Passage of the

Forced Marriage etc.
(Protection and Jurisdiction)
(Scotland) Bill 2010

SPPB 168
Passage of the

Forced Marriage etc.(Protection and Jurisdiction) (Scotland) Bill 2010

SP Bill 53 (Session 3), subsequently 2011 asp 15

SPPB 168

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

Written and oral evidence taken by the Equal Opportunities Committee at Stage 1 was originally published on the web only in association with its Stage 1 Report. This material is included in full in this volume.

At its meeting on 22 February 2011, the Equal Opportunities Committee considered the Scottish Government’s response to its Stage 1 Report. Relevant extracts from the minutes and Official Report of that meeting are included in this volume.

In addition to the Scottish Government’s general response to the Stage 1 Report of the Equal Opportunities Committee, the Government made a written response to the report of the Subordinate Legislation Committee at Stage 1. At its meeting on 22 February 2011, the Subordinate Legislation Committee noted the response and agreed to write to the Scottish Government. Relevant papers for that meeting, including the Scottish Government’s response to the Committee’s report at Stage 1,
are included in this volume along with extracts from the minutes and Official Report of the meeting.
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Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

[AS INTRODUCED]

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

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.

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—
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 abroad,
   (g) to facilitate or otherwise enable the protected person or another person to return to
       the United Kingdom within such period as the court may specify,
   (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.

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.

### 4 Power to make orders without application

(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 or the High Court, and
(b) the sheriff 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 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.

Interim orders

5

(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”.

(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.

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.

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), or

(c) any other person affected by the order.

(2) 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.

(3) Section 5 applies to the variation of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to varying a forced marriage protection order.

(4) In this Part, where a forced marriage protection order specifies a period for which it is to have effect, references to varying an order do not include extending any such period.
8 Extension of orders

(1) This section applies where a forced marriage protection order specifies a period for which it is to have effect.

(2) Before the expiry of the period, a person mentioned in subsection (3) may apply to the court for an extension of the order.

(3) The persons are—
   (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.

(4) In addition, where the order was made by virtue of section 4(1), the court may before the expiry of the period extend the order even though no application has been made to the court.

(5) An order may be extended on more than one occasion.

(6) Section 5 applies to the extension of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to extending such an order.

9 Offence of breaching order

(1) Any person who, knowingly and without reasonable excuse, breaches a forced marriage protection order commits an offence.

(2) A person guilty of such an offence is liable—
   (a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,
   (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

(3) A breach of a forced marriage protection order is not to be punishable other than in accordance with subsection (2).

10 Power to apply Part to civil partnerships

(1) The Scottish Ministers may by order make provision applying this Part (or particular provisions of it) to civil partnerships as it applies (or as the particular provisions of it apply) to marriages.

(2) An order under subsection (1) may, for the purposes of the application mentioned in that subsection, make such modifications of enactments (including of this Act) as the Scottish Ministers consider necessary.
 Allegations of non-consensual marriage

Albert Sidelonsky, PhD

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

Part I—Forced marriage protection orders

Supplementary

11 Guidance

(1) The Scottish Ministers may give guidance to such persons or descriptions of persons as Ministers consider appropriate about—
(a) the effect of this Part or any provision of it,
(b) other matters relating to forced marriages.

(2) A person exercising public functions to whom guidance is given under subsection (1) must have regard to it in the exercise of those functions.

(3) The Scottish Ministers may not give guidance under subsection (1) to any court or tribunal.

12 Other protection or assistance against forced marriage

(1) This Part does not affect any other protection or assistance available to a person who—
(a) is being, or may be, forced into a marriage,
(b) is being, or may be, subjected to an attempt to force the person into a marriage, or
(c) has been forced into a marriage.

(2) In particular, it does not affect—
(a) the equitable jurisdiction of the High Court or the Court of Session,
(b) any criminal liability,
(c) any civil remedies under the Protection from Harassment Act 1997 (c.40),
(d) any right to—
   (i) an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59) relating to occupancy rights,
   (ii) an exclusion order under that Act,
(e) any protection or assistance under the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2010 (asp 00),
(f) any claim in delict, or
(g) the law of marriage.

