

A
B I L L

[DRAFT]

TO

Amend the Family Law Act 1996 to make provision for protecting individuals against being forced to enter into marriage without their free and full consent; and for connected purposes.

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

1 Forced marriage

After Part 4 of the Family Law Act 1996, insert the following Part—

“PART 4A

FORCED MARRIAGE

Prohibition against forcing another into marriage 5

63A Prohibition against forcing another into marriage

- (1) A person must not act in a way which he knows amounts to—
- (a) forcing or attempting to force another person to enter into a marriage or a purported marriage without that other person's free and full consent, or 10
 - (b) practising a deception for the purposes of causing another person to enter into a marriage or a purported marriage without that other person's free and full consent.

63B Unlawful inducement

- (1) It is unlawful knowingly to induce, or attempt to induce, a person to do any act which contravenes section 63A by— 15

- (a) providing or offering to provide him or any other person with any benefit, or
 - (b) subjecting or threatening to subject him or any other person to any detriment.
- (2) 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. 5
- 63C Aiding unlawful acts**
- (1) A person who knowingly aids another person to do an act made unlawful by section 63A or 63B shall be treated for the purposes of this Part as himself doing an unlawful act of the like description. 10
- (2) A person does not under this section knowingly aid another to do an unlawful act if –
- (a) he acts on reliance on a statement made to him by that other person that, by reason of any provision of this Part, the act which he aids would not be unlawful, and 15
 - (b) it is reasonable for him to rely on that statement.

Court proceedings

- 63D Orders for injunctions**
- (1) The court may by order grant an injunction to prevent an actual or apprehended breach of sections 63A, 63B or 63C. 20
- (2) An application for an order under this section may be made by the person who is or may be the victim of the conduct in question or his litigation friend or any other concerned person who has the specific permission of the court. 25
- (3) The prohibitions that may be imposed by an order under this section are those appropriate and necessary for the purposes of protecting the victim from conduct contrary to sections 63A, 63B or 63C.
- (4) If –
- (a) the court makes an order under this section, and 30
 - (b) 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,
- it may attach a power of arrest to the order or to certain provisions of the order unless 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 such a power of arrest. 35
- (5) If, by virtue of subsection (4), the court attaches a 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. 40
- (6) Any period specified for the purposes of subsection (5) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.

- (7) If, by virtue of subsection (4), 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.
- (8) If a power of arrest is attached under subsection (4) to the order or to certain provisions of the order and the respondent is arrested under subsection (7) – 5
- (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
 - (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him. 10
- In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas day, Good Friday or any Sunday.
- (9) If the court has made a relevant order but – 15
- (a) has not attached a power of arrest under subsection (4) to any provisions of the order, or
 - (b) has attached that power only to certain provisions of the order, then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent. 20
- (10) The relevant judicial authority shall not issue a warrant on an application under subsection (9) unless –
- (a) the application is substantiated on oath; and
 - (b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order. 25
- (11) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.
- (12) In exercising its powers under this section, 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
- (13) The court may grant initial interim protective relief on any application under this Act 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. 35
- (14) The court may grant initial interim protective relief –
- (a) if an application for an order has been made under this section; or 40
 - (b) if in any family proceedings to which the respondent is a party the court considers that such relief should be made for the benefit of any other party to the proceedings or any relevant child even though no application for an order under this section has been made. 45

63E Civil proceedings

- (1) An actual or apprehended breach of section 63A, 63B or 63C may be the subject of a claim in civil proceedings by the person who is or may be the victim of the conduct in question.
- (2) On such a claim, damages may be awarded for (amongst other things) any anxiety, distress, injury to feelings or other detriment caused by the conduct in question. 5
- (3) No award of damages may be made under this section unless, taking account of all the circumstances of the case, including—
- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and 10
 - (b) the consequences of any decision (of that or any other court) in respect of that act,
- 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. 15

63F Privacy of proceedings

All applications under this Part are to be dealt with at a hearing held in private unless the court directs otherwise.

63G Inherent jurisdiction of the High Court 20

The provisions of this Part are without prejudice to the rights of the applicant to seek orders for relief under the High Court's inherent jurisdiction with respect to children and vulnerable adults.

63H Rules of court

The Family Procedure Rule Committee may make provision regarding applications issued under this Part. 25

63I Jurisdiction of courts

- (1) For the purposes of this Part “the court” means the High Court, a county court or a magistrates’ court.
- (2) Subsection (1) is subject to the provision made by or under the following provisions of this section. 30
- (3) The Lord Chancellor may by order specify proceedings under this Part which may only be commenced in—
- (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or 35
 - (c) a particular court determined in accordance with, or specified in, the order.
- (4) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Part may only be commenced in—
- (a) a specified level of court; 40
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the order.

