

FORCED MARRIAGE (CIVIL PROTECTION) BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Forced Marriage (Civil Protection) Bill [HL], as brought from the House of Lords on 21st June 2007. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The aim of the Bill is to provide civil remedies for those faced with forced marriage, and victims of forced marriage.
4. Many of the proposals in the Bill have emerged from the following Government consultations and reports:
5. “A Choice by Right”, a report issued by the working group established by the Government in 2000 to look at the question of forced marriage; and
6. “Forced Marriage, A Wrong Not a Right”, a consultation document issued by the Government in December 2005 and the response to that consultation dated June 2006.

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7. The proposals have also emerged from the consultation carried out by the Odyssey Trust, following the introduction of the Bill. The Trust supports the activities of Lord Lester of Herne Hill, the Private Member sponsor of the Bill in the House of Lords.

RELEVANT LEGISLATION

8. The Bill makes amendments to:
 - the Family Law Act 1996 (FLA);
 - the Supreme Court Act 1981;
 - the Courts and Legal Services Act 1990;
 - the Family Homes and Domestic Violence (Northern Ireland) Order 1998; and
 - the Access to Justice (Northern Ireland) Order 2003.

OVERVIEW OF THE STRUCTURE

9. The Bill contains 4 clauses and 2 schedules.
10. Clause 1 introduces a new Part 4A into the FLA and provides for protection against a forced marriage in England and Wales.
11. Clause 2 introduces Schedule 1, which provides for similar protection against a forced marriage in Northern Ireland.
12. Clause 3 concerns consequential amendments and introduces Schedule 2.
13. Clause 4 deals with the short title, commencement and extent.

TERRITORIAL EXTENT: GENERAL

14. The Bill extends to England and Wales and Northern Ireland.
15. Clause 1 provides for England and Wales.
16. Clause 2 and Schedule 1 provide for similar protection against forced marriage in Northern Ireland.

TERRITORIAL APPLICATION: WALES

17. The provisions apply in Wales as they do in England.

TERRITORIAL APPLICATION: SCOTLAND

18. The Bill does not apply to Scotland, as responsibility for policy on forced marriage is a devolved area in Scotland. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

COMMENTARY ON CLAUSES

Clause 1 – Protection against forced marriage: England and Wales

19. Clause 1 is the principal clause and inserts a new Part (Part 4A) into the FLA. This Part contains 19 new sections (63A – 63S).

Section 63A Forced marriage protection orders

20. *Subsection (1)* sets out the purpose of making an order under the Bill. An order may be made either to protect a person from being forced into a marriage, or from any attempt to force a person into a marriage, or to protect a person who has been forced into a marriage.
21. *Subsections (2) and (3)* set out the issues that the court must consider when deciding whether to make an order and the type of order that should be made. These issues include the health, safety and well being of the person to be protected. In considering the well being of the person to be protected regard must be given to their wishes and feelings, as far as it is possible to ascertain them. For example if a person is incarcerated it may not be possible for the court to ascertain their wishes. The section also provides that the court should only give as much weight to the wishes and feelings of the person to be protected as it considers appropriate in light of their age and understanding. For example the court may consider it appropriate to attach less weight to a very young person's wishes.
22. *Subsection (4)* describes what a forced marriage means in these circumstances, namely that a forced marriage is one that is entered into without the person's free and full consent.
23. *Subsection (5)* sets out that the conduct which forces a person into marriage does not have to be directed against that person, but can be directed against another or against the perpetrator. For example, this would cover circumstances where the perpetrator threatened to commit suicide if the person did not submit to the marriage.

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24. *Subsection (6)* provides that the conduct includes coercion by threats or other psychological means. This recognises that the type of force used in these circumstances can be verbal, physical or mental.

