

**FORCED MARRIAGE (CIVIL PROTECTION) BILL**  
**CONSULTATION ON AMENDMENTS TO BILL**

The Forced Marriage (Civil Protection) Bill had its Second Reading in the House of Lords on 26 January 2007. The Bill is a Private Member's Bill introduced by Lord Lester of Herne Hill QC, a Liberal Democrat peer. The Bill will be considered further in March 2007 by Grand Committee in the House of Lords, where amendments will be discussed and agreed to if there is consensus.

We have received various proposals to amend the Bill and now wish to consult about possible changes before the Bill proceeds to Grand Committee. This paper sets out the changes we are considering, and also invites suggestions for other changes to the Bill. We also attach a mock-up version of how the Bill would look if these changes were made. Please note that we have produced this mock-up version of the Bill as an aid to understanding the possible changes; it is not final and does not represent our conclusions on the merits of the changes.

We welcome suggestions and input from organisations and individuals. Please send your response including your name, organisation (if any) and contact details by **28 February 2007** to:

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**Copies of the Bill**

Copies of the Bill and Explanatory Notes are available on the Odysseus Trust website, [www.odysseustrust.org](http://www.odysseustrust.org). The Bill can also be found on the Parliament website, [www.parliament.uk](http://www.parliament.uk).

If you would like a copy by post, please contact the Odysseus Trust at the address above and we would be happy to send one to you.



**Publication of responses**

We will publish a paper summarizing the responses to the consultation. The paper will be available at the Odysseus Trust website, [www.odysseustrust.org](http://www.odysseustrust.org).

Please ensure your response is marked clearly if you wish your response and/or name to be kept confidential. Confidential responses will be included in any statistical summary of the numbers of comments received and the views expressed.

**Representative groups**

If you are a representative group, we would be grateful if you would give a summary of the people and organisations you represent.

## **1 OUTLINE OF THE BILL**

The Forced Marriage (Civil Protection) Bill aims to provide protection for the victims of forced marriage by means of civil remedies in the family courts. The Bill has been prepared by Lord Lester of Herne Hill QC, with advice from organisations such as the Southall Black Sisters and a team of leading family lawyers with practical experience of working in this sensitive field.

The primary remedy offered by the Bill is an injunction – that is, a court order preventing conduct which will lead to a forced marriage. In making such orders, the court must have regard to all the circumstances including the health, safety and well-being of the victim. As a secondary remedy, the Bill allows civil proceedings to be brought to obtain compensation where an injunction cannot provide an effective remedy.

## **2 POSSIBLE CHANGES TO THE BILL**

### **2.1 Incorporation within the Family Law Act**

We would welcome views on whether the provisions of the Bill should be incorporated into a new Part 4A of the Family Law Act 1996.

Arguments in favour of this approach are that it would help position the remedies within the framework of existing law on domestic violence, and family law more generally. It would avoid the risk of treating forced marriage in isolation and help to avoid the stigmatizing of particular communities. Arguments against this approach are that a free-standing Act would be easier for victims to use and understand. The Bill contains various aspects that differ from the current approach of the Family Law Act, including the provisions for compensation and for intervention by third parties. There are other arguments both in favour and against incorporating the Bill within the Family Law Act.

*Do you consider that the Bill should be incorporated into the Family Law Act or should it remain a free-standing measure? What do you think are the advantages and disadvantages of either approach?*

### **2.2 Nullity petitions**

Under current law, a marriage is voidable for lack of consent within 3 years. After 3 years, the only way to dissolve a marriage is by divorce (unless the court grants an extension, which may only be done in very limited circumstances).

We would welcome views on removing the time limit for nullity petitions in cases of forced marriage. This would allow either party to the marriage to seek a nullity petition and would remove the stigma of divorce for survivors of forced marriage.

*Do you think that the time limit for nullity petitions in cases of forced marriage should be extended? What do you think the time limit should be, or should there be no time limit at all? What are the arguments for and against a time limit? Should a forced marriage be void rather than voidable?*

### **2.3 Forced marriage guidance**

The Forced Marriage Unit, in conjunction with Government Departments, has produced guidance on forced marriage for various service providers (including the police, education professionals and social services). Guidance is currently being prepared for registrars and health services.

