30

2 Protection against forced marriage: Northern Ireland

Schedule 1 (protection against forced marriage: Northern Ireland) has effect.

3 Consequential amendments etc.

- (1) Schedule 2 (consequential amendments) has effect. 35
- (2) The Lord Chancellor may by order make such supplementary, incidental or consequential provision as the Lord Chancellor considers appropriate for the purposes of section 1 or in consequence of that section.
- (3) The Department of Finance and Personnel may by order make such supplementary, incidental or consequential provision as the Department considers appropriate for the purposes of section 2 and Schedule 1 or in consequence of those provisions. 40
- (4) An order under subsection (2)—

- (a) may contain such transitional, transitory or saving provision as the Lord Chancellor considers appropriate; and
- (b) is to be made by statutory instrument.
- (5) An order under subsection (3) –
- (a) may contain such transitional, transitory or saving provision as the Department of Finance and Personnel considers appropriate; and 5
- (b) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)).
- (6) Any power to make an order under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including any Act passed in the same Session as this Act). 10
- (7) No order is to be made under this section –
- (a) by the Lord Chancellor unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament; 15
- (b) by the Department of Finance and Personnel unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (8) Subsection (7)(a) does not apply to an order which does not amend or repeal any provision of an Act and an order of the Lord Chancellor under this section which does not amend or repeal any provision of an Act is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (9) Subsection (7)(b) does not apply to an order which does not amend or repeal any provision of an Act or Northern Ireland legislation and an order of the Department of Finance and Personnel under this section which does not amend or repeal any provision of an Act or Northern Ireland legislation is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))). 25
- (10) In this section “enactment” includes Northern Ireland legislation.
- 4 Short title, commencement and extent 30**
- (1) This Act may be cited as the Forced Marriage (Civil Protection) Act 2007.
- (2) Section 1, section 3(1) (so far as relating to Part 1 of Schedule 2) and Part 1 of Schedule 2 come into force on such day as the Lord Chancellor may by order appoint; and different days may be appointed for different purposes.
- (3) An order under subsection (2) – 35
- (a) may contain such transitional, transitory or saving provision as the Lord Chancellor considers appropriate; and
- (b) is to be made by statutory instrument.
- (4) Section 2, section 3(1) (so far as relating to Part 2 of Schedule 2), Schedule 1 and Part 2 of Schedule 2 come into force on such day as the Department of Finance and Personnel may by order appoint; and different days may be appointed for different purposes. 40
- (5) An order under subsection (4) –
- (a) may contain such transitional, transitory or saving provision as the Department of Finance and Personnel considers appropriate; and 45

-
- (b) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)).
 - (6) Section 1 and Part 1 of Schedule 2 extend to England and Wales only.
 - (7) Section 2, Schedule 1 and Part 2 of Schedule 2 extend to Northern Ireland only.
 - (8) Section 3 and this section extend to England and Wales and Northern Ireland only. 5

SCHEDULES

SCHEDULE 1

Section 2

PROTECTION AGAINST FORCED MARRIAGE: NORTHERN IRELAND

PART 1

FORCED MARRIAGE PROTECTION ORDERS

5

Forced marriage protection orders

- 1 (1) The court may make an order for the purposes of protecting –
 - (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
 - (b) a person who has been forced into a marriage. 10
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, 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.
- (3) In ascertaining that person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person’s age and understanding. 15
- (4) For the purposes of this Schedule a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent. 20
- (5) For the purposes of sub-paragraph (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.
- (6) In this Schedule – 25
 - “force” includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and
 - “forced marriage protection order” means an order under this paragraph.

Contents of orders

30

- 2 (1) A forced marriage protection order may contain –
 - (a) such prohibitions, restrictions or requirements; and
 - (b) such other terms;
 as the court considers appropriate for the purposes of the order.

- (2) The terms of such orders may, in particular, relate to –
- (a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;
 - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage; 5
 - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (3) For the purposes of sub-paragraph (2) examples of involvement in other respects are – 10
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or
 - (b) conspiring to force, or to attempt to force, a person to enter into a marriage. 15

Applications and other occasions for making orders

- 3 (1) The court may make a forced marriage protection order –
- (a) on an application being made to it; or
 - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6). 20
- (2) An application may be made by –
- (a) the person who is to be protected by the order; or
 - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including – 25
- (a) the applicant’s connection with the person to be protected;
 - (b) the applicant’s knowledge of the circumstances of the person to be protected; and
 - (c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them. 30
- (5) An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted. 35
- (6) The circumstances in which the court may make an order without an application being made are where –
- (a) any other family proceedings are before the court (“the current proceedings”);
 - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and 40
 - (c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings. 45
- (7) In this paragraph –

