

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

www.justice-ni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast

BT4 3SG

Tel: 028 9052 8121

private.office@justice-ni.x.gsi.gov.uk

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FROM: TIM LOGAN
DATE: 6 SEPTEMBER 2016
TO: CHRISTINE DARRAH

Summary

Business Area: Criminal Justice Policy and Legislation Division

Issue: Legislative Consent Motion for the inclusion of provisions for the anonymity for victims of forced marriage in Northern Ireland in the Policing and Crime Bill.

Restrictions: None

Action Required: The Committee is asked to consider the Legislative Consent Motion.

Officials Attending: N/A. This is a written briefing.

Background

The Policing and Crime Bill was introduced at Westminster in February 2016 and is currently at Committee Stage in the House of Lords. It covers a wide range of policy areas, some of which the Department wishes to extend to Northern Ireland by Legislative Consent Motion (LCM).

2. The Committee will receive oral evidence from officials on 15 September on three measures proposed to be extended to Northern Ireland by LCM, specifically: maritime enforcement powers; cross border powers; and biometric retention – foreign convictions.

3. This paper relates to an emerging issue on which we would seek the Committee's view. Clause 143 of the Bill (which was inserted by amendment in the House of Commons) makes provision for the lifelong anonymity of victims of forced marriage in England and Wales. The Department believes that there is a strong case for making similar provision in Northern Ireland to provide a similar level of protection for victims of forced marriage in this jurisdiction.

Anonymity for Victims of Forced Marriage

4. Forcing someone into marriage is a criminal offence in Northern Ireland under section 16 of the Human Trafficking and Exploitation (Support for Victims and Criminal Justice) Act (Northern Ireland) 2015. A forced marriage is a marriage in which one or both spouses do not (or, in the case of some adults with learning or physical disabilities or mental incapacity, cannot) consent to the marriage and violence, threat or any other form of coercion is involved. Coercion may include emotional force, physical force, or the threat of physical force and financial pressure.

5. At present, a victim of forced marriage may be granted anonymity at the discretion of the court (as is the case for any other crime, with the exception of Female Genital Mutilation (FGM) and certain sexual offences where anonymity always applies unless the court considers it should not). In general terms therefore, anonymity for a victim of forced marriage is not automatic.

6. The proposed amendment to the Policing and Crime Bill would provide lifelong anonymity to victims of forced marriage and would prohibit publication or broadcast of any information likely to result in the victim being identified whether in traditional print, broadcast or social media. The prohibition will be automatic and can only be reversed if the victim applies to the court to remove it. Anyone found guilty of breaching the prohibition will be subject to a fine not exceeding level 5 (£5,000) on summary conviction.

7. The proposed provisions (which are attached at Annex B for the Committee's information) are modelled on the lifelong anonymity for victims of Female Genital

Mutilation (FGM) which is available in Northern Ireland under section 4A and Schedule 1 to the FGM Act 2003. These provisions were extended to Northern Ireland by the Serious Crime Act 2015 following a LCM by the Assembly.

8. The Department believes there is significant value in making provision for the anonymity of victims of forced marriage in Northern Ireland at this time. Although a very rare crime in Northern Ireland, it is important that victims here are afforded the same level of protection as victims in England and Wales.

9. The Minister of Finance (who has policy responsibility for the civil aspects of forced marriage) has agreed that these provisions are desirable in Northern Ireland. Time constraints have prevented wider consultation on the policy.

10. The Committee is asked to agree to the draft LCM at Annex A.



TIM LOGAN
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Enc – Annex A – Legislative Consent Memorandum – Policing and Crime Bill
Annex B - Policing and Crime Bill Amendment- Anonymity for Victims of Forced Marriage NI

LEGISLATIVE CONSENT MEMORANDUM

POLICING AND CRIME BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Justice, is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Policing and Crime Bill, by amendment at Lords Committee Stage, insofar as they apply to the exercise of anonymity for victims of forced marriage, as contained in the draft clause inserted after clause 143 of Part 9 of the Bill”.

