

These notes refer to the Forced Marriage (Civil Protection) Bill [HL] as introduced in the House of Lords on 16th November 2006 [HL Bill 3].

FORCED MARRIAGE (CIVIL PROTECTION) BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Forced Marriage (Civil Protection) Bill [HL] as introduced in the House of Lords on 16th November 2006. They have been prepared in order to assist in understanding the Bill. They do not form part of the Bill.
2. The notes need to be read together with the Bill. They 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 explanation or comment, none is given.

SUMMARY

3. The Bill creates a civil wrong of forced marriage and provides remedies – both injunctive and compensatory – for victims and potential victims of forced marriage.
4. The Bill makes provision, among other things, with respect to:
 - the unlawfulness of forced marriage;
 - deceptive conduct for the purpose of causing another person to enter into a forced marriage;
 - unlawful inducement of acts leading to forced marriage;
 - aiding and abetting forced marriage;
 - orders for injunctions to prevent forced marriage; and
 - civil proceedings and damages.
5. In accordance with the devolution settlement, the Bill applies to England and Wales only.
6. A detailed description of the Bill is contained in the commentary below. Terms used are generally defined in the text where they first appear. Some terms are defined in *clause 10*.

BACKGROUND

7. There is no law which expressly prohibits forced marriage in this country, or which provides tailored remedies for victims and potential victims of forced marriage.

8. During the passage of the Domestic Violence, Crime and Victims Act 2004, the Government agreed to conduct a public consultation on whether to create a specific criminal offence of forcing someone to marry. The consultation document, *Forced Marriage: A Wrong Not a Right*, was published in September 2005. It sought views on whether a specific criminal offence should be created in order to combat the practice of forced marriage. It did not seek views on whether it would be desirable to legislate to enhance protection by means of the civil law.

9. In June 2006 the summary of responses to the consultation was published by the Government. There was no clear majority among respondents about whether or not a specific offence of forcing someone into marriage should be created. However, a majority felt that the disadvantages of creating new criminal legislation would outweigh the advantages and potentially drive forced marriage underground. The Government decided not to pursue further criminal legislation but to pursue non-legislative activity, such as increased training and guidance.

10. The Bill contains civil remedies for forced marriage rather than criminal sanctions. There exist some indirect remedies in the Protection from Harassment Act 1997 and the Family Law Act 1996 which may potentially be used in cases of forced marriage. The Bill covers dimensions which are not addressed by these Acts, in particular deceptive conduct, aiding and abetting, inducement by wider family members and interim relief.

11. The Bill draws upon and recognises recent innovations by family judges in the High Court. It provides protection to victims of all ages and allows third parties to take action on behalf of forced marriage victims or potential victims, with their consent and with the consent of the court. The remedies would be available in a range of courts, including county courts, and would not be limited to the High Court. It would facilitate the grant of legal aid and assistance to victims and potential victims, and would not restrict the ability of the courts to fashion new procedures and remedies in this sensitive area.

COMMENTARY ON CLAUSES

Clause 1: Prohibition against forcing another into marriage

9. *Clause 1* makes clear that forced marriage is unlawful. *Subsection (1)* provides that a person must not act in a way which he knows amounts to forcing or attempting to force another person to enter into marriage without

that other person's free and full consent. "Force" and "forcing" are defined in *clause 10* to include any physical or psychological coercion. *Clause 10* also defines "marriage" as a ceremony of marriage, real or purported, which is religious or civil.

10. *Subsection (2)* provides that a person must not act in a way which he knows amounts to practising a deception for the purpose of causing another person to enter into a marriage or a purported marriage without that other person's free and full consent.

11. *Subsection (2)* of *clause 10* provides that a person is taken to know that his conduct amounts to an act which would contravene *clause 1* if a reasonable person in the possession of the same information would do so.

Clause 2: Unlawful inducement

12. *Clause 2* covers the unlawful inducement of acts which contravene the prohibition of forced marriage in *clause 1*.

13. *Subsection (1)* provides that it is unlawful knowingly to induce, or attempt to induce, a person to do any act which contravenes *clause 1* by providing or offering to provide him with any benefit or by subjecting or threatening to subject him to any detriment.

14. *Subsection (2)* deals with indirect inducement. It makes clear that an offer or threat is not prevented from falling within *subsection (1)* because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

15. *Subsection (2)* of *clause 10* provides an objective test of liability. A person is taken to know that his conduct amounts to an act which would contravene *clause 2* if a reasonable person in the possession of the same information would do so.

Clause 3: Aiding unlawful acts

16. *Clause 3* covers the aiding of acts made unlawful by *clauses 1 and 2*.