We are considering putting the forced marriage guidance on a statutory footing and expanding the guidance available to a wider range of bodies. We are also considering whether compliance with the guidance should be monitored.

*What should be the status of the forced marriage guidance? For example, should public authorities or other persons be under a duty to have regard to the guidance? Should courts be required to take the guidance into account when determining any judicial review proceedings in which the guidance is relevant (for example, immigration decisions)?*

#### **2.3.1 Recipients of forced marriage guidance**

We envisage that guidance may be issued to the following groups, among others:

- registrars of births, deaths and marriages;
- the police;
- immigration officers and providers of immigration advice and immigration services;
- local authorities;
- educational establishments providing full or part-time school or further education;
- NHS bodies;
- the Legal Services Commission
- the Legal Services Board;
- the Bar Council; and
- the Law Society of England and Wales; and
- any others designated by the Secretary of State.

*Do you think that guidance on forced marriage should be issued to these groups? Are there other groups, bodies or individuals who should be expressly included in this list?*

### **2.3.2 Content of forced marriage guidance**

We envisage that the guidance on forced marriage would include guidance on:

- the difference between arranged and forced marriages;
- the legal framework under Part 4A of the Family Law Act 1996;
- the role of the police, social services, immigration officers, and education, health and other professionals in preventing and dealing with cases of forced marriage; and
- the impact of forced marriage on the victim's education, health and employment opportunities.

*Do you think that forced marriage guidance should cover these matters? Are there other matters which should be addressed by guidance?*

### **2.3.3 Monitoring of guidance**

We are considering whether the Secretary of State should make rules providing for the monitoring of guidance on forced marriage. This would help to ensure that the guidance is being followed and to identify problems of implementation and protection for forced marriage victims.

*Do you think that the forced marriage guidance should be monitored? Do you have any suggestions for the effective monitoring of forced marriage guidance?*

## **2.4 Threats and benefits to third parties**

We are considering extending the section on unlawful inducement to cover threats and benefits to third parties as well as to victims. As an example this would cover a situation where someone threatened to harm a person's relative, if that person did not agree to enter a marriage against their will.

*Do you think that threats and benefits to third parties should be covered by the Bill?*

## **2.5 Jurisdiction of courts**

We have drafted a new section in the Bill to address which courts can entertain proceedings for injunctions and compensation (section 63I). The purpose of the section is to allow discretion as to which courts hear certain cases, with power reserved to the Lord Chancellor to make appropriate decisions on that where necessary.

*Do you think that the Lord Chancellor should be able to make appropriate decisions about the levels of court where action may be taken to obtain an injunction or compensation?*

### 3 CLARIFICATION OF CERTAIN PROVISIONS IN BILL

#### **Inherent jurisdiction of High Court**

We propose amending section 63G to preserve the High Court’s inherent jurisdiction over vulnerable adults, in addition to its inherent jurisdiction over children. This is a drafting clarification.

### 4 OTHER QUESTIONS ABOUT THE BILL

#### 4.1 **Role of third parties**

The Bill allows third parties to make applications for injunctions to prevent forced marriages. Section 63D(2) states that an application may be made by the person who is or may be the victim or his litigation friend or any other concerned person who has the specific permission of the court. “Concerned person” is defined to include private individuals, local authorities or other public bodies.

We believe that it is important to allow third parties to seek injunctions on behalf of forced marriage victims, who may be unable to take action themselves for a variety of reasons. Victims may be unable to seek legal help due to fear, physical isolation and confinement to the home, language difficulties and other pressures. Victims frequently seek help from organisations, who should be able to take protective action on their behalf. This would only be allowed where the victim has given her or his consent.

We acknowledge that third parties are not generally entitled to seek injunctions on behalf of others in family law proceedings. The Family Law Act 1996 only allows “associated persons” to do so. Associated persons are usually people in a certain family relationships (for example spouses, civil partners, cohabitants or relatives). In cases of forced marriage, there may be no “associated person” able or willing to take action on behalf of a victim, especially as the associated persons may themselves be involved in enforcing the marriage.

*Do you think that third parties should be able to seek injunctions to protect forced marriage victims? What type of organizations should be allowed to take action on behalf of victims? Should the Bill spell out the types of organisations who may do so, or should this be left to the court’s discretion in each case? Should the Bill include any other provisions in relation to third parties?*

#### 4.2 **Civil proceedings and compensation**

Section 63E allows victims or potential victims of forced marriage to bring civil proceedings. Damages may be awarded if the court is satisfied that this is appropriate and necessary to provide an effective remedy to the victim.