“family proceedings” has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)) (see Article 2(2) and (3)) but also includes –

- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults; 5
- (b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I.2)) which includes an exclusion requirement (as defined in Article 63A(3) of that Order); and 10
- (c) proceedings in which the court has made an order under Article 69 of the Order of 1995 (recovery of abducted children etc.); and

“relevant third party” means a person specified, or falling within a description of persons specified, by order of the Department of Finance and Personnel. 15

- (8) An order of the Department of Finance and Personnel under sub-paragraph (7) may, in particular, specify that Department.

Ex parte orders

- 4 (1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court. 20
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including – 25
- (a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;
 - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and 30
 - (c) whether there is reason to believe that –
 - (i) the respondent is aware of the proceedings but is deliberately evading service; and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant. 35
- (3) If the court makes an order by virtue of sub-paragraph (1), it must specify a date for a full hearing.
- (4) In sub-paragraph (3), “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court. 40

Duration of orders

- 5 A forced marriage protection order may be made for a specified period or until varied or discharged.

Variation of orders and their discharge

- 6 (1) The court may vary or discharge a forced marriage protection order on an application by –
- (a) any party to the proceedings for the order;
 - (b) the person being protected by the order (if not a party to the proceedings for the order); or
 - (c) any person affected by the order.
- (2) In addition, the court may vary or discharge a forced marriage protection order made by virtue of paragraph 3(1)(b) even though no application under sub-paragraph (1) above has been made to the court.
- (3) Paragraph 4 applies to a variation of a forced marriage protection order as it applies to the making of such an order; and, accordingly, references in that paragraph to making a forced marriage protection order are to be read as references to varying such an order.

PART 2

ENFORCEMENT

Offence of contravening an order

- 7 Any person who, without reasonable excuse, contravenes a forced marriage protection order, commits an offence and is liable on summary conviction –
- (a) to a fine not exceeding level 5 on the standard scale;
 - (b) to imprisonment for a term not exceeding 6 months; or
 - (c) to both.

PART 3

JURISDICTION AND PROCEDURE

Jurisdiction of courts

- 8 (1) For the purposes of this Schedule “the court” means the High Court or a county court.
- (2) Sub-paragraph (1) is subject to any provision made by virtue of sub-paragraphs (3) and (4).
- (3) Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)) (allocation of proceedings to courts etc.) apply for the purposes of this Schedule as they apply for the purposes of that Order but as if the following modification were made.
- (4) The modification is that Article 34(8) is to be read as if there were substituted for it –
- “(8) For the purposes of paragraphs (3), (4) and (5), there are two levels of court –
 - (a) the High Court; and
 - (b) a county court.”

Power to extend jurisdiction to courts of summary jurisdiction

- 9 (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Schedule.
- (2) An order under sub-paragraph (1) may, in particular, make any provision in relation to courts of summary jurisdiction which corresponds to provision made in relation to such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)). 5
- (3) Any power to make an order under this paragraph (including that power as extended by paragraph 14(3)) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Schedule or any other enactment. 10
- (4) In sub-paragraph (3) “enactment” includes Northern Ireland legislation.
- (5) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice’s functions under this paragraph – 15
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

Contempt proceedings

- 10 The powers of the court in relation to contempt of court arising out of a person’s failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the relevant judge. 20

Appeals from county courts

- 11 (1) An appeal lies to the High Court against – 25
- (a) the making by a county court of any order under this Schedule; or
- (b) any refusal by a county court to make such an order;
- as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I.3)) (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases). 30
- (2) But an appeal does not lie to the High Court under sub-paragraph (1) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I.15)) in the same proceedings. 35
- (3) Provision must be made by rules of court for an appeal to lie (upon a point of law, a question of fact or the admission or rejection of any evidence) to the Court of Appeal against –
- (a) the making of any order under this Schedule; or
- (b) any refusal to make such an order; 40
- by a county court of the type referred to in sub-paragraph (2).
- (4) Sub-paragraph (3) is without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I.3)) (cases stated).

- (5) On an appeal under sub-paragraph (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
- (6) Where an order is made under sub-paragraph (5), the High Court may also make such incidental or consequential orders as appear to it to be just.
- (7) Any order of the High Court made on an appeal under sub-paragraph (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of—
- (a) the enforcement of the order; and
 - (b) any power to vary, revive or discharge orders;
- as if it were an order of the county court from which the appeal was brought and not an order of the High Court.
- (8) This paragraph is subject to paragraph 12.