13 Interpretation of Part

In this Part (except where the context otherwise requires)—
“court” means the Court of Session or the sheriff,
“force” and related expressions have the meanings given by section 1(6),
“forced marriage protection order” has the meaning given by section 1(6),
“interim forced marriage protection order” has the meaning given by section 5(2),
“marriage” means any religious or civil ceremony of marriage (wherever carried out and whether or not legally binding under the law of Scotland or any other place),
“protected person” has the meaning given by section 1(1).
PART 2

DECLARATORS OF NULLITY OF MARRIAGE IN SHERIFF COURT

14 Action of declarator of nullity in sheriff court: jurisdiction

(1) Section 8 of the Domicile and Matrimonial Proceedings Act 1973 (c.45) (jurisdiction of sheriff court in respect of certain actions) is amended as follows.

(2) In subsection (1)—

(a) the word “and” immediately following paragraph (a) is repealed, and

(b) after paragraph (b) insert “; and

(c) an action for declarator of nullity of marriage.”.

(3) After subsection (2) insert—

“(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and

(b) either—

(i) the Scottish courts have jurisdiction under the Council Regulation; or

(ii) the action is one to which subsection (2B) below applies and a condition mentioned in either subsection (2C) or (2D) is satisfied.

(2B) This subsection applies to an action—

(a) which is an excluded action; or

(b) where one of the parties to the marriage in question died before the date when the action is begun.

(2C) The condition is that either party to the marriage in question is domiciled in Scotland on the date when the action is begun.

(2D) The condition is that either party to the marriage in question died before the date when the action is begun and either—

(a) was at death domiciled in Scotland; or

(b) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”.

(4) In subsection (3)—

(a) after “divorce” insert “or declarator of nullity of marriage”,

(b) after “subsection (2)”, where it first occurs, insert “or (2A)”, and

(c) for “or of” substitute “(2A) or”.

(5) In subsection (4), after “divorce” insert “or declarator of nullity of marriage”.

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill
Part 2—Declarators of nullity of marriage in sheriff court
PART 3

GENERAL

15 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

16 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make orders is exercisable by statutory instrument.

(2) Subject to subsection (3), a statutory instrument containing an order under this Act (other than one under section 18(2)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) No order under—

(a) section 10(1),

(b) section 15(1) containing provisions which add to, replace or omit any part of the text of any Act,

may be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

17 Crown application

(1) No contravention by the Crown of—

(a) section 9(1), or

(b) any provision made by virtue of section 10,

makes the Crown criminally liable.

(2) But the Court of Session may, on the application of any public body or office holder having responsibility for enforcing section 9(1) or any provision made by virtue of section 10, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 9(1) and any provision made by virtue of section 10 apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this section affects Her Majesty in Her private capacity.

18 Short title and commencement

(1) The short title of this Act is the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2010.

(2) This Act (other than this section) comes into force on such day as the Scottish Ministers may by order appoint.
Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill
[AS INTRODUCED]

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.

Introduced by: Nicola Sturgeon
On: 29 September 2010
Supported by: Alex Neil
Bill type: Executive Bill
These documents relate to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill introduced in the Scottish Parliament on 29 September 2010:
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 53–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (“the Bill”) and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill makes provision for protecting people from being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent. It also amends the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage.

Overview of the Structure

5. The Bill is divided into three parts:
   - Part 1 makes provision for forced marriage protection orders to protect people from being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent (and makes provision for connected purposes, such as the issuing of guidance on matters connected with forced marriage);
   - Part 2 clarifies the circumstances in which individuals, including victims of a forced marriage, can seek a declaration from the sheriff court that a purported marriage is void; and
   - Part 3 makes provision in relation to ancillary orders, subordinate legislation, Crown application and commencement.

COMMENTARY ON SECTIONS

PART 1: FORCED MARRIAGE PROTECTION ORDERS

Section 1: Forced marriage protection orders

6. Subsection (1) enables the Court of Session or a sheriff to make a forced marriage protection order for the purposes of protecting a person from being forced, or from any attempt to force the person, into a marriage or protecting a person who has been forced into a marriage.

7. Subsections (2) and (3) set out the issues that the court must consider when deciding whether to make an order and the type of order that should be made.
8. Subsection (4) describes what a forced marriage means for the purposes of Part 1. Subsection (5) makes it clear that the conduct which forces a person into marriage does not have to be directed against that person and includes, for example, circumstances in which the perpetrator threatens to commit suicide if the person does not submit to the marriage.

9. Subsection (6) defines “force” to include coercion by threats or other psychological means. It is also “force” to knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage.

