

## SCHEDULES

### SCHEDULE 1

Section 2

#### PROTECTION AGAINST FORCED MARRIAGE: NORTHERN IRELAND

#### PART 1

##### FORCED MARRIAGE PROTECTION ORDERS

###### *Forced marriage protection orders*

- 1 (1) The court may make an order for the purposes of protecting—
  - (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
  - (b) a person who has been forced into a marriage.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.
- (3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.
- (4) For the purposes of this Schedule a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent.
- (5) For the purposes of sub-paragraph (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.
- (6) In this Schedule—
  - "force" includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and
  - "forced marriage protection order" means an order under this paragraph.

###### *Contents of orders*

- 2 (1) A forced marriage protection order may contain—
  - (a) such prohibitions, restrictions or requirements; and
  - (b) such other terms;as the court considers appropriate for the purposes of the order.
- (2) The terms of such orders may, in particular, relate to—
  - (a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;

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- (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage;
  - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (3) For the purposes of sub-paragraph (2) examples of involvement in other respects are—
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or
  - (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

*Applications and other occasions for making orders*

- 3 (1) The court may make a forced marriage protection order—
- (a) on an application being made to it; or
  - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by—
- (a) the person who is to be protected by the order; or
  - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—
- (a) the applicant’s connection with the person to be protected;
  - (b) the applicant’s knowledge of the circumstances of the person to be protected; and
  - (c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them.
- (5) An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
- (a) any other family proceedings are before the court (“the current proceedings”);
  - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and
  - (c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.
- (7) In this paragraph—
- “family proceedings” has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)) (see Article 2(2) and (3)) but also includes—
- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults;

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- (b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I.2)) which includes an exclusion requirement (as defined in Article 63A(3) of that Order); and
  - (c) proceedings in which the court has made an order under Article 69 of the Order of 1995 (recovery of abducted children etc.); and
- “relevant third party” means a person specified, or falling within a description of persons specified, by order of the Department of Finance and Personnel.

- (8) An order of the Department of Finance and Personnel under sub-paragraph (7) may, in particular, specify that Department.

#### *Ex parte orders*

- 4 (1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—
- (a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;
  - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and
  - (c) whether there is reason to believe that—
    - (i) the respondent is aware of the proceedings but is deliberately evading service; and
    - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.
- (3) If the court makes an order by virtue of sub-paragraph (1), it must specify a date for a full hearing.
- (4) In sub-paragraph (3), “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court.

#### *Duration of orders*

- 5 A forced marriage protection order may be made for a specified period or until varied or discharged.

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

- 6 (1) The court may vary or discharge a forced marriage protection order on an application by—
- (a) any party to the proceedings for the order;
  - (b) the person being protected by the order (if not a party to the proceedings for the order); or
  - (c) any person affected by the order.

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- (2) In addition, the court may vary or discharge a forced marriage protection order made by virtue of paragraph 3(1)(b) even though no application under sub-paragraph (1) above has been made to the court.
- (3) Paragraph 4 applies to a variation of a forced marriage protection order as it applies to the making of such an order; and, accordingly, references in that paragraph to making a forced marriage protection order are to be read as references to varying such an order.

## PART 2

### ENFORCEMENT

#### *Offence of contravening an order*

- 7 Any person who, without reasonable excuse, contravenes a forced marriage protection order, commits an offence and is liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale;
  - (b) to imprisonment for a term not exceeding 6 months; or
  - (c) to both.

## PART 3

### JURISDICTION AND PROCEDURE

#### *Jurisdiction of courts*

- 8 (1) For the purposes of this Schedule “the court” means the High Court or a county court.
- (2) Sub-paragraph (1) is subject to any provision made by virtue of sub-paragraphs (3) and (4).
- (3) Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 ([S.I. 1998/1071 \(N.I.6\)](#)) (allocation of proceedings to courts etc.) apply for the purposes of this Schedule as they apply for the purposes of that Order but as if the following modification were made.
- (4) The modification is that Article 34(8) is to be read as if there were substituted for it—
- “(8) For the purposes of paragraphs (3), (4) and (5), there are two levels of court—
- (a) the High Court; and
  - (b) a county court.”

#### *Power to extend jurisdiction to courts of summary jurisdiction*

- 9 (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Schedule.
- (2) An order under sub-paragraph (1) may, in particular, make any provision in relation to courts of summary jurisdiction which corresponds to provision made in relation to

such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)).

