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# ***Forced Marriage (Civil Protection) Bill [HL]***

## ***Committee Stage Report***

This is a report on the Committee Stage of the *Legal Services Bill [HL]* produced in response to a recommendation of the Modernisation Committee in its report on The Legislative Process (HC 1097, 2005-06).

This is a pilot Committee Stage Report and we would welcome all feedback on its content and format. This should be sent to [papers@parliament.uk](mailto:papers@parliament.uk) or to the Director of Research Services, Rob Clements (ext. 3622).

The aim of the Bill is to provide civil remedies for those faced with forced marriage, and victims of forced marriage. It would insert new sections into the *Family Law Act 1996* and is intended to become a part of the general provisions protecting against domestic violence in England and Wales; there would be similar protection against forced marriage in Northern Ireland. The Bill would enable victims and third parties on their behalf to seek an injunction and other measures to prevent a forced marriage.

The Bill was introduced in the House of Lords as a Private Member's Bill by Lord Lester of Herne Hill and received considerable cross party support. In Grand Committee the Bill was completely rewritten by way of Government amendments, with the support of Lord Lester and with cross party support. All the original clauses in the Bill, except that containing the short title, were removed and replaced by clauses and schedules drafted by the Government.

The Bill was not amended in the House of Commons Public Bill Committee.

Catherine Fairbairn

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## Summary

A forced marriage has been defined as one conducted without the valid consent of both people, where pressure or abuse is used. The Government regards forced marriage as an abuse of human rights and a form of domestic violence and child abuse. Although in the Western world, forced marriage is sometimes discussed as a religious practice, no major world faith condones forced marriage. A forced marriage must be distinguished from an arranged marriage, where both parties fully and freely consent to the marriage, although their families take a leading role in the choice of partner.

At present, there is no law expressly prohibiting forced marriage in England and Wales and it is not a specific criminal offence. However, there is a range of current criminal offences and civil remedies which may be relevant in relation to forced marriage.

In September 2005, the Foreign and Commonwealth Office and the Home Office published a consultation paper, *Forced Marriage A Wrong not a Right*. The consultation sought views on whether there should be a specific criminal offence of forced marriage. The majority of respondents felt that the disadvantages of creating new criminal legislation would outweigh the advantages and the Government announced that non-legislative activity would be taken forward.

The *Forced Marriage (Civil Protection) Bill [HL]* was introduced in the House of Lords as a Private Member's Bill by Lord Lester of Herne Hill on 16 November 2006 as HL Bill 3 of 2006-07. At second reading it received considerable cross party support. A number of interested parties also expressed their support for the Bill. The Bill had its Grand Committee stage on 10 May 2007. As a Private Member's Bill, this in itself was unusual. In Grand Committee the Bill was completely rewritten by way of Government amendments, with the support of Lord Lester and with cross party support. All the original clauses in the Bill, except that containing the short title, were removed and replaced by clauses and schedules drafted by the Government. Further Government amendments to the amendments already agreed were made on report. This followed consultation with High Court judges.

The aim of the Bill is to provide civil remedies for those faced with forced marriage, and victims of forced marriage. Key features of the Bill include:

- the Bill would insert 19 new sections into the *Family Law Act 1996* and is intended to become a part of the general provisions protecting against domestic violence in England and Wales; there would be similar protection against forced marriage in Northern Ireland
- the Bill would provide civil remedies but would not create any new criminal offence of forced marriage
- it would be possible to seek an injunction and other measures to prevent a forced marriage; in relevant circumstances it would be possible to attach a power of arrest
- third parties would be able to apply to the Court for protection on the victim's behalf
- cases could be heard in the High Court or the county courts

Hopes have been expressed that the approach of the bill, in using civil, rather than criminal, law provisions will encourage victims to seek protection because it would not involve reporting family members to the police.

In Public Bill Committee there was again cross party support for the Bill. Members debated a number of probing amendments. There were no divisions and the Bill was not amended.

Further background and information about the Bill's provisions is included in Library Research Paper 07/56, which was prepared for the Bill's second reading in the House of Commons.

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## I Background

A forced marriage has been defined as one conducted without the valid consent of both people, where pressure or abuse is used.<sup>1</sup> The Government regards forced marriage as an abuse of human rights and a form of domestic violence and child abuse.<sup>2</sup> Although in the Western world, forced marriage is sometimes discussed as a religious practice, no major world faith condones forced marriage.<sup>3</sup> A forced marriage must be distinguished from an arranged marriage, where both parties fully and freely consent to the marriage, although their families take a leading role in the choice of partner.