Section 2: Contents of orders

10. Subsection (1) provides that the court may make an order containing any terms that are considered appropriate for the purposes of protecting a person from being forced into a marriage or who has been forced into a marriage. Subsection (3) gives some examples.

11. Subsection (2) makes it clear that the terms of the order may relate to conduct outwith, as well as within, Scotland. It also makes it clear that, in addition to persons who force or attempt to force a person to enter into a marriage, the terms of the order may relate to persons who are, or may become, involved in other respects. Subsection (4) provides examples of such involvement.

Section 3: Applications for orders

12. Subsection (1) provides that the person to be protected or a relevant third party can apply without leave to the court. Subsection (7) defines “relevant third party” to mean a local authority, the Lord Advocate or a person specified by order made by the Scottish Ministers.

13. Subsection (2) provides that any other applicant must first get the permission of the court before they are able to make an application and subsection (3) sets out the criteria that the court must consider in deciding whether to grant permission.

14. Subsections (5) and (6) provide that applications to a sheriff are to be made by summary application to the sheriff in whose sheriffdom the person to be protected is ordinarily resident or, if the protected person is not ordinarily resident in Scotland, to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.

Section 4: Power to make orders without application

15. Subsection (1) enables the court to make a forced marriage protection order on its own initiative if, in civil proceedings before the court, the court considers that an order should be made to protect a person, provided that a person who would be a party to any proceedings for the order is also a party to the civil proceedings currently before the court.

16. Subsection (2) provides that, in criminal proceedings before the sheriff or the High Court of Justiciary, if the court considers that a forced marriage protection order should be made to protect a person, the sheriff or the High Court may refer the matter to the Lord Advocate who may apply for an order or take such others steps as are appropriate.
Section 5: Interim orders

17. This section enables the court to make interim orders in the absence of a person who is, or would be, a party to proceedings for the order where it considers it is equitable to do so. In deciding whether to make an interim order, the court must have regard to all the circumstances including any risk of significant harm if the order is not made immediately.

Section 6: Duration of orders

18. This section provides that where the court specifies, in a forced marriage protection order, a period for which it is to have effect, the order has effect until the expiry of that period (unless the order is recalled under section 7 or extended under section 8). If no period is specified, the order has effect until it is recalled.

Section 7: Variation and recall of orders

19. This section provides for the variation and recall of orders. A person mentioned in subsection (1) who wishes to vary or recall an order must apply to the court. But no application is necessary in the case of orders made by virtue of section 4(1). The court can vary or recall such orders on its own initiative. Other persons for the purposes of section 7(1)(c) may include individuals who are not directly involved but are otherwise affected such as a sibling of someone who is required to be taken to a place of safety and other persons who are required to disclose certain information or take steps to facilitate the protection of a person.

Section 8: Extension of orders

20. This section provides for extensions to the period for which an order has effect. A person mentioned in subsection (3) who wishes to extend an order must apply to the court. But no application is necessary in the case of orders made by virtue of section 4(1). The court can extend such orders on its own initiative. Other persons affected by the order for the purposes of section 8(3)(c) may include the persons referred to above in relation to section 7(1)(c).

Section 9: Offence of breaching order

21. This section makes it a criminal offence to breach a forced marriage protection order and sets out the penalties that may be imposed.

Section 10: Power to apply Part to civil partnerships

22. This section enables the Scottish Ministers to make provision by order to apply the provisions (or particular provisions) in Part 1 to forced civil partnerships, with such modifications as are considered necessary.

Section 11: Guidance

23. This section enables the Scottish Ministers to issue guidance on any of the provisions in Part 1 or on other matters relating to forced marriage (such as practitioner guidance covering information sharing, data collection, risk assessment and safety planning that will assist those
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working with victims of forced marriage to ensure their safety). A person exercising public functions to whom the guidance is given must have regard to it in exercising those functions.

Section 12: Other protection or assistance against forced marriage

24. This section provides that Part 1 does not affect any other protection or assistance already available including, in particular, the matters listed in subsection (2).

Section 13: Interpretation of Part

25. This section defines various terms and expressions used in Part 1.

PART 2: DECLARATORS OF NULLITY OF MARRIAGE IN SHERIFF COURT

Section 14: Action of declarator of nullity in sheriff court: jurisdiction

26. This section amends section 8 of the Domicile and Matrimonial Proceedings Act 1973 to make provision for jurisdictional rules applying in the sheriff courts in relation to declarators of nullity of marriage. These jurisdictional rules parallel those that apply in the Court of Session.