Section 63B Contents of orders

25. Section 63B provides for the measures that can be included in the orders that the court may make under section 63A.
26. *Subsection (1)* provides that the court may make an order containing any measures that are considered appropriate in order to protect against conduct that may lead to a person being forced into marriage; or to protect a person who has been forced into a marriage. The orders may prohibit or restrict certain activity or they may require a person to do something, such as produce their passport. The court is given a wide discretion to include “such other terms” as may be appropriate.
27. *Subsection (2)* provides that the conduct being regulated or controlled may be within or outside England and Wales.
28. Subsection (2) also provides to whom orders may be addressed. The terms of the order can be directed to respondents who force or attempt to force, or may force or attempt to force, a person into marriage and respondents who are involved in other respects in relation to a forced marriage. Orders may also be addressed to any other persons who are or may become involved in other respects as well as respondents.
29. *Subsection (3)* provides examples of being involved in other respects in relation to a forced marriage. This may include a person who aids, abets, counsels, procures, encourages, or helps the perpetrator and anyone who conspires to force or attempt to force a person into marriage.

Section 63C Applications and other occasions for making orders

30. *Subsection (1)* provides that the court can make an order on an application or, if there are already family proceedings before the court, of its own initiative.
31. *Subsection (2)* provides that a person who is to be protected or a relevant third party can apply without leave of the court. A relevant third party is a person or class of persons specified by the Lord Chancellor by order. The Forced Marriage Unit could for example be made a third party. Technically the Secretary of State would have to be designated a relevant third party for the Forced Marriage Unit to operate in this way as the Forced Marriage Unit has no independent status in law.
32. *Subsection (3)* provides that any other applicant must first get the permission of the court before they are able to make an application, and *subsection (4)* sets out the criteria that the court must consider in making a decision as to

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whether to grant permission. Again the court must consider the ascertainable wishes and feelings of the person to be protected, as it is required to do by section 63A.

33. *Subsection (5)* provides that an application can be made within other family proceedings or as a stand-alone application.
34. *Subsection (6)* sets out the circumstances in which the court can make a forced marriage protection order of its own initiative.
35. *Subsection (7)* defines the meaning of the term ‘family proceedings’ for the purpose of section 63C. The definition goes beyond that set out in Part 4 of the FLA. ‘Relevant third party’ is also defined as a person or type of person specified by order of the Lord Chancellor.

Section 63D Ex parte orders: Part 4A

36. Ex parte orders are orders made without the respondent being notified of proceedings.
37. *Subsection (1)* provides that an ex parte order can be used when just and convenient to do so. In deciding whether it is just and convenient, *subsection (2)* provides that the court should have regard to all the circumstances of the case, including those circumstances set out in the subsection. Ex parte orders are used in emergencies when the usual notice periods cannot be complied with. The provision is modelled on section 45 of the FLA which deals with ex parte occupation and non-molestation orders. The court has to have regard to the risk of significant harm to the person to be protected or another person if the order is not made immediately. This represents the reality of forced marriage where threats of violence are often made to third parties.
38. *Subsections (3)* and *(4)* provide that the respondent is to be given an opportunity to make representations about any order as soon as just and convenient and at a hearing with proper notice to all the other parties.

Section 63E Undertakings instead of orders

39. This section provides that, as an alternative to a forced marriage protection order, the court may accept an undertaking from the respondent. An undertaking is a promise given to the court. *Subsection (1)* provides that the court may accept an undertaking from a respondent if it has the power to make a forced marriage protection order.
40. *Subsection (2)* provides that a power of arrest cannot be attached to an undertaking and *subsection (3)* provides that the court cannot accept an undertaking instead of an order if it would have attached a power of arrest to the order. This provision makes clear that if the court considers the threat sufficiently serious to warrant the attachment of a power of arrest, then this is not a case where an undertaking would be appropriate.

41. *Subsection (4)* provides that the court has the same enforcement powers to deal with a breach of an undertaking, as they have to deal with a breach of an order.

Section 63F Duration of orders

42. This section provides that the court may make an order for a set period or may allow the order to run until it is changed. The court can also discharge an order. This provision is modelled on section 42(7) of the FLA.

Section 63G Variation of orders and their discharge

43. This section provides for the variation and discharge of orders. *Subsection (1)* provides that the court can vary or discharge orders on application from any party to the original proceedings, the person being protected by the order, or anyone else affected by the order. *Subsection (2)* also provides that the court can vary or discharge an order if the order was made of the court's own volition.