The *Forced Marriage (Civil Protection) Bill [HL]* was introduced in the House of Lords as a Private Member's Bill by Lord Lester of Herne Hill on 16 November 2006 as HL Bill 3 of 2006-07.

The Bill had its Grand Committee stage on 10 May 2007. As a Private Member's Bill, this in itself was unusual. In Grand Committee the Bill was completely rewritten by way of Government amendments, with the support of Lord Lester and with cross party support. All the original clauses in the Bill, except that containing the short title, were removed and replaced by clauses and schedules drafted by the Government. Further Government amendments to the amendments already agreed were made on report. This followed consultation with High Court judges.

The Bill completed its passage through the House of Lords on 21 June 2007. It had its first reading in the House of Commons on 21 June 2007 as Bill 129 of 2006-07 and its second reading on 10 July 2007.

The Bill had a single sitting in a Public Bill Committee on 17 July 2007. Three further sessions agreed in the programme motion were not used. A Bill gateway is available on the Parliamentary intranet, which gives additional information and detail of the progress of the Bill.

Further background and information about the Bill's provisions is included in Library Research Paper 07/56, which was prepared for the Bill's second reading in the House of Commons.

The Bill would extend to England and Wales and Northern Ireland.

## II Second reading debate

The *Forced Marriage (Civil Protection) Bill [HL]* was introduced at second reading by Bridget Prentice, Under-Secretary of State for Justice. She paid tribute to Lord Lester and set out the aim of the Bill:

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<sup>1</sup> <http://www.fco.gov.uk/Files/KFile/Forced%20Marriage%20Leaflet.pdf> (site visited 20 July 2007)

<sup>2</sup> *Ibid*

<sup>3</sup> p6, *A choice by right*, June 2000, <http://www.fco.gov.uk/Files/KFile/AChoiceByRightJune2000.pdf> (site visited 20 July 2007)

Above all, the Bill's aim is to offer protection to those faced with forced marriage, whether they are children, teenagers or adults, regardless of background, race or religion. It also offers protection to people who have already been forced into a marriage...

The Bill gives the courts a wide discretion to deal flexibly and sensitively with the circumstances of each individual case, employing civil remedies that will offer protection to victims without criminalising members of their family. The new provisions take the form of a new part 4A of the Family Law Act 1996, placing them firmly in the wider context of domestic violence and family proceedings generally. That was the wish of Lord Lester, who wanted the provisions to be part of the family law package.

The type of orders that we envisage being made under the Bill are ones prohibiting violence or requiring certain steps, such as requiring a person to surrender a passport, for as long as such measures are appropriate to protect the victim. The Bill does not define what actions would constitute force in those circumstances, but it provides that that includes coercion by threats or the use of psychological pressure. The force may not even be directed against the victim, because it can be indirectly aimed at a third party or directed against the perpetrator themselves.<sup>4</sup>

Bridget Prentice also spoke of proposals to implement the Bill including court rules, court fees and judicial training.<sup>5</sup>

Dominic Grieve, the Shadow Attorney General, spoke of "universal support across the House" for the Bill and of the co-operation between the parties:

Because the chances of a private Member's Bill from the other place getting through this House are not usually very good—not because of any obstruction but simply because they tend to come at the very bottom of the Order Paper in private Members' business—we felt it incumbent on ourselves, as we took the matter so seriously, to ask for time for it to be dealt with, even at the cost of Opposition debating time. We are absolutely delighted to have been able to do that. We are also delighted that the Government responded positively to our proposal and that we have been able to co-operate with the Liberal Democrats on this matter.<sup>6</sup>

Jo Swinson, Liberal Democrat Shadow Minister for Women and Equality spoke of the Liberal Democrat support for the Bill and of it being "a good example of consensual, cross-party working to tackle an appalling problem".<sup>7</sup>

Members debated a number of issues including whether it would be preferable to have a criminal offence of forced marriage.

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<sup>4</sup> HC Deb 10 July 2007 cc1381-2

<sup>5</sup> HC Deb 10 July 2007 cc1383-4

<sup>6</sup> HC Deb 10 July 2007 c 1385

<sup>7</sup> HC Deb 10 July 2007 c 1391

Fiona Mactaggart (Labour) cautioned against the possible consequences of cross party support:

All Members agree on the issue and I want to remind Members of our record when we all agree. We should think about what happened in respect of the Child Support Agency and the dangerous dogs legislation. It is risky when we all agree. That is especially true of this Bill and I want to alert Ministers and other colleagues to that....

