

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.

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).

Section 121: Offence of forced marriage: England and Wales

322. The new offence of forced marriage catches a person who intentionally forces a person to enter into marriage, believing the person does not consent, or a person who deceives someone into going abroad for the specific purpose of forcing them to marry. An offence is committed whether or not the forced marriage goes ahead.
323. *Subsection (1)* makes it a criminal offence, under the law in England and Wales, for a person to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without their free and full consent. Where the victim lacks the capacity to consent (within the meaning of the Mental Capacity Act 2005) the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion (*subsection (2)*).
324. *Subsection (3)* additionally captures as a criminal offence any form of deception practised with the intention both of causing another person to leave the United Kingdom (“UK”) to travel to another country and that the other person be subjected to conduct that is an offence under subsection (1) or would be an offence if the victim were in England and Wales.
325. *Subsection (4)* provides that “marriage” means any religious or civil ceremony of marriage recognised by the customs of the parties to it, or the laws of any country in which it is carried out, as constituting a binding agreement, whether or not it would be legally binding according to the law of England and Wales.
326. *Subsection (6)* provides that an offence is committed whether the violence, threats or other forms of coercion are directed at the victim of a forced marriage or another person.
327. *Subsection (7)* and *(8)* make provision to take extra-territorial jurisdiction over both the coercion and deception elements of the new offence. Any of the prohibited acts in subsections (1) and (2) carried out outside the UK by a UK national or person habitually resident in England or Wales, or to a UK national or person habitually resident in England or Wales, will be an offence under domestic law and triable in the courts of England and Wales. The effect of *subsection (5)(b)* is that it will also be an offence under domestic law if the prohibited acts in subsection (1) or (2) are conducted by or against a person habitually resident in England and Wales, but take place in Scotland or Northern Ireland.
328. *Subsections (9)* and *(10)* set out that the maximum penalties for the new offences in subsections (1) and (2). On summary conviction the maximum penalty is a fine or six months’ imprisonment (rising to 12 months once the increase in magistrates’ courts sentencing powers in section 154(1) of the Criminal Justice Act 2003 is commenced), or both, and on conviction on indictment the maximum penalty is seven years’ imprisonment.

Section 122: Offence of forced marriage: Scotland

329. **Section 122** creates an equivalent new offence of forced marriage under the law in Scotland. The provisions of this section broadly mirror those in section 121 above.
330. *Subsection (1)* makes it a criminal offence for a person, under the law in Scotland, to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without their free and full consent. Where the victim lacks the capacity to consent (by reason of a mental disorder within the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003) the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion (*subsection (2)*).
331. *Subsection (3)* additionally captures as a criminal offence any form of deception practised with the intention of causing another person to leave the UK to travel to another country and with the intention that the other person is subjected to conduct that is an offence under subsection (1) or would be an offence if the victim were in Scotland.
332. *Subsection (4)* provides that “marriage” means any religious or civil ceremony of marriage, whether or not it would be legally binding according to the law of Scotland.
333. *Subsection (6)* provides that an offence is committed whether the violence, threats or other forms of coercion are directed at the victim of a forced marriage or another person.
334. *Subsection (7)* and *(8)* make provision to take extra-territorial jurisdiction over both the coercion and deception elements of the new offence. Any of the prohibited acts in subsections (1) and (2) carried out outside the UK by a UK national or to a UK national, or person habitually resident in Scotland, will be an offence under domestic law and triable in the courts of Scotland. The effect of *subsection (7)(b)* is that it will also be an offence under domestic law if the prohibited acts in subsection (1) or (2) are conducted by or against a person habitually resident in Scotland, but takes place in Northern Ireland. The same principle applies if the prohibited act takes place in England or Wales.
335. *Subsection (9)* sets out that the maximum penalties for the new offences in subsections (1) and (2). On summary conviction the maximum penalty is imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (currently £10,000) or both. On conviction on indictment, the maximum penalty is imprisonment for a term not exceeding seven years or to an unlimited fine, or both.