44. *Subsection (3)* provides that applications for variation of an order can also be made on an ex parte basis and, where they are, the provisions set out in section 63D will apply.

45. *Subsection (4)* provides that section 63E may be applied to proceedings for the variation of a forced marriage protection order. This means that an undertaking may be given on an application to vary a forced marriage protection order if appropriate.

46. *Subsection (7)* provides that where there is a power of arrest attached to an order the court can vary or discharge that power of arrest.

Section 63H Attachment of powers of arrest to orders

47. *Subsections (1)* and *(2)* provide that the court must attach a power of arrest to any order if the respondent has used or threatened violence, unless there would be adequate protection without the power. *Subsection (7)* provides that for the purposes of this provision a respondent includes any person who is not a respondent but to whom an order is directed.

48. *Subsections (3)* and *(4)* provide that, where an order has been made ex parte and the respondent has been or has threatened to be violent in relation to the matters concerned, the court may attach a power of arrest only where it considers there to be a risk of significant harm to a person, if the power is not attached immediately.

49. *Subsection (5)* provides that where a power of arrest has been attached to an ex parte order the court may provide for the power of arrest to have effect for a shorter period. *Subsection (6)* provides that in those circumstances the court can extend the period on an application to vary or discharge the order. This

would most likely happen once the respondent had been given the opportunity to be heard in respect of the order.

Section 63I Arrest under attached powers

50. This section makes provision for arresting a person under attached powers of arrest. *Subsections (1) and (2)* provide that where an order has an attached power of arrest a police constable may arrest without warrant someone whom the constable has reasonable cause to suspect is in breach of the order or may be in contempt of court. This provision is modelled on section 47 (6) and (7) of the FLA, but goes further than the provisions in that section.
51. As a power of arrest may be attached to an order directed to any person who is, or might be, involved in other respects in a forced marriage, then the power of arrest may be used to arrest any person who breaches such an order even though they are not a party to the original proceedings.
52. The power of arrest may also be used to arrest any third party who frustrates the terms of the order and is otherwise in contempt of court, not only the respondent to the original proceedings. For example, if an order were made to prevent a father and mother from forcing, or attempting to force, their child into a marriage and it became known that another family member was in the process of doing this, then the power of arrest could be used against that other person to bring the person before the family court to consider contempt proceedings.
53. *Subsections (3) and (4)* provide that a person arrested under this section must be brought before the judge within 24 hours. Sundays, Christmas Day and Good Friday are excluded when calculating the 24-hour rule.

Section 63J Arrest under warrant

54. *Subsections (1) and (2)* provide that, where there is no power of arrest attached to an order, the person being protected by the order, the person who applied for the original order or any other third party with the leave of the court may apply to the court for a warrant of arrest to be issued, if they consider that a person has failed to comply with the order or is in contempt of court. This provision is modelled on section 47(8) and (9) of the FLA, but goes wider as the warrant may be issued against a person who is not a respondent to the original proceedings.
55. *Subsection (3)* provides that the court must issue a warrant only where the application has been sworn on oath and the judge has reasonable grounds for believing that the person concerned has failed to comply with the order or is in contempt of court.

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Section 63K Remand: general

56. *Subsection (1)* provides that where an arrested person is brought before the court, that court may remand the person if the matter is not dealt with straight away.
57. *Subsections (2) and (3)* modify Schedule 5 to the FLA to apply the remand arrangements for county courts and the High Court to forced marriage protection orders.
58. *Subsections (4) and (5)* provide that where a person is remanded on bail the court may place conditions on that person such as those necessary to ensure witnesses are not interfered with.