Appeals: transfers and proposed transfers

- 12 (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under Article 34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)) as applied by paragraph 8(3) and (4) above.
- (2) Except so far as provided for in any order made under sub-paragraph (1), no appeal may be made against any decision of a kind mentioned in that sub-paragraph.
- (3) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice’s functions under this paragraph—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

PART 4

SUPPLEMENTARY

Guidance

- 13 (1) The Department of Finance and Personnel may from time to time prepare and publish guidance to such descriptions of persons as the Department of Finance and Personnel considers appropriate about—
- (a) the effect of this Schedule or any provision of this Schedule; or
 - (b) other matters relating to forced marriages.
- (2) A person exercising public functions to whom guidance is given under this paragraph must have regard to it in the exercise of those functions.
- (3) Nothing in this paragraph permits the Department of Finance and Personnel to give guidance to any court or tribunal.

Orders

- 14 (1) An order made by the Department of Finance and Personnel under paragraph 3(7) –
- (a) may make different provision for different purposes;
 - (b) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Department of Finance and Personnel considers appropriate; 5
 - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)); and
 - (d) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))). 10
- (2) An order made by the Lord Chancellor by virtue of paragraph 8(3) and (4) or under paragraph 12(1) –
- (a) may make different provision for different purposes;
 - (b) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Lord Chancellor considers appropriate; 15
 - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)); and
 - (d) is subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument (and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly). 20
- (3) An order made by the Lord Chancellor under paragraph 9 –
- (a) may make different provision for different purposes; 25
 - (b) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Lord Chancellor considers appropriate;
 - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)); and 30
 - (d) is not to be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Other protection or assistance against forced marriage

- 15 (1) This Schedule does not affect any other protection or assistance available to a person who – 35
- (a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or
 - (b) has been forced into a marriage.
- (2) In particular, it does not affect –
- (a) the inherent jurisdiction of the High Court; 40
 - (b) any criminal liability;
 - (c) any right to an occupation order or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6));
 - (d) any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I.9)); 45

- (e) any protection or assistance under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I.2));
- (f) any claim in tort; or
- (g) the law of marriage.

Interpretation 5

- 16 In this Schedule –
- “the court” is to be read with paragraph 8(1);
 - “force” (and related expressions), in relation to a marriage, are to be read in accordance with paragraph 1(4) to (6);
 - “forced marriage protection order” has the meaning given by paragraph 1(6); 10
 - “marriage” means any religious or civil ceremony of marriage (whether or not legally binding); and
 - “the relevant judge”, in relation to any order under this Schedule, means – 15
 - (a) where the order was made by the High Court, a judge of that court; and
 - (b) where the order was made by a county court, a judge or district judge of that or any other county court.

SCHEDULE 2 Section 3(1) 20

CONSEQUENTIAL AMENDMENTS

PART 1

ENGLAND AND WALES

- 1 In paragraph 3(f)(i) of Schedule 1 to the Supreme Court Act 1981 (c. 54) (distribution of business in High Court: family division) after “Part IV” insert “or 4A”. 25
- 2 In section 58A(2)(f) of the Courts and Legal Services Act 1990 (c. 41) (conditional fee agreements: supplementary) for “Part IV” substitute “Parts 4 and 4A”.
- 3 (1) The Family Law Act 1996 (c. 27) is amended as follows. 30
 - (2) In section 63(2) (interpretation of Part 4: family proceedings), after paragraph (b), insert –
 - “(ba) Part 4A;”.
 - (3) In section 65 (rules, regulations and orders) – 35
 - (a) in subsection (3) after “5(8)” insert “, 63N”; and
 - (b) in subsection (4) after “5(8)” insert “or 63N”.

PART 2

NORTHERN IRELAND

- 4 In Article 2(3) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)) (interpretation: family proceedings), after sub-paragraph (h), insert— 5
 “(i) Schedule 1 to the Forced Marriage (Civil Protection) Act 2007.”
- 5 In Article 39(2) of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I.10)) (conditional fee agreements: supplementary), after sub-paragraph (g), insert— 10
 “(h) Schedule 1 to the Forced Marriage (Civil Protection) Act 2007,”.

Forced Marriage (Civil Protection) Bill [HL]

A

B I L L

To make provision for protecting individuals against being forced to enter into marriage without their free and full consent and for protecting individuals who have been forced to enter into marriage without such consent; and for connected purposes.

Brought from the Lords, 21st June 2007.

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