PART 3: GENERAL

Section 15: Ancillary provision

27. This section enables the Scottish Ministers, by order, to make incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of the Bill and, in particular, section 10.

Section 16: Subordinate legislation

28. This section regulates the powers conferred on the Scottish Ministers to make orders. It requires these powers to be exercised by statutory instrument and also establishes the type of Parliamentary procedure which applies to these instruments.

Section 17: Crown application

29. By virtue of section 20(1) of the Interpretation and Legislative Reform (Scotland) Act 2010, the provisions of the Bill bind the Crown except in so far as section 17 provides otherwise. Section 17 provides that the Crown cannot be held criminally liable for breaching a forced marriage protection order (or for contravening any provision made by virtue of section 10, such as breaching a forced civil partnership protection order). However, the Court of Session may, on a relevant application, declare unlawful any such breach or contravention by the Crown. Subsection (3) provides that the Crown immunity under subsection (1) does not extend to persons in the public service of the Crown. Subsection (4) provides that nothing in the section affects Her Majesty in her private capacity. So, for example, no declaration under subsection (2) may be made in that respect.
Section 18: Short title and commencement

30. Section 18(2) provides that the Bill (other than section 18) comes into force on such day as the Scottish Ministers may by order appoint. By virtue of section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010, this power may be exercised so as to appoint different days for different purposes for the coming into force of the provisions of the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

31. This document relates to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (“the Bill”) introduced to the Scottish Parliament on 29 September 2010. The provisions in the Bill closely align to those of the equivalent legislation operating in England, Wales and Northern Ireland – the Forced Marriage (Civil Protection) Act 2007 (“the 2007 Act”), which has been in force since 25 November 2008.

Methodology

32. In calculating the financial effect of the new powers included in the Bill, this Memorandum has erred towards higher rather than lower estimates. The figures included are based on assumptions made by the:

- Association of Chief Police Officers (Scotland);
- Scottish Legal Aid Board; and
- Scottish Court Service.

It also includes estimates of demand made by the Scottish Government and by third parties who will be affected by these proposals, via the Business Regulatory Impact Assessment¹.

33. The total number of people forced into marriage in Scotland, or indeed in the UK, is not known as cases are under-reported. However the Scottish Government has drawn on the early evaluation of the 2007 Act in its assessment of the resources required to implement the Bill. When making that assessment, the Scottish Government looked at:

- the numbers of applications for forced marriage protection orders (FMPOs) in England, Wales and Northern Ireland in the first year that the Act was in force;
- the cases originating in Scotland that were dealt with by the UK Government’s Forced Marriage Unit and those supported by women’s aid groups here in Scotland.

¹ The Business Regulatory Impact Assessment for the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill is available from the Scottish Parliament Information Centre (SPICe)
34. In total 86 FMPOs were granted between 25 November 2008 and 31 October 2009 in England. Although the legislation applies in Wales and Northern Ireland no applications for FMPOs were made\(^2\).

35. The joint Home Office/Foreign & Commonwealth Office Forced Marriage Unit deals with approximately 300 to 400 cases of forced marriage a year (375 in 2009). Of these, (up until 2009) approximately 10\% involved people from Scotland. In 2009 this percentage dropped significantly to 1\%\(^3\). It should be clarified that neither Forced Marriage Unit officials nor Scottish stakeholders supporting victims of forced marriage feel that this decrease in reporting reflects a real reduction in forced marriage cases in Scotland. A more likely reason is that Scottish victims are seeking advice and support from organisations closer to home, rather than contacting the London-based Forced Marriage Unit.

36. The main support organisations in Scotland for female victims, who make up 85\% of all cases\(^4\), are Shakti Women’s Aid in Edinburgh and Hemat Gryffe Women’s Aid in Glasgow. In 2009-10 Shakti Women’s Aid supported 7 forced marriage cases and Hemat Gryffe Women’s Aid 13 cases. There is no reliable source of information that captures the 15\% of cases involving male victims of forced marriage. However since we know that 20 cases involving female victims make up 85\% of all cases, we can estimate that there were at least 4 cases which involved male victims.

37. Although victims of forced marriage can come from a range of communities the majority of cases have involved people of Pakistani, Bangladeshi and Indian origin (74\% of all cases dealt with in 2009 by the UK Government’s Forced Marriage Unit\(^5\)).