Section 63L Remand: medical examination and report

59. *Subsection (1)* provides that, where the court considers that a medical report will be necessary, the court may remand an arrested person whilst they await that medical examination and report.
60. *Subsections (2) and (3)* provide that where there is an adjournment for a medical report, the case must not be adjourned for more than 4 weeks at a time, unless the accused is in custody in which case the adjournment must be for no more than 3 weeks.
61. *Subsections (4) and (5)* provide that where an arrested person is suffering from a mental illness or severe mental impairment, the court has the same power to order that the person be remanded in order that a report can be made on their mental condition, as the Crown Court has under section 35 of the Mental Health Act 1983.

Section 63M Jurisdiction of courts: Part 4A

62. Section 63M provides that the High Court and county courts may issue forced marriage protection orders. Extending jurisdiction to the county courts is intended to make it easier for victims of forced marriage or those threatened with a forced marriage to get the protection they need.
63. *Subsection (2)* makes this extension subject to restrictions set out in *subsections (3) and (4)*.
64. *Subsection (3)* provides that section 57(3) to (12) of the FLA, which enables proceedings under the FLA to be allocated to particular courts, applies to forced marriage proceedings, subject to the changes set out in *subsection (4)* which confirm that allocation can only be made either to the High Court or to any county courts.

Section 63N Power to extend jurisdiction to magistrates' courts

65. Section 63N deals with extension of jurisdiction to the magistrates' courts. *Subsection (1)* provides a power for the Lord Chancellor to extend jurisdiction

for dealing with cases of forced marriage to the magistrates' courts, following consultation with the Lord Chief Justice.

66. *Subsection (2)* provides that an order extending jurisdiction to the magistrates' courts may in particular make provision which corresponds to existing legislation relating to the jurisdiction of magistrates' courts for dealing with domestic violence (Part 4 of the FLA 1996). Many of the provisions included in clause 1 of the Bill are modelled on Part 4 of the FLA 1996 and closely mirror domestic violence legislation. This provision would help to ensure that domestic violence cases and forced marriage cases are dealt with consistently in the magistrates' courts, if the forced marriage jurisdiction is extended to those courts.
67. *Subsection (3)* clarifies that the power to extend jurisdiction to magistrates' courts includes making any consequential changes or modifications to provisions in Part 4A, elsewhere in the FLA or in any other enactments necessary for the magistrates' courts to hear forced marriage cases.
68. *Subsection (4)* provides that the Lord Chief Justice may nominate a judicial office holder as the person with whom the Lord Chancellor must consult on extending jurisdiction to magistrates' courts. Section 109(4) of the Constitutional Reform Act 2005 provides that a judicial office is an office as a senior judge or an office set out in Schedule 14 to that Act.

Section 63O Contempt Proceedings: Part 4A

69. Section 63O provides that where a person is in contempt for failing to comply with a forced marriage protection order or for undermining the effect of an order, then a relevant judge may deal with contempt proceedings. A relevant judge is defined in section 63S as a judge of the High Court where the order was made by the High Court, or a judge or district judge of a county court where the order was made by a county court.

Section 63P Appeals: Part 4A

70. Section 63P provides for appeals against decisions made by the courts in connection with the transfer or proposed transfer of forced marriage proceedings. *Subsection (1)* provides a power for the Lord Chancellor (in consultation with the Lord Chief Justice) to set out the circumstances in which an appeal may be made. The power is subject to the negative procedure by virtue of section 65 of the FLA.
71. *Subsection (2)* provides that no appeal may be made against any decision relating to the transfer or proposed transfer of forced marriage proceedings other than in circumstances provided for in the power under subsection (1).
72. *Subsection (3)* provides that the Lord Chief Justice may designate a judicial office holder to take his place as the person with whom the Lord Chancellor must consult on the provisions for appeals.

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Section 63Q Guidance

73. Section 63Q provides for guidance on forced marriages. *Subsection (1)* provides a power for the Secretary of State to issue guidance on any of the provisions included in the Bill or on the issue of forced marriages generally. It is intended that this section will enable the guidance currently issued by the Forced Marriage Unit to be issued under a statutory power.
74. *Subsection (2)* provides that public authorities to whom guidance is issued under this power must have regard to the guidance in carrying out their functions. This will ensure that the guidance has more force than the non-statutory guidance issued at present.
75. *Subsection (3)* provides that this power does not permit the Secretary of State to give guidance to any court or tribunal. This subsection also applies to guidance to the judiciary or magistracy as a body. It is intended to clarify that the power to issue guidance cannot interfere with judicial independence.

