

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Forced marriage

Section 120: Offence of breaching of a forced marriage protection order

315. Part 4A of the Family Law Act 1996 empowers a court to make an order for the purpose of protecting: a person from being forced into a marriage or from any attempt to be forced into a marriage; or a person who has been forced into a marriage. A forced marriage protection order may contain such prohibitions, restrictions or requirements and any other such terms as the court considers appropriate for the purposes of the order. A breach of such an order would otherwise be punishable only as a contempt of court. Speedy enforcement depends on whether the court attaches a power of arrest to the order. If no power of arrest is attached, the victim has to go to the civil court to get an arrest warrant.
316. *Subsection (2)* inserts into Part 4A of the Family Law Act 1996 a new section 63CA, which makes breach of a forced marriage protection order a criminal offence with a maximum penalty of five years' imprisonment. This means that the police will always be able to arrest for breach of a forced marriage protection order, without the need for the courts to attach a power of arrest, or for the victim to apply to the civil court for an arrest warrant. Under new section 63CA(2), an individual would only be guilty of a criminal offence if aware of the existence of the order at the time of the breach. For a victim who does not want to pursue criminal proceedings, the option will still remain of applying for an arrest warrant for breach of a forced marriage protection order in the civil court.
317. Subsections (3) and (4) of the new section 63CA make provision to preclude double jeopardy so that where a person has been convicted of a breach of a forced marriage protection order, that person cannot be punished subsequently for contempt in relation to the same conduct, and vice versa.
318. *Subsections (3) to (7)* make provision which is consequential on the insertion into the Family Law Act 1996 of new section 63CA. *Subsection (3)* amends section 63E of that Act to enable the court, as an alternative to making a forced marriage protection order, to accept an undertaking (a promise given to the court to do or not to do certain things) from the respondent. But a court may not accept an undertaking where it appears to the court that the respondent has used or threatened violence against the person to be protected and it is necessary for that person's protection to make the order so that breach may be punishable as an offence.
319. *Subsection (4)* amends section 63J(2), which refers to "the order", to make it clear that it is a forced marriage protection order that is being referred to.

These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014

320. *Subsection (5)* repeals various provisions which relate to the attachment of a power of arrest to a forced marriage protection order and to arrest pursuant to such a power. Those provisions are no longer required because, as with non-molestation orders when the offence of breach of the order was introduced, the respondent may be arrested for breach without the need for a power of arrest to be attached to the order.
321. *Subsection (6)* makes transitional provision, so that the changes only apply in relation to conduct occurring on or after the day on which the section comes into force. Pre-commencement breach of a forced marriage protection will accordingly not retrospectively be made an offence; but post-commencement breach of a forced marriage protection order will be an offence (even if the order was made before commencement).