- (3) Any power to make an order under this paragraph (including that power as extended by paragraph 14(3)) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Schedule or any other enactment.
- (4) In sub-paragraph (3) “enactment” includes Northern Ireland legislation.
- (5) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice’s functions under this paragraph—
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

#### *Contempt proceedings*

- 10 The powers of the court in relation to contempt of court arising out of a person’s failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the relevant judge.

#### *Appeals from county courts*

- 11 (1) An appeal lies to the High Court against—
  - (a) the making by a county court of any order under this Schedule; or
  - (b) any refusal by a county court to make such an order;as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I.3)) (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases).
- (2) But an appeal does not lie to the High Court under sub-paragraph (1) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I.15)) in the same proceedings.
  - (3) Provision must be made by rules of court for an appeal to lie (upon a point of law, a question of fact or the admission or rejection of any evidence) to the Court of Appeal against—
    - (a) the making of any order under this Schedule; or
    - (b) any refusal to make such an order;by a county court of the type referred to in sub-paragraph (2).
  - (4) Sub-paragraph (3) is without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I.3)) (cases stated).
  - (5) On an appeal under sub-paragraph (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
  - (6) Where an order is made under sub-paragraph (5), the High Court may also make such incidental or consequential orders as appear to it to be just.

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- (7) Any order of the High Court made on an appeal under sub-paragraph (1) (other than one directing that an application be re-heard by the county court) is to be treated, for the purposes of—
- (a) the enforcement of the order; and
  - (b) any power to vary, revive or discharge orders;
- as if it were an order of the county court from which the appeal was brought and not an order of the High Court.
- (8) This paragraph is subject to paragraph 12.

*Appeals: transfers and proposed transfers*

- 12 (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under Article 34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6)) as applied by paragraph 8(3) and (4) above.
- (2) Except so far as provided for in any order made under sub-paragraph (1), no appeal may be made against any decision of a kind mentioned in that sub-paragraph.
- (3) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice's functions under this paragraph—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

## PART 4

### SUPPLEMENTARY

*Guidance*

- 13 (1) The Department of Finance and Personnel may from time to time prepare and publish guidance to such descriptions of persons as the Department of Finance and Personnel considers appropriate about—
- (a) the effect of this Schedule or any provision of this Schedule; or
  - (b) other matters relating to forced marriages.
- (2) A person exercising public functions to whom guidance is given under this paragraph must have regard to it in the exercise of those functions.
- (3) Nothing in this paragraph permits the Department of Finance and Personnel to give guidance to any court or tribunal.

*Orders*

- 14 (1) An order made by the Department of Finance and Personnel under paragraph 3(7)—
- (a) may make different provision for different purposes;

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- (b) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Department of Finance and Personnel considers appropriate;
  - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)); and
  - (d) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).
- (2) An order made by the Lord Chancellor by virtue of paragraph 8(3) and (4) or under paragraph 12(1)—
- (a) may make different provision for different purposes;
  - (b) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Lord Chancellor considers appropriate;
  - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)); and
  - (d) is subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument (and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly).
- (3) An order made by the Lord Chancellor under paragraph 9—
- (a) may make different provision for different purposes;
  - (b) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Lord Chancellor considers appropriate;
  - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)); and
  - (d) is not to be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

*Other protection or assistance against forced marriage*

- 15 (1) This Schedule does not affect any other protection or assistance available to a person who—
- (a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or
  - (b) has been forced into a marriage.
- (2) In particular, it does not affect—
- (a) the inherent jurisdiction of the High Court;
  - (b) any criminal liability;
  - (c) any right to an occupation order or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I.6));
  - (d) any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I.9));
  - (e) any protection or assistance under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I.2));
  - (f) any claim in tort; or
  - (g) the law of marriage.

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### *Interpretation*

16 In this Schedule—

“the court” is to be read with paragraph 8(1);

“force” (and related expressions), in relation to a marriage, are to be read in accordance with paragraph 1(4) to (6);

“forced marriage protection order” has the meaning given by paragraph 1(6);

“marriage” means any religious or civil ceremony of marriage (whether or not legally binding); and

“the relevant judge”, in relation to any order under this Schedule, means—

- (a) where the order was made by the High Court, a judge of that court; and
- (b) where the order was made by a county court, a judge or district judge of that or any other county court.