All Members who have spoken stressed that it is supported by the three parties represented in the Chamber. This is a great opportunity, but we need to make sure that such widespread support does not slide into complacency about the detail of the legislation and how we actually deliver refuge and support for women. We need good practice in every Department—whether on regulations for the courts about witnesses with learning difficulties, the treatment of women by the immigration service or the advice that police and schools are given about women who are at risk.<sup>8</sup>

### III Committee stage

In Public Bill Committee, Bridget Prentice, Under-Secretary of State for Justice led for the Government. Dominic Grieve and Humphrey Malins contributed for the Conservatives. Jo Swinson and Lorely Burt, Liberal Democrat Spokesperson for Business, Enterprise and Regulatory Reform, represented the Liberal Democrats.

Cross party support continued in Public Bill Committee and there were no divisions. A number of probing amendments were moved and all were withdrawn. Dominic Grieve set out his motivation in tabling probing amendments:

When I tabled my amendments to the Bill, I was concerned that the normal procedure for clause stand part debates would become rather difficult, because clause 1 encompasses virtually the entire Bill and we would be required to consider it all together. With that in mind, I hoped that the Minister would talk us through the relevant measures, to which I would not have otherwise tabled amendments, and have the opportunity of drawing our attention to any relevant issue. However, I am conscious that, because the Bill follows existing legislation so closely, nothing of any great significance might apply, but I did not want the Minister to be left having to do a clause 1 stand-part debate that would be meaningless if she wanted to bring something to the Committee's attention.<sup>9</sup>

In response to the probing amendments which were moved, and others grouped with those amendments, Bridget Prentice set out information about various provisions in the Bill and how it was intended that they should operate, including :

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<sup>8</sup> HC Deb 10 July 2007 cc 1404-6

<sup>9</sup> PBC Deb 17 July 2007 c26

- The giving of evidence by witnesses, particularly by vulnerable witnesses. Bridget Prentice set out the various ways in which the court could ascertain the wishes and feelings of a victim.<sup>10</sup>
- The court's powers to require a person to do something. Bridget Prentice set out the reasoning behind the provisions:

The reasoning behind this part of the clause is that in many cases of forced marriages victims are taken abroad on the pretext of going on holiday. The option of requiring the person to do something such as producing their passport can be a useful tool in preventing the forced marriage from taking place. The clause is in the Bill as a preventative measure...<sup>11</sup>

- To whom a forced marriage order might be directed.<sup>12</sup>
- The definition of “relevant third party” (the Bill would enable such a person to apply for an order on behalf of a victim) and also the range of persons who might apply for the discharge or variation of an order or for the issue of an arrest warrant. Bridget Prentice explained the various provisions in some detail including why it was important to allow third party applications; who the relevant third party might be; the hope that third party applications might facilitate family reconciliation because the victim would not be directly involved in the court process; that if an application to vary or discharge an order was made by someone not closely affected, it would be discarded by the court; and the requirement to obtain the leave of the court to apply for an arrest warrant.<sup>13</sup>
- The interplay between the provisions in the Bill and criminal law. Bridget Prentice confirmed that criminal law would continue to operate where offences had been committed and Dominic Grieve highlighted a possible consequence:

One of the consequences of the Bill—if it works—is that facts will undoubtedly emerge during the civil jurisdiction proceedings under discussion that may clearly disclose the commission of serious criminal offences. I raise such an issue because, if it becomes clear that the consequence of such civil proceedings is in the number of cases that lead to prosecution, it might start to prevent people from coming forward to use the civil proceeding. I just wanted to explore the matter because, although the proposal is highly well intentioned, there is potential for it to lead to more criminal prosecutions, which might have the unintended consequence of undermining the Government's approach.<sup>14</sup>

- The time limit which might apply for a full hearing following an ex-parte<sup>15</sup> injunction. Bridget Prentice said that the provision in the Bill would ensure that the respondent was heard “in a timely manner”: “It is based on section 45 of the Family Law Act

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<sup>10</sup> PBC Deb 17 July 2007 cc 3-10

