



Forced Marriage

1. The practice of forced marriage has long been a social evil, particularly among families of Asian origin. It is important to draw a distinction between arranged and forced marriage. *Bona fide* arranged marriages are normal in Asian communities and the legislation summarised in this paper does not seek to impugn them. There have however been many cases of young women in particular being forced to marry husbands from the Asian subcontinent whom they have never met, as a means of facilitating immigration for the men concerned. The problem has become particularly serious in northern cities with large communities of Asian origin. In 2005 a Forced Marriage Unit was established jointly by the Home Office and Foreign and Commonwealth Office to assist victims and prospective victims of forced marriages and provide guidance on the subject. In 2013 it dealt with 1302 cases.

Forced Marriage Protection Orders

2. The Forced Marriage (Civil Protection) Act 2007, which received Royal Assent on 26 July 2007 and was brought into force in November 2008, amends the Family Law Act 1996 by inserting a whole Part 4A, the sections of which empower the High Court and county courts to make forced marriage protection orders (FMPOs) for the purpose of providing legal means of protection for persons who are being or have been forced into marriage. A person is deemed to be forced into a marriage if he or she is forced by another person to enter into a marriage without his or her free and full consent. The courts are given wide powers to include in FMPOs such prohibitions, restrictions or requirements or such other terms as are considered appropriate and may relate to conduct outside the United Kingdom. Thus a court could for example issue an order prohibiting a family from taking an unwilling daughter abroad for the purpose of marriage or an order in the case of a daughter who has left home to take refuge from her family, forbidding other members of her family from trying to contact or molest her.

3. The Act deals with the problem of young people under pressure to marry who are afraid to seek help from authority against their own parents. An application to the court may be made by the person to be protected but may also be made by a relevant third party. "Relevant third party" means a person or body to be specified by order of the Lord Chancellor and could include e.g. other relatives, Social Services departments of local authorities. Any other person may make an application with the leave of the court. In certain circumstances the court may make an order even though no application has been made. In the normal way when an application is made to a court for an order against a particular person, notice of the proceedings must be given to the person concerned in accordance with rules of court. In the case of FMPOs however, the Act specifically provides that the court may, in any case where it considers that it is just and convenient to do so, make a FMPO even though the respondent, the person against whom the order is to be made, has not been given notice of the proceedings. In these various ways the Act gives maximum flexibility to the court to ensure that the FMPO regime has teeth.

Criminalisation

4. When the Bill which became the Forced Marriage Act 2007 was going through Parliament there was a public consultation as to whether it should create a new criminal offence of forcing a person into marriage, but this possibility was not favoured at the time by the majority of those consulted, so the Act did not create such an offence.

5. The government in 2011 committed itself to creating a new criminal offence of breaching an FMPO and Parliament has now enacted the Anti-Social Behaviour, Crime and Policing Act 2014, which received Royal Assent on 13 March 2014. Part 10, sections 122 to 124 of the Act, honour the government's commitment by creating a specific offence of breaching a FMPO. Breach of any order of a court is normally punishable as a contempt of court but section 120 specifically provides that a person who has been convicted of the offence of breaching an FMPO under that section may not also be punished for contempt of court on account of the same conduct. The offence is triable in magistrates' and Crown courts and in the latter case the maximum penalty is imprisonment for five years, a fine or both.

6. New offences in relation to forced marriage are created by section 121 of the Act for England and Wales Section 122 makes identical provision for Scotland. **Both sections are brought into force with effect from 16 June 2014.** Subsection (1) of section 121 makes it an offence if a person:

- a. uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
- b. believes or ought reasonably to believe that the conduct may cause the other person to enter into marriage without free and full consent.

Subsection (3) makes it an offence if a person:

- a. practices any form of deception with the intention of causing another person to leave the United Kingdom, and
- b. intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in England or Wales.

In recent years there have been many cases reported of Pakistani parents in particular taking their children supposedly on holiday to Pakistan and forcing them into marriage locally while there. It is against such actions that this subsection is directed.

7. "Marriage" is defined in the section as "any religious or civil ceremony of marriage (whether or not legally binding)". This would include e.g. marriages purported to be made under sharia law in the United Kingdom which are not recognised by law. Offences under section 121 are triable in the magistrates' and Crown courts and in the latter case carry the maximum penalty of imprisonment for a term not exceeding seven years.

9. This paper replaces the previous paper 8.60, "Forced marriage – a Consultation Paper" which is now deleted. The reader's attention is drawn to the contents of Legal Paper MW 240 and Legal Paper MW 241, based on the Supreme Court decision in the case of *Quila*, in which the question of regulating and seeking to prevent forced marriage was a material issue.

Harry Mitchell QC
Honorary Legal Adviser
Migration Watch

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