

FORCED MARRIAGE (CIVIL PROTECTION) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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 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.