38. In making the estimates included in this Memorandum, consideration has been given to the differences in population demographics between Scotland and England (only England is considered as, as is stated in paragraph 34, this is the only country where applications have been made). Scotland’s population as a proportion of England’s is approximately 10\%. Therefore in reaching an estimated figure for the expected FMPOs in Scotland, the Government calculated that:

- the percentage differences in overall population figures (detailed above), may result in 8 to 9 FMPOs in Scotland, representing 10\% of the 86 FMPOs granted in England in 2008-09;
- however, the ethnic population is a smaller proportion of the total population in Scotland compared to England. The ethnic population accounts for approximately 12\% of the total population in England but only 3\% in Scotland. So taking account of the difference in composition, it is more likely that the figure for Scotland would be around 2 to 3 cases.

39. The estimates of the number of cases are reinforced by the fact that:

\(^2\) Source: Ministry of Justice, One Year On: the initial impact of the Forced Marriage (Civil Protection) Act 2007, (2009), page 4
\(^3\) Source: Forced Marriage Unit annual statistics 2009
\(^4\) Ibid
\(^5\) Ibid
These documents relate to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

- the percentage of Scottish cases supported by the Forced Marriage Unit up until 2008, which was on average 10% of the total of all of the Forced Marriage Unit’s cases (40 cases per year), could result in 9 FMPOs, 10% of the 86 FMPOs made in England;
- if the same proportion of applications to cases held in Scotland as in England (86 applications out of 375 cases: 23%) this would translate to 6 FMPOs in Scotland. This has been calculated by applying 23% to the number of women that Hemat Gryffe Women’s Aid and Shakti Women’s Aid supported in Scotland in 2009-10 which was 20 plus the estimate of 4 additional cases that involved male victims.

40. As a result of this information an estimate of 10 or fewer FMPOs being made in Scotland in the first year of the legislation being in place has been used in this Memorandum.

Projected increase in FMPOs

41. It is difficult to forecast accurately the likely increase in the number of FMPOs over the coming years. However, the UK Government has advised that there has been an increase of approximately 25% in the number of FMPOs being granted in England and Wales in the 10 months of the second year of the UK Act being in force. This estimate has therefore been applied to the numbers of projected FMPO cases in Scotland and associated costs for the financial years 2012-13 and 2013-14. This is reflected in the table summarising the costs associated with the Bill at paragraph 80.

COSTS ON THE SCOTTISH ADMINISTRATION

42. The main financial impact of the Bill is the new power to grant a civil FMPO in the sheriff court or Court of Session, and the creation of a new criminal offence of breach of a FMPO. As estimated above, the numbers of cases coming to the Scottish Courts is likely to be relatively low. The Government has sought views on this from:

Scottish Legal Aid Board

43. The Scottish Legal Aid Board (‘‘SLAB’’) has advised that due to the circumstances of the individuals seeking these protection orders, including lack of income or capital, it is likely that the majority would be eligible for legal aid. If the assumptions on how many orders would be granted in Scotland (based on the number of applications for similar orders in England and Wales and cases supported here in Scotland) are accurate, then this would not cause a significant impact on the legal aid fund. SLAB note that if the procedure for these orders is similar to an interdict, 10 cases would cost approximately £10,000 per year, at a cost of £1,000 per case. A 25% increase in FMPOs in 2012-13 would result in 13 cases costing £13,000 and 16 cases in 2013-14 would cost £16,000.

Criminal cases

44. However SLAB has also made the point that in addition to the cost of up to 10 civil cases per year, there might also be a cost for SLAB in relation to the possible applications on the criminal side related to the new criminal offence created. Although it is suggested that there would be a maximum of 10 cases per year, the calculation would not be the same for legal aid as
These documents relate to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

SLAB would deal with individual accused and there may be multiple accused as in some cases more than one family member (or other person) involved might breach an order. SLAB has advised that the cost to the legal aid fund would depend on the procedure under which a prosecution is brought and on how the defendant pleads. SLAB has advised that in 2008-09 the average case cost for summary proceedings was around £700 and for solemn proceedings was around £1,800. Therefore a range of potential criminal costs would be: one summary proceedings case involving one accused at a cost of £700, up to £18,000 for 10 solemn proceedings at £1,800 per case; 10 solemn proceedings with 3 accused per case would cost £54,000, 13 solemn proceedings cases with 3 accused would cost £70,200 and 16 cases £86,000.