Section 63R Other protection or assistance against forced marriage

76. Section 63R sets out how provisions under this Part will link with existing provisions, which may offer other types of protection for victims of forced marriage. *Subsection (1)* clarifies that Part 4A does not affect any other protection or assistance already available to those faced with a forced marriage or those who have already been forced into marriage.
77. *Subsection (2)* lists the particular provisions which might be used to offer protection.

Section 63S Interpretation of Part 4A

78. Section 63S defines key terms in relation to the new Part 4A.

Clause 2 – Protection against forced marriage: Northern Ireland

79. This clause introduces a new Schedule into the Bill which makes similar provision for protection against forced marriage in Northern Ireland.

Clause 3 – Consequential amendments etc.

80. *Subsection (1)* introduces a new Schedule which contains consequential amendments.
81. *Subsections (2)* and *(3)* provide powers for the Lord Chancellor (in relation to England and Wales) and the Department of Finance and Personnel (in relation to Northern Ireland) to make any supplementary, incidental or consequential provisions necessary for the implementation and operation of the Bill.
82. *Subsections (4)* and *(5)* provide that any provisions made under the above power can include transitional, transitory or savings provisions and the order must be made by statutory instrument or statutory rule.

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83. *Subsection (6)* provides that an order may amend, repeal, revoke or modify any provision made by or under any enactment.
84. *Subsections (7) to (9)* provide that where an order is made which amends or repeals the provisions of an Act or Northern Ireland legislation, the order must go through an affirmative resolution procedure. If the order does not amend or repeal the provisions of an Act or Northern Ireland legislation, the order must follow a negative resolution procedure.

Clause 4 – Short title, commencement and extent

85. *Subsection (1)* sets out the short title of the Bill.
86. *Subsection (2)* provides that the Lord Chancellor can, by order, appoint the commencement dates of those provisions under the Bill which relate to England and Wales.
87. *Subsection (3)* provides that an order made under the above provision must be made by statutory instrument and may contain whatever transitional, transitory or saving provisions the Lord Chancellor thinks appropriate.
88. *Subsection (4)* provides that the Department of Finance and Personnel can, by order, appoint the commencement dates of those provisions under the Bill which relate to Northern Ireland.
89. *Subsection (5)* provides that an order made under the above provision must be made by statutory rule and may contain whatever transitional, transitory or saving provisions the Department of Finance and Personnel thinks appropriate.

Schedule 1 – Protection against forced marriage: Northern Ireland

Part 1 – Forced marriage protection orders

90. *Paragraph 1* replicates section 63A in clause 1 as it sets out the purpose of making an order under the Schedule and the factors that the court must take into account when making an order.

Contents of orders

91. *Paragraph 2* replicates section 63B in clause 1 in that it provides for a forced marriage order to contain measures considered appropriate by the court, including prohibitions, restrictions and requirements.
92. *Sub-paragraph (2)(a)* provides that the conduct being regulated or controlled may be within or outside Northern Ireland.

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Applications and other occasions for making orders

93. *Paragraph 3* replicates section 63C in clause 1 in that it sets out who may apply for a forced marriage protection order, with or without leave; and in considering leave, the factors which are to be taken into account.
94. *Paragraph 3* varies from section 63C in some limited respects. The definition of “family proceedings” in *sub-paragraph (7)* is related to the Family Homes and Domestic Violence (Northern Ireland) Order 1998 rather than Part 4 of the FLA which does not apply to Northern Ireland. In *sub-paragraph (8)* the Department of Finance and Personnel is given the power to specify the relevant third parties, who may take applications on behalf of a person to be protected.

