

An analysis of forced marriage legislation in the UK

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The Forced Marriage (Civil Protection) Act 2007

On 26 July 2007, the Forced Marriage (Civil Protection) Act (FMCPA) received Royal Assent as Part 4A of the Family Law Act 1996 and it was implemented on 25 November 2008.¹ This legislation enabled courts in England and Wales to make forced marriage protection orders (FMPOs) under the FMCPA to protect not only persons who face being forced into marriage but also those already in such a marriage.

The FMCPA expressly prohibits the practice, inducement, or aiding of forced marriage (FM), which is defined as:

forcing, or attempting to force, another person to enter into a marriage, or a purported marriage, without that other person's free and full consent, or practising deception for the purpose of causing another person to enter into a marriage, or a purported marriage, without that other person's free and full consent.

Forced marriage protection orders

FMPOs are injunctions made by a court to prohibit persons from performing particular acts that might lead to a named individual being forced into marriage. FMPOs are detailed and case-specific. They may last for a specified period of time or effectively be indefinite (i.e. they may remain in force until a new order is made to the contrary). Critically, through FMPOs, the FMCPA makes it possible for people at risk of FM to make applications *prior* to an FM taking place. Having this possibility is critical, as previous legislation had ignored the importance of affording protections and remedies to prevent FMs, as opposed to merely dealing with cases after the fact. Even when an FM has already taken place, courts can make FMPOs to protect victims and/or remove them from their current situation.

As victims of FM may be unable to protect themselves, the FMCPA enables others to apply for an FMPO on behalf of a victim or person at risk, provided that the applicant first obtains the permission of the court to do so. In addition, the FMCPA allows 'relevant third parties' to apply for an FMPO without first obtaining the permission of the court. The decision of who to appoint as relevant third parties to make applications of various sorts lies with the Lord Chancellor; in the case of FMPOs, relevant third parties include the police and local authorities.

1. The courts also have the power to make orders

¹ Parliament (2007) Forced Marriage (Civil Protection) Act 2007, available at: <http://www.legislation.gov.uk/ukpga/2007/20/contents>.

2. requiring passports to be handed over,
3. prohibiting individuals from being taken abroad,
4. requiring persons to stop intimidation and violence against a named individual, or
5. requiring the whereabouts of a named individual (i.e. a victim of FM or a person at risk) to be revealed.²

When the police obtain an FMPO, arrangements are usually made for the victim to remain in contact with the police and vice versa. The local authority and relevant education authorities are also alerted, and often remain closely involved throughout. Since being named a relevant third party under the FMCPA, local authorities have been vigilant in working to identify, and take immediate action in, cases of FM by using the FMCPA, in conjunction with care proceedings, to obtain the appropriate orders to protect victims and those at risk. It is, however, important to recognise that the majority of victims wish to return home once an FMPO, and any protective orders made under the Children Act 1989, have taken effect. Suggesting that victims should always be removed from their family home not only ignores victims' wishes but also the difficulties surrounding being removed from one's normal environment.

On 16 June 2014, the Government introduced new criminal offences relating to FM under Section 120/121 of the Anti-Social Behaviour, Crime and Policing Act 2014. Forcing someone to marry now carries a maximum penalty of seven years' imprisonment, while breaching the terms of the civil law FMPO has become a criminal offence carrying a maximum penalty of five years in prison.³ However, since the criminalisation of FM in the UK, only one individual has been convicted. In June 2015, a 34-year-old man was jailed for forcing a 25-year-old woman to marry him under duress. The Merthyr Crown Court in Wales heard that the Muslim man⁴, who was already married to someone else, repeatedly raped his victim over a period of months, threatened to publish footage of her having a shower and told her that her parents would be killed unless she agreed to become his wife. The defendant was put on the sex offenders' register and sentenced to 16 years in custody. In addition, he was made the subject of an extended licence which lasted for a further five years after release. This important case raises questions about whether these offences, including rape, voyeurism and bigamy⁵ alongside FM, could have and should have been prosecuted under the existing criminal law, given that, before FM was criminalised, the Forced Marriage (Civil Protection) Act 2007 enabled courts to issue protection orders against those who attempt or conspire to

² Parliament (2007) Forced Marriage (Civil Protection) Act 2007, available at: <http://www.legislation.gov.uk/ukpga/2007/20/contents>.

³ See: Honour Based Violence and Forced Marriage http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/ [accessed 28 April 2017].

⁴ UK: Muslim prosecuted under new forced marriage law after repeatedly threatening and raping victim if she did not wed him <https://themuslimissue.wordpress.com/2015/06/10/uk-muslim-prosecuted-under-new-forced-marriage-law-after-repeatedly-threatening-and-raping-victim-if-she-did-not-wed-him/> [accessed 28 April 2017].

⁵ UK Legislation on bigamy: <http://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/bigamy> [accessed 28 April 2017].

force someone into marriage (Gill and Hamid, 2016). In 2016, 279 applications and 229 orders were made.⁶

The low number of prosecutions, along with my current research with Hertfordshire Police, highlights that victims/survivors endure significant challenges and require extensive support from different services. For one thing, it is often the case that the victims/survivors of forced marriage, and those at risk, need assistance from specialist support services, in order to access justice in the first place. Many victims of forced marriage cannot afford to pay for the legal assistance they require. For instance, foreign nationals may require immigration advice and assistance, while British citizens may need advice regarding family law remedies like marriage annulments, or about contact with their children. Legislation fails to address the day-to-day issues associated with protecting and supporting victims, and there has been no long-term investment in additional resources to support specialist black and minority ethnic services that work to support those affected by forced marriage. Ultimately, the success of the stand-alone law on forced marriage depends on how effective it proves to be for victims/survivors. At present, too little consideration has been paid to the practicalities of this legislation, and its effect on victims/survivors themselves.

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Useful Resources

1. Gill, A.K., Harvey, H. (2016) Examining the impact of gender on young people's views of forced marriage in Britain, *Feminist Criminology*, <http://journals.sagepub.com/doi/pdf/10.1177/1557085116644774>
2. Gill, A.K., Hamid, T. (2016) Muslim Women and Forced Marriage in the UK, *Journal of Muslim Minority Affairs*, Vol. 36, No. 4.

⁶ Source: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2016>