Interpretation costs

45. Another area which may incur costs to the legal aid fund relates to the need for interpreters to attend meetings between the victim and their solicitor or for the translation of relevant case documents. It is not possible to give an accurate estimate of this cost as the interpretation/translation requirements will vary on a case-by-case basis. However given the small number of expected cases, again this should not cause a significant impact on the legal aid fund.

Declarators of nullity

46. The Bill clarifies the circumstances in which individuals, including victims of a forced marriage, can separately seek a declaration from the sheriff court annulling a purported marriage on the basis that it is void or voidable. These provisions ensure that the jurisdictional rules applying to declarators of nullity of marriage in the sheriff court are the same as those that apply in the Court of Session. There may be a potential saving to the legal aid fund in relation to cases for declarator of nullity being heard in the sheriff court if the number remains the same as in previous years (7 declarators of nullity were granted between 2000 and 2008). If the numbers of cases increased there would be a slight increase in costs but it would not be possible to estimate this additional cost.

Scottish Courts Service

Court costs

47. The Scottish Court Service (“SCS”) has advised that there should be no additional cost to the SCS arising out of forced marriage protection order civil applications, as the £78 which is the average per case cost for the sheriff court summary application procedure would be expected to be recovered from the court fees which are payable by the parties involved. Costs to the SCS relating to criminal prosecutions when a FMPO is breached, have been estimated in the first year of the legislation being in force to range between:

- £508 per year – based on 1 case at £508 per sheriff summary case, and up to
- £188,170 per year – based on 10 cases at £13,917 per High Court case if all 10 FMPOs were breached, plus £49,000 to cover the cost of 10 appeals at £4,900 per appeal, if all 10 cases went to appeal.
Translation costs

48. There could be additional costs incurred by the SCS relating to the translation of court documentation for those involved in FMPO applications. An estimate of costs to translate a five-page FMPO (translation of 1551 words) would be £155.10 including VAT per document, and £1,551 to translate 10 FMPOs. The cost would be the same regardless of the language requested.

49. There may also be costs incurred by the use of interpreters during court hearings. SCS currently access such a service from a collaborative contract managed by the Central Government Centre of Procurement Expertise. The contractor currently charges £27.50 per hour, though this figure can vary depending on language required (e.g. if it is a very uncommon language interpreters may be brought in from further afield increasing the costs). An estimate would be £220 per day (8 hours x £27.50 per hour). One day’s interpreter services for 10 cases would therefore be £2,200.

Court jurisdiction relating to declarators of nullity

50. As stated previously the Bill clarifies the circumstances in which individuals, including victims of a forced marriage, can separately seek a declaration from the sheriff court annulling a purported marriage on the basis that it is void or voidable. This may lead to additional costs associated with sheriffs hearing actions of declarators of nullity. These are likely to be few.

51. However if all of the 10 estimated FMPOs involved victims who had been forced into marriage and then went on to separately seek a declarator of nullity where eligible to do so, it would cost £2,560 per year (based on 10 cases at £256 per ordinary action) but it would be expected that 80% of these costs would normally be recovered from the fees paid, which would leave a balance of £512 for these 10 cases.

52. As the expectation would be that the majority of actions of declarator of nullity would subsequently be dealt with by the sheriff courts, there should be a resulting saving, as currently it costs £1,071 per declarator of nullity case heard by the Court of Session. For 10 cases this would cost £10,710, with 50% likely to be recovered from fees paid, which would leave a balance of £5,355. The resulting saving would therefore be £5,355 minus £512 leaving an overall potential saving of £4,843 in the first year of the legislation being in place.
Summary of court costs

53. The table below summarises the possible costs to the SCS based on the maximum costs in the range.

<table>
<thead>
<tr>
<th>Breakdown of costs</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court costs</td>
<td>£139,170</td>
<td>£180,921</td>
<td>£222,672</td>
</tr>
<tr>
<td>Appeals</td>
<td>£49,000</td>
<td>£63,700</td>
<td>£78,400</td>
</tr>
<tr>
<td>Translation costs</td>
<td>£1,551</td>
<td>£2,016</td>
<td>£2,481</td>
</tr>
<tr>
<td>Interpretation services</td>
<td>£2,200</td>
<td>£2,860</td>
<td>£3,520</td>
</tr>
<tr>
<td>Declarators of nullity</td>
<td>£512</td>
<td>£666</td>
<td>£820</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£192,433</td>
<td>£250,163</td>
<td>£307,893</td>
</tr>
<tr>
<td>Minus potential saving from changes to declarators of nullity</td>
<td>£4,843</td>
<td>£13,257</td>
<td>£16,316</td>
</tr>
<tr>
<td><strong>Revised total</strong></td>
<td>£187,590</td>
<td>£236,906</td>
<td>£291,577</td>
</tr>
</tbody>
</table>