Ex parte orders

95. *Paragraph 4* makes provision for Northern Ireland in relation to ex parte orders. These are orders made in the absence of the respondent. *Sub-paragraph (1)* provides that the court can make an ex parte order if it is just and convenient to do so. In deciding whether it is just and convenient *sub-paragraph (2)* provides that the court should have regard to all the circumstances of the case, including those circumstances set out in the sub-paragraph.
96. *Sub-paragraphs (3) and (4)* provide that where an order is made ex parte a date must then be set for a hearing where both parties will be given the appropriate notice as provided by court rules.

Duration of orders

97. *Paragraph 5* provides that the court can make an order for a set period or an order can be made until it is varied or discharged. It replicates section 63F in clause 1.

Variation of orders and their discharge

98. *Paragraph 6* replicates section 63G in clause 1.

Part 2 – Enforcement

Offence of contravening an order

99. Part 2 provides that a breach of a forced marriage protection order is an offence and a person who commits such an offence will be liable on summary conviction to either a fine not exceeding level 5 on the standard scale, or imprisonment for a term not exceeding 6 months, or to both. *Paragraph 7* follows the model of the penalty contained in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 for breaching a non-molestation order or a combined non-molestation order or occupation order.

Part 3 – Jurisdiction and procedure

Jurisdiction of courts

100. *Paragraph 8* makes comparable provision to section 63M in clause 1. It provides that the High Court and county courts may issue forced marriage protection orders. *Sub-paragraph (3)* also modifies Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 to apply the allocation of proceedings provisions.

Power to extend jurisdiction to courts of summary jurisdiction

101. *Paragraph 9* deals with extension of jurisdiction to courts of summary jurisdiction. *Sub-paragraph (1)* provides a power for the Lord Chancellor to extend jurisdiction for dealing with cases of forced marriage to courts of summary jurisdiction, following consultation with the Lord Chief Justice.
102. *Sub-paragraph (2)* provides that an order made under sub-paragraph (1) may in particular make provision which corresponds to existing legislation in Northern Ireland relating to courts of summary jurisdiction for dealing with domestic violence. This provision would help to ensure that domestic violence cases and forced marriage cases are dealt with consistently in the courts of summary jurisdiction, if the forced marriage jurisdiction is extended to those courts.
103. *Sub-paragraph (3)* provides that any order to extend jurisdiction may amend, repeal, revoke or modify a provision made by or under the Bill or any other legislation.
104. *Sub-paragraph (5)* provides that the Lord Chief Justice may nominate a judicial office holder or a Lord Justice of Appeal to exercise his powers under this paragraph.

Contempt proceedings

105. *Paragraph 10* replicates section 63O in clause 1.

Appeals from county courts

106. *Paragraph 11* makes provision for appeals from county courts. *Sub-paragraph (1)* provides that where the county court has made or refused to make an order an appeal may be made to the High Court.
107. However *sub-paragraph (2)* provides that an appeal does not lie to the High Court where the county court was a divorce county court making an order under the Northern Ireland divorce legislation in the same proceedings as a forced marriage protection order hearing. *Sub-paragraph (3)* provides that rules of court must be made to provide for appeals to the Court of Appeal against a decision made by the divorce county court.

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108. *Sub-paragraphs (5) and (6)* provide that when the High Court is hearing an appeal it may make any orders necessary to give effect to the determination of that appeal. The court may also make such incidental or consequential orders as are just.
109. *Sub-paragraph (7)* provides that any order made by the High Court on appeal should be treated for the purposes of enforcement, variation, revival or discharge, as an order made by the county court from which the appeal was brought.

Appeals: transfers and proposed transfers

110. *Paragraph 12* provides that the Lord Chancellor, following consultation with the Lord Chief Justice, may make provision setting out the circumstances in which an appeal can be made about the transfer of a case.
111. *Sub-paragraph (3)* provides that the Lord Chief Justice can nominate certain other persons to exercise his functions in this regard.

Part 4 – Supplementary

Guidance

112. *Paragraph 13* corresponds to section 63Q in clause 1 in that it makes provision for the Department of Finance and Personnel to issue guidance on the forced marriage legislation and more generally about the issue of forced marriage.