17. *Subsection (1)* provides that a person who knowingly aids another person to do an act made unlawful by *clause 1 or 2* shall be treated for the purposes of the Bill as himself doing an unlawful act of the like description.

18. By virtue of *subsection (2)*, a person does not knowingly aid another to do an unlawful act if:

- he acts in reliance on a statement made to him by that other person that, by reason of any provision of the Bill, the act which he aids would not be unlawful; and

- it is reasonable for him to rely on that statement.

19. *Subsection (2) of clause 10* provides that a person is taken to know that his conduct amounts to an act which would contravene *clause 3* if a reasonable person in the possession of the same information would do so.

Clause 4: Orders for injunctions

20. *Clause 4* sets out the powers of the court to make orders for injunctions to prevent an actual or apprehended breach of *clauses 1, 2 or 3*.

21. *Subsection (2)* widens the category of those with access to the courts beyond the victim. It provides that an application for an order under this clause may be made not only by the person who is or may be the victim of the conduct in question but also by his litigation friend or any other concerned person who has the specific permission of the court.

22. "Concerned person" is defined in *clause 10* to include private individuals, local authorities or other public bodies.

23. *Subsection (3)* provides that the prohibitions that may be imposed by an order for an injunction are those appropriate and necessary for the purpose of protecting the victim from conduct contrary to *clauses 1, 2 or 3*.

24. *Subsection (4)* provides that the court may attach a power of arrest to the order or to certain provisions of the order if it appears to the court that the respondent has used or threatened violence against the person who is or may be the victim of the conduct in question. The court need not attach a power of arrest if it is satisfied that, in all the circumstances of the case, the person who is or may be the victim of the conduct in question will be adequately protected without a power of arrest.

25. *Subsection (5)* provides that if, by virtue of *subsection (4)*, the court attaches the power of arrest to an order or to certain provisions of the order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order. Under *subsection (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.

26. Under *subsection (7)*, if a power of arrest is attached to the order or to certain provisions of the order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.

27. *Subsection (9)* provides that if the court has made a relevant order but has not attached a power of arrest to any provisions of the order, or has attached the power of arrest only to certain provisions of the order, and at any time the applicant considers that the respondent has failed to comply with the order,

the applicant may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.

28. *Subsection (10)* provides that the relevant judicial authority shall not issue a warrant on an application under *subsection (9)* unless the application is substantiated on oath and the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.

29. *Subsection (12)* provides that in exercising its powers under this clause, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being of the person who is or may be the victim of the conduct in question.

30. *Subsection (13)* provides that the court may grant initial interim protective relief on any application under the Bill to secure the safety of the person who is or may be the victim of the conduct in question until the first hearing between the parties.

31. *Subsection (14)* makes clear that provides that the court may grant initial interim protective relief in any family proceedings to which the respondent is a party, if the court considers that such relief should be made for the benefit of any other party to the proceedings or any relevant child.

Clause 5: Civil proceedings

32. *Clause 5* makes provision for civil claims relating to an actual or apprehended breach of *clauses 1, 2 or 3*.

33. *Subsection (1)* provides that a civil claim may be brought by the person who is or may be the victim of the conduct in question.

34. *Subsection (2)* provides that damages may be awarded for, among other things, any anxiety, distress, injury to feelings or other detriment caused by the conduct in question.

35. However, monetary remedies are treated as secondary. *Subsection (3)* provides that no award of damages may be made unless, taking into account any other relief or remedy granted, the court is satisfied that the award is appropriate and necessary to provide an effective remedy to the person who is or may be the victim of the conduct in question.

Clause 6: Privacy of proceedings

36. In accordance with the Convention right to respect for private and family life, *clause 6* provides that all applications are to be dealt with at a hearing in private unless the court directs otherwise.

Clause 7: Wardship applications and inherent jurisdiction of the High Court

37. *Clause 7* makes clear that the provisions of the Bill are without prejudice to the rights of the applicant to seek orders for relief within the High Court (Family Division or otherwise) for wardship and related relief and orders.

Clause 8: Limitation

38. This clause provides that the limitation period of 3 years relating to actions in respect of personal injuries does not apply to any action brought for damages under *clause 5*.

Clause 9: Rules of court

39. This clause provides that the Family Procedure Rule Committee may make rules governing the procedure to be followed.

Clause 10: Interpretation

40. This clause defines a number of terms that are used in the Bill.

41. *Subsection (2)* provides that for the purposes of *clauses 1, 2 or 3*, the person whose conduct is in question is taken to know that his conduct amounts to an act which would contravene the section if a reasonable person in possession of the same information would think so.

Clause 11: Short title, commencement and extent

42. The Bill extends to England and Wales only.