Scottish Government

54. The Scottish Government will incur administrative costs relating to the implementation of the Bill. These costs include the production of statutory and practitioner guidance, publicity and training materials, the development of data collection and monitoring and evaluation costs.

55. These costs will be met from planned health programme budgets (as responsibility for the equalities agenda, and this Bill, lies with the Cabinet Secretary for Health and Wellbeing). The Government estimates these costs will be broken down as follows over the next spending review period:

<table>
<thead>
<tr>
<th>Estimated expenditure</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring and</td>
<td>-</td>
<td>£20,000</td>
<td>£10,000</td>
</tr>
<tr>
<td>implementation report</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(including data</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>collection)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training/awareness</td>
<td>£20,000</td>
<td>£10,000</td>
<td>£5,000</td>
</tr>
<tr>
<td>raising</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guidance</td>
<td>£25,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£45,000</td>
<td>£30,000</td>
<td>£15,000</td>
</tr>
</tbody>
</table>

56. The estimated costings for monitoring, an implementation report and guidance are based on similar work commissioned recently by the Government’s Equality Unit and Communities Analytical Services Team. The amount allocated to training and awareness raising is based on the development of tailored training packages, the delivery of training workshops and the use of PR work for the Bill, including editorial platforms and publicity material, as well as web-based information. Again these costs are based on those for similar pieces of work.
COSTS ON LOCAL AUTHORITIES

57. One significant feature of the Bill is that it will enable local authorities (as “relevant third parties”) to make applications for FMPOs on behalf of victims. This recognises that victims may feel unwilling or unable to take action against perpetrators who may be members of their family. The Bill will also enable Scottish Ministers to give guidance to appropriate persons on the effect of the Bill and on other matters relating to forced marriages. Public bodies such as local authorities will be required to have regard to this guidance in exercising public functions.

58. The Government has consulted with the Convention of Scottish Local Authorities (CoSLA) regarding the potential impact on local authorities. CoSLA has indicated that the legislation will not impose an additional financial burden on councils. Given that the communities mainly affected by forced marriage may be concentrated within certain local authority areas the Government has undertaken further consultation with Glasgow City Council, because it may experience a disproportionate number of cases. However Glasgow City Council advised that it did not foresee any additional financial impact.

59. The cost to a local authority, acting as a relevant third party to make an application for a FMPO has been estimated by the UK Government at £2,800 per case\(^6\) (based on assumptions of social work input over an average of 6 weeks per case and a legal expert for 4 days. If all FMPO cases were dealt with by local authorities, the total cost would be £28,000 in 2011-12 for 10 cases, £36,400 in 2012-13 for 13 FMPOs and £44,800 for 16 FMPOs in 2013-14.

60. However, as stated by CoSLA and Glasgow City Council, given the relatively low numbers of expected third party applications that local authorities will have to make, it is likely that existing staff will carry out these functions. Therefore the cost in relation to their time would not be an additional cost, as existing staff would be able to carry out these functions. It would therefore be an opportunity cost, in the sense that if an existing social worker is reallocating their time to deal with these cases, they would no longer be dealing with other cases on their caseload.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Association of Chief Police Officers (Scotland)

61. Association of Chief Police Officers (Scotland) (“ACPOS”) has indicated that it is not possible for them to be specific in predicting the financial impact for the police of this Bill. Unfortunately actual financial data is not something ACPOS is able to supply as it has no way of quantifying the amount of time, and therefore cost, which members of staff would spend dealing with a case and given that there are likely to be variations amongst and between the types of cases dealt with this figure would not be a constant.

62. Also ACPOS has advised that it does not have a standard cost of interpreters as costs would very much depend on the individual case in terms of the length of time for which an

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interpreter would be required, the call-out charges and the company used. ACPOS has highlighted that there are face-to-face and telephone interpreting services and the one utilised would very much depend on the nature of the situation being dealt with.