<sup>11</sup> PBC Deb 17 July 2007 c 11

<sup>12</sup> PBC Deb 17 July 2007 cc 11-15

<sup>13</sup> PBC Deb 17 July 2007 cc 15-20

<sup>14</sup> PBC Deb 17 July 2007 c22

<sup>15</sup> That is, without the respondent being notified of the proceedings

1996, which deals with domestic violence cases. That has worked perfectly well in practice, and the Bill is worded as it is on that basis".<sup>16</sup>

- The duration of orders.<sup>17</sup>
- Whether it should be possible to consider the likelihood of the use of violence in the future and not just past violence or threats of violence in deciding whether to attach a power of arrest to an order. Bridget Prentice did not consider that the proposed amendment would add any value.<sup>18</sup>
- The provisions relating to remand and to contempt and which judge would deal with a failure to comply with an order.<sup>19</sup>
- The Government's intentions with regard to the potential jurisdiction of the magistrates' courts. Bridget Prentice said:

The Government certainly intend that magistrates will be able to take on this work at a suitable time. As I said, the vast majority of domestic violence cases are currently dealt with in the county court, and I envisage that that will remain the position in the immediate future for cases concerning forced marriage. That is partly because there has been a build-up in the expertise of county court judges in such issues, so that they are well placed to deal with them speedily and effectively. As the hon. Gentleman rightly said, magistrates will need further training and resources, which will be an important consideration to take into account before an affirmative order is made.

We certainly intend that the High Court and the county courts deal with the early cases. After that we will be in a much better position to know how the legislation is working, and once one or two leading cases have been decided we will be able to give much better guidance to the lower courts. That too will need to be taken into account should an affirmative order be made.

We intend to roll out the legislation to the county courts and the High Court, where the expertise is concentrated, and to allow case law to be developed by those courts before extending the legislation further. That will give us the opportunity to prepare for the single family court, the strategy for whose creation we have already published. Magistrates and district judges will constitute the first tier in that new court. It is right to indicate now that family magistrates will have jurisdiction in future over forced marriage cases.<sup>20</sup>

- The importance of guidance, what guidance should be given and how it was intended to operate. Bridget Prentice also gave information about the proposed timetable:

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<sup>16</sup> PBC Deb 17 July 2007 cc 23-4

<sup>17</sup> PBC Deb 17 July 2007 cc 24-5

<sup>18</sup> PBC Deb 17 July 2007 c25

<sup>19</sup> PBC Deb 17 July 2007 cc26-9

<sup>20</sup> PBC Deb 17 July 2007 c 28

The revised guidelines for social workers are due out before the end of the year. The original guidance was in one volume, and the revised guidance will be in two—one for social workers dealing with children and young people, and one for those dealing with vulnerable adults. We hope also to publish a legal handbook by the end of October. That will contain chapters on the legal situation on forced marriage in Pakistan, Bangladesh and India, as well as on legal and non-legal remedies available here. Legal briefing sessions will be conducted by legal experts. We do not want the Bill, excellent as it is, to be lost because people are not aware of its provisions. For the Bill to work, it is essential to ensure that those who are in a position to make it work and to protect the victims of forced marriage are aware of their powers and those of the court.<sup>21</sup>

## **IV Appendix – Members of the Public Bill Committee**

**Chairman:** Mr. Jim Hood

**Members:**

Blunt, Mr. Crispin (Reigate) (Con)  
Burt, Lorely (Solihull) (LD)  
Cryer, Mrs. Ann (Keighley) (Lab)  
Davies, Philip (Shipley) (Con)  
Grieve, Mr. Dominic (Beaconsfield) (Con)  
Hendrick, Mr. Mark (Preston) (Lab/Co-op)  
Jones, Lynne (Birmingham, Selly Oak) (Lab)  
Khan, Mr. Sadiq (Tooting) (Lab)  
Linton, Martin (Battersea) (Lab)  
McCafferty, Chris (Calder Valley) (Lab)  
Mahmood, Mr. Khalid (Birmingham, Perry Barr) (Lab)  
Malins, Mr. Humfrey (Woking) (Con)  
Moffatt, Laura (Crawley) (Lab)  
Prentice, Bridget (Parliamentary Under-Secretary of State for Justice)  
Rifkind, Sir Malcolm (Kensington and Chelsea) (Con)  
Swinson, Jo (East Dunbartonshire) (LD)  
Waltho, Lynda (Stourbridge) (Lab)

**Committee Clerk:** John Benger

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<sup>21</sup> PBC Deb 17 July 2007 c 32