



# Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011

2011 asp 15

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 22nd March 2011 and received Royal Assent on 27 April 2011**

An Act of the Scottish Parliament to make provision for protecting persons from being forced into marriage without their free and full consent and for protecting persons who have been forced into marriage without such consent; for amending the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage; and for connected purposes.

## PART 1

### FORCED MARRIAGE PROTECTION ORDERS

#### *Forced marriage protection orders*

#### **1 Forced marriage protection orders**

- (1) The court may make an order for the purposes of protecting a person (a “protected person”)—
  - (a) from being forced into a marriage or from any attempt to force the person into a marriage, or
  - (b) who has been forced into a marriage.
- (2) In deciding whether to make such an order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person.
- (3) In ascertaining the protected person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding.

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**Changes to legislation:** There are currently no known outstanding effects for the *Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011*. (See end of Document for details)

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- (4) For the purposes of this Part, a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.
- (5) For the purposes of subsection (4), it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.
- (6) In this Part—
  - “force” includes—
    - (a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means,
    - (b) knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage,
 and related expressions are to be read accordingly,  
 “forced marriage protection order” means an order under subsection (1).

#### Commencement Information

**II** [S. 1](#) in force at 28.11.2011 by [S.S.I. 2011/352](#), [art. 2](#)

## 2 Contents of orders

- (1) A forced marriage protection order may contain such—
  - (a) prohibitions, restrictions or requirements, and
  - (b) other terms,
 as the court considers appropriate for the purposes of the order.
- (2) The terms of such an order may, in particular, relate to—
  - (a) conduct outwith (as well as, or instead of, conduct within) Scotland,
  - (b) persons who force or attempt to force, or may force or attempt to force, a protected person to enter into a marriage,
  - (c) persons who are, or may become, involved in other respects.
- (3) A forced marriage protection order may, among other things, require a person—
  - (a) to take the protected person to a place of safety designated in the order,
  - (b) to bring the protected person to a court at such time and place as the court making the order may specify,
  - (c) to refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person),
  - (d) who is a person such as is mentioned in subsection (2)(b) or (c), to appear in court,
  - (e) to disclose, if known, the whereabouts of such a person,
  - (f) to refrain from taking the protected person from, or to, such place as the court may specify,
  - (g) to facilitate or otherwise enable the protected person or another person to return or go to such place (whether in Scotland or another part of the United Kingdom) as the court may specify within such period as may be so specified,

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- (h) to submit to the court such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify,
  - (i) to provide the court with such other information as it may specify.
- (4) For the purposes of subsection (2)(c), examples of involvement in other respects are—
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage,
  - (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

#### Commencement Information

**I2** [S. 2](#) in force at 28.11.2011 by [S.S.I. 2011/352](#), [art. 2](#)

### 3 Applications for orders

- (1) The court may make a forced marriage protection order on an application being made to it by—
  - (a) the protected person, or
  - (b) a relevant third party.
- (2) An application may be made by any other person only with the leave of the court.
- (3) In deciding whether to grant such leave, the court must have regard to all the circumstances including—
  - (a) the applicant's connection with the protected person,
  - (b) the applicant's knowledge of the circumstances of the protected person, and
  - (c) the wishes and feelings of the protected person so far as they are reasonably ascertainable.
- (4) But the court need only have regard to those wishes and feelings so far as it considers it appropriate, on the basis of the protected person's age and understanding, to do so.
- (5) An application made to the sheriff under this section is to be made by summary application.
- (6) An application made to the sheriff under this section is to be made—
  - (a) to the sheriff in whose sheriffdom the protected person is ordinarily resident, or
  - (b) where the protected person is not ordinarily resident in Scotland, to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.
- (7) In this section, “a relevant third party” means—
  - (a) a local authority,
  - (b) the Lord Advocate,
  - (c) a person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.

#### Commencement Information

**I3** [S. 3](#) in force at 28.11.2011 by [S.S.I. 2011/352](#), [art. 2](#)

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#### 4 Power to make orders without application, etc.

- (1) The court may make a forced marriage protection order without an application being made to it where—
  - (a) civil proceedings are before the court,
  - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the civil proceedings), and
  - (c) a person who would be a party to any proceedings for the forced marriage protection order (other than as the protected person) is a party to the civil proceedings.
- (2) Subsection (3) applies where—
  - (a) criminal proceedings are before the sheriff [<sup>F1</sup>, the Sheriff Appeal Court] or the High Court, and
  - (b) the sheriff [<sup>F2</sup>, the Sheriff Appeal Court] or the High Court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the criminal proceedings).
- (3) The sheriff [<sup>F3</sup>, the Sheriff Appeal Court] or, as the case may be, the High Court may refer the matter to the Lord Advocate who may—
  - (a) apply under section 3 for a forced marriage protection order,
  - (b) take such other steps as the Lord Advocate considers appropriate.

##### Textual Amendments

- F1** Words in s. 4(2)(a) inserted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 7(2)(a)(i)** (with art. 4(2))
- F2** Words in s. 4(2)(b) inserted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 7(2)(a)(ii)** (with art. 4(2))
- F3** Words in s. 4(3) inserted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 7(2)(b)** (with art. 4(2))

##### Commencement Information

- I4** S. 4 in force at 28.11.2011 by [S.S.I. 2011/352](#), **art. 2**

#### *Interim orders*

#### 5 Interim orders

- (1) The court may, in a case where it considers that it is equitable to do so, make a forced marriage protection order in the absence of a person who is, or would be, a party to proceedings for the order (and may do so whether or not the person has been given such notice of the application for the order as would otherwise be required by rules of court).
- (2) An order made by virtue of subsection (1) is an “interim forced marriage protection order”.

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- (3) In deciding whether to make an interim order by virtue of subsection (1), the court must have regard to all the circumstances including any risk of significant harm to the protected person or to another person if the order is not made immediately.
- (4) In this Part (unless the context otherwise requires), references to forced marriage protection orders include references to interim forced marriage protection orders.

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#### Commencement Information

**I5** [S. 5](#) in force at 28.11.2011 by [S.S.I. 2011/352](#), [art. 2](#)

### *Duration, variation, recall and extension*

## 6 Duration of orders

A forced marriage protection order has effect—

- (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is recalled under section 7 or extended under section 8),
- (b) where no such period is specified, until the order is recalled under section 7.

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#### Commencement Information

**I6** [S. 6](#) in force at 28.11.2011 by [S.S.I. 2011/352](#), [art. 2](#)

## 7 Variation and recall of orders

- (1) The court may vary or recall a forced marriage protection order on an application by—
- (a) any person who was or, in the case of an order made by virtue of section 4(1) or 5(1), would have been a party to the proceedings for the order,
  - (b) the protected person (if not such a person),
  - (c) any other person affected by the order, or
  - (d) with the leave of the court only, any person not falling within paragraphs (a) to (c).
- (2) In deciding whether to grant leave under subsection (1)(d), the court must have regard to all the circumstances including—
- (a) the applicant's connection with the protected person,
  - (b) the applicant's knowledge of the circumstances of the protected person, and
  - (c) the wishes and feelings of the protected person so far as they are reasonably ascertainable.
- (3) But the court need only have regard to those wishes and feelings so far as it considers it appropriate, on the basis of the protected person's age and understanding, to do so.
- (4) In addition, the court may vary or recall a forced marriage protection order made by virtue of section 4(1) even though no application under subsection (1) of this section has been made to the court.