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Policing and Crime Bill (‘the Bill’) was introduced in the House of Commons on 10 February 2016 and is scheduled to begin Lords Report Stage in the Autumn. The latest version of the Bill as introduced to the House of Lords can be found at:

<http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0055/17055.pdf>

Summary of the Bill and its policy objectives

3. The Bill is in nine parts and its purpose is to further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services; enhance the democratic accountability of police forces and fire and rescue services; build public confidence in policing; strengthen the protections for persons under investigation by, or who come into contact with, the police; ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and further safeguard children and young people from sexual exploitation:

- Part 1 places a duty on police, fire and rescue and ambulance services to collaborate, and enables Police and Crime Commissioners to take on responsibility for fire and rescue services.
- Part 2 reforms the police complaints and disciplinary systems, provides for a new system of “super-complaints” and confers new protections on police whistle-blowers. It also further strengthens the independence of HMIC and ensures that it is able to deliver end-to-end inspections of the police, including by inspecting contractors and third parties who carry out policing functions.
- Part 3 enables chief officers of police to confer a wider range of policing powers on police civilian staff and volunteers.
- Part 4 contains a number of reforms to police powers, including the extension of police powers to investigate offences committed on vessels operating at sea.
- Part 5 makes further provision in respect of the term of office of Deputy Police and Crime Commissioners to enable them to be eligible for appointment as an acting PCC in the event of the office of PCC falling vacant mid-term.
- Part 6 seeks to better protect the public by amending the Firearms Acts so as to close loopholes that can be exploited by criminals and terrorists and by ensuring that, through statutory guidance, there is a consistent approach by chief officers of police to the consideration of applications for firearms licences and shotgun certificates.
- Part 7 amends the Licensing Act 2003 to improve the effectiveness of the alcohol licensing regime in preventing crime and disorder.

- Part 8 strengthens the enforcement regime for financial sanctions by increasing the maximum custodial sentence on conviction for breaching sanctions, expanding the range of enforcement options, including a new system of monetary penalties, and by providing for the immediate implementation of UN-mandated sanctions.
- Part 9 contains miscellaneous and general provisions, including new requirements on arrestees to confirm their nationality and defendants in criminal proceedings to provide their name, date of birth and nationality to the court.

Provisions which deal with a Devolution Matter

4. The provisions dealing with anonymity for victims of forced marriage in Northern Ireland (draft clause inserted after clause 143 of Part 9 of the Bill (Annex B)), so far as it relates to the exercise of those powers in Northern Ireland, are the responsibility of the Northern Ireland Executive.

The position in other devolved administrations

5. The anonymity for victims of forced marriage provisions in the Bill currently apply to England and Wales only.

Reasons for making the Provisions

6. Forcing someone into marriage is a criminal offence in Northern Ireland under section 16 of the Human Trafficking and Exploitation (Support for Victims and Criminal Justice) Act (Northern Ireland) 2015. A forced marriage is a marriage in which one or both spouses do not (or, in the case of some adults with learning or physical disabilities or mental incapacity, cannot) consent to the marriage and violence, threat or any other form of coercion is involved. Coercion may include emotional force, physical force, or the threat of physical force and financial pressure.
7. At present, a victim of forced marriage may be granted anonymity at the discretion of the court (as is the case for any other crime, with the exception of Female Genital Mutilation (FGM) and certain sexual offences where anonymity always applies unless the court considers it should not). In general terms therefore, anonymity is not automatic.

8. The provisions proposed are modelled on the lifelong anonymity for victims of Female Genital Mutilation (FGM) which is available in Northern Ireland under section 4A and Schedule 1 to the FGM Act 2003. This provision was extended to Northern Ireland by the Serious Crime Act 2015 following a Legislative Consent Motion.

The effect of the provisions

9. The Legislative Consent Motion will have the effect of enabling the provision of lifelong anonymity to victims of forced marriage in Northern Ireland and the prohibition of the publication or broadcast of any information likely to result in the victim being identified whether in traditional print/broadcast media or social media.
10. The prohibition will be automatic and can only be reversed if the victim applies to the court to remove it. Anyone found guilty of breaching the prohibition will be subject to a fine not exceeding level 5 (£5,000) on summary conviction.

Reasons for utilising the Bill rather than an Act of the Assembly

11. The Bill contains provisions to provide anonymity for victims of forced marriage in England and Wales. At present, there is no Department of Justice Bill available to carry these provisions and in order to provide support to victims of forced marriage in Northern Ireland a Legislative Consent Motion is required to provide Assembly consent to extend these provisions to Northern Ireland.

