

# **FORCED MARRIAGE (CIVIL PROTECTION) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1 – Protection against forced marriage: England and Wales***

17. **Section 1** is the principal section and inserts a new Part (Part 4A) into the FLA. This Part contains 19 new sections (63A – 63S).

#### ***Section 63A Forced marriage protection orders***

18. *Subsection (1)* sets out the purpose of making an order under the Act. 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.
19. *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.
20. *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.
21. *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.
22. *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***

23. Section 63B provides for the measures that can be included in the orders that the court may make under section 63A.
24. *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

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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.

25. *Subsection (2)* specifies in particular that the conduct being regulated or controlled may be within or outside England and Wales.
26. *Subsection (2)* also mentions persons 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.
27. *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 assists 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***

28. *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.
29. *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.
30. *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 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.
31. *Subsection (5)* provides that an application can be made within other family proceedings or as a stand-alone application.
32. *Subsection (6)* sets out the circumstances in which the court can make a forced marriage protection order of its own initiative.
33. *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***

34. Ex parte orders are orders made without the respondent being notified of proceedings.
35. *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.

36. *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***

37. 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.
38. *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 making 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.
39. *Subsection (4)* provides that the court has the same enforcement powers to deal with a breach of an undertaking, as it has to deal with a breach of an order.

***Section 63F Duration of orders***

40. 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***

41. 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 without an application, if the order was made of the court's own volition.
42. *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.
43. *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.
44. *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***

45. *Subsections (1) and (2)* provide that the court must attach a power of arrest to any order (other than an ex parte 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 section a respondent includes any person who is not a respondent but to whom an order is directed.
46. *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.
47. *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***

48. 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 is otherwise 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.
49. 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.
50. 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.
51. *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***

52. *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 otherwise 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.
53. *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 otherwise in contempt of court.

***Section 63K Remand: general***

54. *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.
55. *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.
56. *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***

57. *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.

58. *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.
59. *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***

60. 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.
61. *Subsection (2)* makes this extension subject to restrictions set out in *subsections (3) and (4)*.
62. *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***

63. 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.
64. *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 section 1 of the Act are modelled on Part 4 of the FLA 1996 and closely mirror domestic violence legislation. This provision will 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.
65. *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.
66. *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***

67. 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**

68. 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.
69. *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).
70. *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.

### **Section 63Q Guidance**

71. 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 Act 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.
72. *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.
73. *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**

74. 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.
75. *Subsection (2)* lists the particular provisions which might be used to offer protection.

### **Section 63S Interpretation of Part 4A**

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

### **Section 2 – Protection against forced marriage: Northern Ireland**

77. This section introduces a new Schedule into the Act, which makes similar provision for protection against forced marriage in Northern Ireland.

### **Section 3 – Consequential amendments etc.**

78. *Subsection (1)* introduces a new Schedule which contains consequential amendments.
79. *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 Act.

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80. *Subsections (4) and (5)* provide that any provisions made under the above powers can include transitional, transitory or saving provisions and the order must be made by statutory instrument or statutory rule.
81. *Subsection (6)* provides that an order may amend, repeal, revoke or modify any provision made by or under any enactment.
82. *Subsections (7) to (9)* provide that where an order is made which amends or repeals the provisions of an Act or (as the case may be) an Act or Northern Ireland legislation, the order must go through the affirmative resolution procedure. If the order does not amend or repeal the provisions of an Act or (as the case may be) an Act or Northern Ireland legislation, the order must follow the negative resolution procedure.

**Section 4 – Short title, commencement and extent**

83. *Subsection (1)* sets out the short title of the Act.
84. *Subsection (2)* provides that the Lord Chancellor can, by order, appoint the commencement dates of the main provisions under the Act which relate to England and Wales.
85. *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.
86. *Subsection (4)* provides that the Department of Finance and Personnel can, by order, appoint the commencement dates of the main provisions under the Act which relate to Northern Ireland.
87. *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.
88. *Sections 3(2) to (10) and 4* come into force on Royal Assent.

**Schedule 1 – Protection against forced marriage: Northern Ireland**

**Part 1 – Forced marriage protection orders**

89. *Paragraph 1* replicates section 63A in section 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**

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

**Applications and other occasions for making orders**

92. *Paragraph 3* replicates section 63C in section 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.
93. *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 (7)* 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**

94. *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.
95. *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**

96. *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 section 1.

### **Variation of orders and their discharge**

97. *Paragraph 6* replicates section 63G in section 1 (save that it makes no provision for undertakings or attached powers of arrest, which are not relevant in relation to Northern Ireland).

## **Part 2 – Enforcement**

### **Offence of contravening an order**

98. *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 and occupation order.

## **Part 3 – Jurisdiction and procedure**

### **Jurisdiction of courts**

99. *Paragraph 8* makes comparable provision to section 63M in section 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**

100. *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.
101. *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 will help to ensure that domestic violence cases and forced marriage cases



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are dealt with consistently in the courts of summary jurisdiction, if the forced marriage jurisdiction is extended to those courts.

102. *Sub-paragraph (3)* provides that any order to extend jurisdiction may amend, repeal, revoke or modify a provision made by or under the Act or any other legislation.
103. *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**

104. *Paragraph 10* replicates section 63O in section 1.

### **Appeals from county courts**

105. *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.
106. 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.
107. *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.
108. *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**

109. *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.
110. *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**

111. *Paragraph 13* corresponds to section 63Q in section 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**

112. *Paragraph 14* makes provision about the purpose and content of, and method of making, an order under the Schedule.

### **Other protection or assistance against forced marriage**

113. *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**

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

## **Schedule 2 – Consequential amendments**

### **Part 1 – England and Wales**

115. This Part contains consequential amendments to England and Wales legislation necessary for the implementation of the Act.
116. *Paragraph 1* amends the Supreme Court Act 1981 to assign forced marriage proceedings to the Family Division.
117. *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.
118. *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**

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