We believe that it is important for victims to be able to bring civil proceedings to compensate them for the serious anxiety and distress which may be caused by a forced marriage, or attempted forced marriage. Forced marriage cases can involve significant psychological and physical harm, and it is right that the law provides a remedy for this. Similar remedies exist for cases of unlawful harassment and discrimination, and in our view there are compelling reasons for treating forced marriage in a similar way.

*Do you think that compensation should be available to victims and potential victims of forced marriage? If yes, do you think that there should be any additional limitations on the right to receive compensation, in addition to those already contained in section 63E(3)?*

#### **Award of damages**

As currently drafted, the Bill allows for damages to be awarded for (amongst other things) any anxiety, distress, injury to feelings or other detriment caused by the conduct in question. The Bill does not provide for compensation for financial loss. Under the Protection from Harassment Act 1997, damages may be awarded for any financial loss resulting from harassment within the scope of that Act, in addition to damages for anxiety.

*Should forced marriage victims be entitled to recover damage for financial loss?*

#### **Separate proceedings for damages?**

The Family Law Act does not allow claims for damages, and if the Bill were to be incorporated within the Family Law Act, this aspect would represent a departure from existing practice in the family courts. If victims rely on the Protection from Harassment Act, separate proceedings would be required in the county court (in addition to any proceedings for an injunction under this Bill or other action under the Family Law Act).

*Do you think that the existing scope for compensation under the Protection from Harassment Act provides an adequate remedy? Should the same court be able to award damages to a forced marriage victim, in addition to considering injunctive relief and/or nullity petitions, or should separate proceedings be required for compensation?*

### **4.3 Legal aid**

As currently drafted, the Bill does not contain a section relating to legal aid for proceedings for injunctions or compensation.

*Should the Bill include a specific provision about legal aid?*

#### **4.4 Any other changes**

We welcome other suggestions for changes to the Bill.

*Do you think the Bill should be amended in any other way?*

## SUMMARY OF CONSULTATION QUESTIONS

1. Do you consider that the Bill should be incorporated into the Family Law Act or should it remain a free-standing measure? What do you think are the advantages and disadvantages of either approach?
2. Do you think that the time limit for nullity petitions in cases of forced marriage should be extended? What do you think the time limit should be, or should there be no time limit at all? What are the arguments for and against a time limit? Should a forced marriage be void rather than voidable?
3. What should be the status of the forced marriage guidance? For example, should public authorities or other persons be under a duty to have regard to the guidance? Should courts be required to take the guidance into account when determining any judicial review proceedings in which the guidance is relevant (for example, immigration decisions)?
4. Do you think that guidance on forced marriage should be issued to these groups? Are there other groups, bodies or individuals who should be expressly included in this list?
5. Do you think that forced marriage guidance should cover these matters? Are there other matters which should be addressed by guidance?
6. Do you think that the forced marriage guidance should be monitored? Do you have any suggestions for the effective monitoring of forced marriage guidance?
7. Do you think that threats and benefits to third parties should be covered by the Bill?
8. Do you think that the Lord Chancellor should be able to make appropriate decisions about the levels of court where action may be taken to obtain an injunction or compensation?
9. Do you think that third parties should be able to seek injunctions to protect forced marriage victims? What type of organizations should be allowed to take action on behalf of victims? Should the Bill spell out the types of organisations who may do so, or should this be left to the court's discretion in each case? Should the Bill include any other provisions in relation to third parties?
10. Do you think that compensation should be available to victims and potential victims of forced marriage? If yes, do you think that there should be any additional

**limitations on the right to receive compensation, in addition to those already contained in section 63E(3)?**

- 11. Should forced marriage victims be entitled to recover damage for financial loss?**
- 12. Do you think that the existing scope for compensation under the Protection from Harassment Act provides an adequate remedy? Should the same court be able to award damages to a forced marriage victim, in addition to considering injunctive relief and/or nullity petitions, or should separate proceedings be required for compensation?**
- 13. Should the Bill include a specific provision about legal aid?**
- 14. Do you think the Bill should be amended in any other way?**