Consultation

12. The Minister of Finance (who has policy responsibility for the civil aspects of forced marriage) has agreed that these provisions are desirable in Northern Ireland. Time constraints have prevented wider consultation on the policy.

Human Rights and Equality

13. It is considered that the proposed provisions would be beneficial from a human rights and equality perspective. They would assist to protect victims of forced marriage in Northern Ireland.

Financial Implications

14. None anticipated.

Summary of Regulatory Impact

15. There would not be any significant impact on the business or voluntary sectors.

Engagement to date with the Committee for Justice

16. None. This is a new policy proposal aimed at providing additional protection to victims of forced marriage.

Conclusion

17. The view of the Minister for Justice is that, to support victims of forced marriage, the Assembly should support the terms of the draft Legislative Consent Motion as set out in paragraph 1 of this memorandum.

Department of Justice

August 2016

Policing and Crime Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE

After Clause 143

BARONESS WILLIAMS OF TRAFFORD

1 Insert the following new Clause –

“Anonymity of victims of forced marriage: Northern Ireland

- (1) After Part 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I)) insert –

“PART 4A

PROTECTION OF VICTIMS OF FORCED MARRIAGE

24A Anonymity of victims of forced marriage

Schedule 3A (anonymity of victims of forced marriage) has effect.”

- (2) Insert, as Schedule 3A to that Act, the following Schedule –

“SCHEDULE 3A

Section 24A

ANONYMITY OF VICTIMS OF FORCED MARRIAGE

Prohibition on the identification of victims in publications

- 1 (1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime.
- (3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.

- (4) The first condition is that the conduct of a person's defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.
- (5) The second condition is that—
 - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
 - (b) it is in the public interest to remove or relax the restriction.
- (6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (7) In this paragraph, "the court" means a magistrates' court, a county court or the Crown Court.

Penalty for breaching prohibition imposed by paragraph 1(2)

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (3) The persons responsible for a publication are as follows—

| <i>Type of publication</i> | <i>Persons responsible</i> |
|-------------------------------|--|
| Newspaper or other periodical | Any person who is a proprietor, editor or publisher of the newspaper or periodical. |
| Relevant programme | Any person who— (a) is a body corporate engaged in providing the programme service in which the programme is included, or (b) has functions in relation to the programme corresponding to those of an editor of a newspaper. |
| Any other kind of publication | Any person who publishes the publication. |

- (4) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

Offence under paragraph 2: defences

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
 - (a) the publication included the matter in question, or
 - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.
- (4) The defence in sub-paragraph (3) is not available if—
 - (a) the victim was under the age of 16 at the time when his or her consent was given, or
 - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.
- (5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.

Special rules for providers of information society services

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in Northern Ireland).
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
 - (a) is necessary for the purposes of the public interest objective,
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and

- (c) is proportionate to that objective.
 - (3) “The public interest objective” means the pursuit of public policy.
- 6
- (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
 - (a) initiate the transmission,
 - (b) select the recipient of the transmission, or
 - (c) select or modify the information contained in the transmission.
 - (2) For the purposes of sub-paragraph (1)—
 - (a) providing access to a communication network, and
 - (b) transmitting information in a communication network, include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
 - (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7
- (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
 - (2) The first condition is that the storage of the information—
 - (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
 - (3) The second condition is that the service provider—
 - (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
 - (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
 - (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8
- (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—
 - (a) the service provider has no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or

- (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

9 (1) In this Schedule –

“domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;

“the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“information society services” –

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“offence of forced marriage” means an offence under section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I));

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

- (2) For the purposes of the definition of “publication” in subparagraph (1) –
- (a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;
 - (b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.
- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in subparagraph (1) –
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider –
 - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
 - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
 - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
 - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.”

Clause 149

BARONESS WILLIAMS OF TRAFFORD

2 Page 171, line 8, at end insert –

“() Section (*Anonymity of victims of forced marriage: Northern Ireland*) extends to Northern Ireland only.”

Clause 150

BARONESS WILLIAMS OF TRAFFORD

3 Page 171, line 29, at end insert –

“() section (*Anonymity of victims of forced marriage: Northern Ireland*);”