

Forced Marriage (Civil Protection) Act 2007 – relevant third party [CP 31/07]

List of questions for response

We would welcome responses to the following questions set out in this consultation paper.

Please email your completed form to: Forced.Marriages@hmcourts-service.gsi.gov.uk or fax to: 020 7210 8681. Thank you.

Question 1. In what circumstances is it appropriate for a third party to make an application on behalf of another? Are there circumstances where it is not appropriate?

Comments:

[We assume that this and Q2 are intended to refer to a relevant third party.]

The circumstances in which seeking relief under FMA may be justified are infinite and certainly not capable of sensible or complete definition. But where the relevant information is available to or obtained by an independent and official (or quasi-official) organisation, then the objectives of the legislation are facilitated if such Relevant Third Parties (RTPs) have immediate access to the court, without a 'leave' filter.

The Act therefore envisages the nomination of RTPs by the Lord Chancellor: 'a person specified, or falling within a description of persons specified, by order of the Lord Chancellor'. We are surprised that the option of NOT specifying ANY RTPs is now for consideration: we had thought that the principle of RTP applications was not in doubt, but rather which organisations should be nominated.

Similarly it is self-evident that the circumstances where an RTP application is inappropriate cannot comprehensively be defined. Where an inappropriate RTP application is launched the court will be astute to stop it in its tracks, whether at the outset or at a later stage.

It is therefore important to select as RTPs only accountable organisations which, if need be, can be deselected. That is why we suggest that in the first instance the number and category of RTPs should be restricted to those with a national presence, and experience of involvement in legal proceedings.

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Question 2. Are there any other circumstances when it is appropriate for a third party to make an application on behalf of a child under 16?

Comments:

There are no other particular circumstances applicable to children and young persons. However, the risk that a minor child might become a 'victim' without any access to the protection the FMA is intended to afford will, in our opinion, be greatly increased if there is no access by RTPs.

We are unclear why the age of 16 has been selected as the watershed, rather than 18, the age of majority, when (for instance) the jurisdiction in wardship lapses, and other criteria apply to vulnerable and incapacitated adults. But (whether or not 16 is thought to be a relevant threshold) pressures threats and force of the sort encountered in FM situations can be and are applied irrespective of the age of the 'victim'. In many families and communities they carry as much weight for adults (and especially for adults with disability) as for children and young persons.

Question 3. Which type of person or organisation do you think should act as a relevant third party? Please give reasons to support your answer.

Comments:

The Home Office and the FCO (via the existing Forced Marriage Unit), the Border and Immigration Agency,

Local Authorities, Education Authorities, Health Authorities,

Police Authorities,

CAFCASS (via CAFCASS Legal), NYAS (in cases where they represent a child in existing proceedings).

So far as NGOs and sectional and charitable organisations are concerned, we suggest an initially cautious approach. One candidate for special consideration is Reunite because of

their considerable experience in this field. NSPCC might also be considered, and there are no doubt others.

Some locally-based organisations may face difficulties within their own communities, and may not have the resources necessary to run a case (especially if, as is apparently proposed, public funding for legal advice and representation is not to be made available), but should be encouraged (and if necessary authorised) to bring suspected Forced Marriage child protection and/or freedom of the individual concerns to the attention of one of the nominated RTPs.

Question 4. Which type of person or organisation do you think should act as a relevant third party for children under 16? Please give reasons to support your answer.

Comments:

As above. Those proposed would all be suitable, subject to necessary funding availability.

Question 5. Based upon your answers to questions 3 and 4, what type of funding or resources would a relevant third party need?

Comments:

An RTP should be entitled (and indeed expected) to instruct a solicitor, who in turn should have the ability to instruct counsel. We are surprised that, if outside lawyers are instructed (and we envisage that in many cases they will be needed) public funding may not be available, especially in the case of any RTPs which are NGOs. The level of funding will need to be realistic, and to take into account the legal and factual complexities of many of the FM cases of which the Family Division judges have experience. FM cases often require a number of successive hearings within a short space of time.

Question 6. What safeguards should there be for a victim to ensure that the relevant third party acts in their best interests?

Comments:

The court will have as its objective to ensure so far as can be done that the best interests of the 'victim' are served. The court will have the power to control and direct RTPs once proceedings have been launched.

Prior to the institution of proceedings that responsibility will be borne by the RTP, and the best safeguards are care in their selection, guidance and education in relation to FM and the sensitivity and caution with which such cases must be addressed, and the provision of adequate facilities.

Question 7. Are there any other safeguards required for a relevant third party acting on behalf of children aged under 16?

Comments:

No other or additional safeguards should be necessary in the case of minors: those in Q6 equally apply.

Question 8. How can we adapt our court administration to meet the needs of those who use the Act?

Comments:

HMCS staff and judicial awareness training.

Continuity of judge, unless absolutely unobtainable.

Listing precedence, such as the prioritisation given to Hague Abduction Cases (and some others) within the Family Division.

The development over time of a 'panel' of experienced solicitors local to each court : a system which pays dividends in Hague Abduction Convention cases (administered by the Central Authority ICACU)

Professional (and security-vetted) interpretation facilities (in and out of court), with total

understanding and acceptance of the imperative of confidentiality within what may be a community shared with the 'victim'.

Facilities for participation in hearings (including giving evidence) via video-link in cases where there are (or may be) personal safety or other security concerns.