Orders

113. *Paragraph 14* makes provision about the purpose and content and method by which any order can be made under the Schedule.

Other protection or assistance against forced marriage

114. *Paragraph 15* makes clear that the Schedule does not affect any other protections that are available to a person who has been, or is in danger of being, forced into marriage.

Interpretation

115. *Paragraph 16* clarifies some of the terminology used in Schedule 1.

Schedule 2 – Consequential amendments

Part 1 – England and Wales

116. This Part contains consequential amendments to England and Wales legislation necessary for the implementation of the Bill.
117. *Paragraph 1* amends the Supreme Court Act 1981 to assign forced marriage proceedings to the Family Division.

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118. *Paragraph 2* amends the Courts and Legal Services Act 1990 to provide that forced marriage proceedings are family proceedings, and therefore cannot be the subject of an enforceable conditional fee agreement.
119. *Paragraph 3* amends the FLA so that non-molestation and occupation orders may be made in proceedings for a forced marriage protection order. Amendments also ensure an affirmative parliamentary procedure for an order made under the new section 63N.

Part 2 – Northern Ireland

120. This Part contains consequential amendments to Northern Ireland legislation necessary for the implementation of the Bill.
121. *Paragraph 4* amends the Family Homes and Domestic Violence (Northern Ireland) Order 1998 to designate that proceedings under Schedule 1 of the Bill are family proceedings.
122. *Paragraph 5* amends the Access to Justice (Northern Ireland) Order 2003 to provide that proceedings under Schedule 1 of the Bill are family proceedings and therefore cannot be the subject of an enforceable conditional fee agreement.

FINANCIAL EFFECTS OF THE BILL

123. The financial effects of the Bill are considered to be limited and are considered below in the section summarising the Regulatory Impact Assessment.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

124. It is expected that there will be no effect on public service manpower as it is anticipated that cases relating to forced marriage which are at present dealt with by the High Court under its inherent jurisdiction will be dealt with under the Bill.
125. It is not anticipated that the work of the courts will materially increase.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

126. Copies of the Regulatory Impact Assessment are available from the Vote Office. New legislation is likely to impact on: -
 - individuals, in practice particularly those from South Asian cultural and ethnic groups;

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- those areas of the public sector most likely to be involved in helping the potential victims of forced marriage. These particularly include the Forced Marriage Unit (jointly sponsored by the Home Office and the Foreign and Commonwealth Office), but also police, teachers, social services, children's services and healthcare personnel, any of whom could be the first port of call for people who find themselves at risk of being forced into marriage. The police may also be involved in the enforcement of any injunctions issued by the courts under the proposed legislation;
 - the voluntary and charitable sector (non-governmental organisations and support groups working in the forced marriage field).
127. The potential benefits of strengthening civil law are that:
- primary legislation will provide vulnerable individuals with more options to prevent the marriage in the first instance;
 - it will help change public opinion, and thus perception and practice, by sending a clear signal to relevant communities that forced marriage is not an acceptable or lawful practice in this country;
 - in consequence it should have a strong deterrent effect;
 - it should similarly give young people more tools to negotiate with their parents and should in some cases assist parents facing pressure from relatives;
 - it should simplify and clarify matters for public sector employees tackling this issue by setting out in legislation what can be done to prevent forced marriage and deter behaviour leading to forced marriage.
128. The estimated cost of creating the new civil remedy will be between £20,500 and £180,000 a year (based on a range of between 5 and 50 applications a year being made to the courts). The cost per case is based on the average cost of a domestic violence case hearing in the county courts and covers the administrative cost to the courts of hearing the cases and the legal aid cost. Many of the provisions in the Bill are modelled on existing domestic violence legislation, so the cost of domestic violence hearings gives the best indication of the likely cost of a hearing under the new legislation.
129. The volume of cases will be the main factor in costs of the Bill. The range of 5 to 50 cases a year represents a best guess at the proportion of these that might result in proceedings under this legislation. Caseworkers in the Forced Marriage Unit indicated that of the 300 cases they deal with every year, two thirds would not include circumstances that would be covered by the Bill, while about 100 would. They considered that as few as 5 of these a year might necessitate an application to the courts. It is likely that cases might begin at

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as brought from the House of Lords on 21st June 2007 [Bill 129]*

the lower end of this range and gradually increase in numbers as the legislation becomes more familiar to those helping victims of forced marriage. The numbers of people choosing to use the new provisions may, however, remain very low, at least for the first few years following implementation. The senior members of the judiciary dealing with cases of forced marriage in the High Court have estimated that in the last 12 months about 30 applications involving forced marriage came to the High Court.