- (5) The Lord Chancellor may by order provide that in specified circumstances the whole, or any specified part of any proceedings under this Part is to be transferred to—
- (a) a specified level of court;
 - (b) a court which falls within a specified class of court; or
 - (c) a particular court determined in accordance with, or specified in, the order.
- (6) An order under subsection (5) may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.
- (7) An order under subsection (5) may make such provision as the Lord Chancellor thinks appropriate for excluding specified proceedings from the operation of section 38 or 39 of the Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings) or any other enactment which would otherwise govern the transfer of those proceedings, or any part of them.
- (8) For the purposes of subsections (3), (4) and (5), there are three levels of court—
- (a) the High Court;
 - (b) any county court; and
 - (c) any magistrates' court.
- (9) The Lord Chancellor may by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for specified purposes of this Part, or of any provision made under this part.
- (10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient for the purpose of applying (with or without modifications) provisions which apply in relation to the procedure in county courts to the principal registry when it acts as if it were a county court.
- (11) In this section “specified” means specified by an order under this section.

Supplemental

63J Interpretation

- (1) In this Part—
- “act” includes speech;
 - “conduct” includes a single act;
 - “force” and “forcing” include any physical or psychological coercion;
 - “person” means a person of either sex;
 - “marriage” means a ceremony of marriage, real or purported, which is religious or civil;
 - “concerned person” includes private individuals, local authorities or other public bodies;

“family proceedings” include those specified in sections 3 and 4 of the Children Act 1989 and any applications in the High Court (Family Division).

- (2) For the purposes of sections 63A, 63B or 63C, 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. 5

2 Guidance

- (1) The Secretary of State may issue guidance on the effects and operation of Part 4A of the Family Law Act 1996 to— 10
- (a) registrars of births, deaths and marriages;
 - (b) the police;
 - (c) immigration officers;
 - (d) providers of immigration advice and immigration services as defined in Part V of the Immigration and Asylum Act 1999; 15
 - (e) local authorities in England and Wales;
 - (f) educational establishments providing full or part-time school or further education;
 - (g) NHS bodies;
 - (h) the Legal Services Commission; 20
 - (i) the Legal Services Board;
 - (j) the Bar Council;
 - (k) the Law Society of England and Wales; and
 - (l) such other persons as he considers appropriate.
- (2) Guidance under subsection (1) may include, but not be limited to, guidance on— 25
- (a) the difference between arranged and forced marriages;
 - (b) the legal framework under Part 4A of the Family Law Act 1996;
 - (c) the role of— 30
 - (i) the police;
 - (ii) social services;
 - (iii) immigration officers; and
 - (iv) education, health and other professionals;
 in preventing and dealing with cases of forced marriage; and
 - (d) the impact of forced marriage on the victim’s education, health and employment opportunities. 35
- (3) Before issuing guidance under subsection (1) the Secretary of State shall consult such of the persons mentioned in that subsection as he considers appropriate.
- (4) In this section “NHS body” means— 40
- (a) in relation to England, a Strategic Health Authority, a Special Health authority, an NHS trust, an NHS foundation trust, a Primary Care Trust (including a Care Trust established under section 16A of the National Health Service Act 1977),
 - (b) in relation to Wales, a Local Health Board or an NHS trust. 45

- (5) The Secretary of State shall, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make rules providing for the monitoring of guidance issued under this section.

3 Assignment of business to Family Division of the High Court

In Schedule 1 to the Supreme Court Act (distribution of business in High Court), in paragraph 3 (Family Division) – 5

- (a) in paragraph (d), for “Part 4” substitute “Parts 4 or 4A”, and
(b) in paragraph (f)(i), for “Part 4” substitute “Parts 4 and 4A”.

4 Limitation

In section 11 of the Limitation Act 1980 (special time limit for actions in respect of personal injuries), after subsection (1A) there is inserted – 10

- “(1B) This section does not apply to any action for damages brought under section 63E of the Family Law Act 1996.”

5 Removal of bar to relief where marriage is voidable on ground of lack of consent

15

- (1) The Matrimonial Causes Act 1973 is amended as follows.
- (2) In section 12 (grounds on which a marriage is voidable) for paragraph (c) substitute –
- “(c) that either party to the marriage was unlawfully forced into the marriage in breach of section 63A of the Family Law Act 1996; 20
(ca) that either party to the marriage did not otherwise validly consent to it, whether in consequence of mistake, unsoundness of mind or otherwise;”
- (3) In section 13(2) (bars to relief where marriage is voidable) for “(c)” substitute “(ca)”. 25

6 Short title, commencement and extent

- (1) This Act may be cited as the Forced Marriage (Civil Protection) Act 2007.
- (2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed.
- (3) This Act extends to England and Wales only. 30

Forced Marriage (Civil Protection) Bill [HL]

A

B I L L

[DRAFT]

To amend the Family Law Act 1996 to make provision for protecting individuals against being forced to enter into marriage without their free and full consent; and for connected purposes.

Lord Lester of Herne Hill

Ordered to be Printed, xth February 2007

© Parliamentary copyright House of Lords 2007
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx

00

(xxxxxx)

54/2

xxxbarxxx