130. Given that there have been no identified cases of forced marriage in Northern Ireland to date, it is anticipated that there will be very few cases taken forward under the legislation in the short-term, though numbers may increase in time. In any event, it would be anticipated that numbers of applications under the legislation would be significantly lower in Northern Ireland than in England and Wales given the comparative size of the jurisdiction. It is not possible to estimate costs for Northern Ireland more precisely at this time given the information available.

EUROPEAN CONVENTION ON HUMAN RIGHTS

131. The Bill was introduced by Lord Lester as a Private Peer's Bill in the House of Lords. There was no obligation on the Government to provide a statement regarding the compatibility of the Bill with the European Convention on Human Rights when the Bill was introduced in the Lords because no Minister of the Crown was in charge of the Bill at that time.
132. The Bill is being taken forward in the House of Commons as a Government Bill. Section 19 of the Human Rights Act 1998 requires the Minister in charge of the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Vera Baird QC MP has made the following statement on the compatibility of the Bill with the European Convention on Human Rights: In my view the provisions of the Forced Marriage (Civil Protection) Bill [HL] are compatible with the Convention rights.
133. The purpose of the Bill is to enable courts to issue orders (forced marriage protection orders) protecting (1) a person from being forced into a marriage or from any attempt to be forced into marriage; or (2) a person who has been forced into a marriage.
134. The scope of the order making power in terms of who might be caught by an order is framed in broad terms. Section 63B(2) (and in relation to Northern Ireland, Schedule 1, paragraph 2) provides that orders may be addressed not only to named respondents but also to any other persons who are, or may become, involved in other respects. Examples of involvement in other respects are aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage.

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135. Article 8(1) of the ECHR is engaged – the right to respect for private and family life. Article 8 is intended to protect individuals from arbitrary interference by the state in their family life, home and correspondence. Forced marriage protection orders interfere with the enjoyment of this right.
136. Article 8(2) of the ECHR allows a public authority to interfere with the rights enshrined in Article 8(1) if in accordance with the law and if necessary in a democratic society for, amongst other considerations, the protection of health or morals, or for the protection of the rights and freedoms of others.
137. It is the Government's view that the power to make a forced marriage protection order does not breach Article 8. Orders will only be made for the purposes of protecting those caught by section 63A(1) (and in relation to Northern Ireland, Schedule 1, paragraph 1) from conduct which is clearly set out on the face of the Bill – in section 63A(4) and (5) (and in relation to Northern Ireland, sub-paragraphs (4) and (5) of paragraph 1 of Schedule 1) . Under section 63B(1) (and in relation to Northern Ireland, Schedule 1, paragraph 2) the content of a forced marriage protection order may only be what is “appropriate” to protect a victim.
138. The Government believes that it is necessary and proportionate to enable orders to be directed to any person as it may be difficult in practice to name all the possible respondents to an order as wider members of communities and families are often involved in forcing individuals into marriage.
139. The provisions are also modelled closely on Part 4 of the FLA, albeit with differences to take account of the context. This helps to anchor the provisions in existing practice especially as regards contempt and the use of the power of arrest.

COMMENCEMENT

140. Clause 4 provides for commencement and provides that the main provisions of the Bill are to come into force by commencement orders. These orders will be made by the Lord Chancellor in relation to those provisions which apply to England and Wales; and by the Department of Finance and Personnel for those provisions which apply to Northern Ireland.

FORCED MARRIAGES (CIVIL PROTECTION) BILL [HL]

EXPLANATORY NOTES

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