63. However although the police may become involved in criminal incidents relating to cases of forced marriage, the cost of their involvement would not necessarily be costs which would arise from this Bill. The only relevant costs are those associated with a FMPO which is breached as that constitutes a criminal offence and where there is no other criminal behaviour involved. Based on the statistical information\(^7\) gathered by the UK Government that showed that only 3 FMPOs were breached in the first 12 months of the Act being in force, it is likely that not all of the FMPOs granted in Scotland will be breached.

64. Key issues that were identified by ACPOS related to:

- **Guidance** – ACPOS was clear that in order to maximise the effectiveness of legislation, it is essential to have multi-agency guidance that provides clear pathways and a process which includes access to financial support both for supporting agencies/organisations and victims.

- **Training** – ACPOS felt that to accompany the introduction of guidance there should be a structured training programme to raise awareness about the new legislation and related process of implementation. Multi-agency training may be appropriate alongside the publication of multi-agency guidance and would lessen the financial impact on relative agencies/organisations in devising and delivering requisite training. It is still likely that the current training provision, specific to police investigation of reported forced marriage incidents, would require expansion to enable a consistent and effective police response. The development of a national training strategy for investigating reported incidents of honour-based violence including forced marriage is currently an objective of the ACPOS honour-based violence working group. The impact of new legislation and associated guidance could be included within the group’s ongoing work, thereby sharing the financial impact across the forces nationally and providing a national consistency and perspective.

- **Personnel** – ACPOS identified that incidents of forced marriage are being reported with increasing regularity across Scotland. Although reliable statistics and baseline data were still difficult to retrieve, where forces had introduced a method of identifying and recording reported incidents there had been a noticeable increase. However not all forces had this in place so it is not possible to give the number of incidents the police are dealing with in Scotland. To date incidents of forced marriage reported to the police have been managed by Public Protection Units, many of whom have issues with capacity in relation to staffing. Public Protection Units offer investigative provision for issues commonly linked to forced marriage and vulnerable groups such as child protection and adult protection. Therefore they can provide much of the expertise and knowledge required for effective investigation. In acknowledging the believed under-reporting of forced marriage, they feel that the introduction of a civil remedy, raising awareness and improving response is likely to lead to a financial impact relating to the provision of adequate resources required to

\(^7\) Ministry of Justice
respond to an anticipated increase of reporting. However ACPOS were unable to quantify this potential financial impact.

Third sector support organisations

65. The other key sector that the Bill will impact on is organisations that provide direct advice and support to victims of forced marriage. The majority of these organisations are members of the Scottish Government’s Forced Marriage Network, including Shakti Women’s Aid, Hemat Gryffe Women’s Aid, Amina - the Muslim Women’s Resource Centre, Saheliya, Scottish Women’s Aid and Victim Support Scotland. The impact on these stakeholders has been measured via the Bill’s Business Regulatory Impact Assessment.

66. Amina, Saheliya, Shakti Women’s Aid and Hemat Gryffe Women’s Aid have advised that they would foresee increased demands on their service due to the raised profile of forced marriage as a consequence of the Bill. This would include the need to provide one to one support, awareness raising particularly within schools and, in the case of the women’s aid groups, refuge accommodation. They also identified that there would be a need to train their staff in relation to the content of the new legislation as well as delivering training to mainstream services such as health professionals, social workers or police.

67. An example of the costs associated with training has been given by Amina - the Muslim Women’s Resource Centre, who currently deliver training to outside organisations at a rate of £150 per half day training session.

68. Victim Support Scotland (“VSS”) has identified that 90% of their referrals were made by the police as a direct result of a crime. As FMPOs are a civil remedy they do not envisage dealing with more than a handful of cases in the first year, i.e. less than 10. VSS did not see any additional costs for itself with regard to this Bill. They are already present in all sheriff and High Courts in Scotland and would provide support in FMPO cases if required.

69. All of the above named third sector organisations, except Saheliya, currently receive funding from the Scottish Government. However none of them receive funding specifically for forced marriage as it represents a small fraction of their total workload.

70. These organisations may experience an increase in requests for support from victims but this is not expected to be at significantly increased levels based on the estimated numbers of cases. The Government expects that these additional cases will be absorbed by the organisations’ existing staff. Decisions about future funding for these organisations will depend on the outcome of the Comprehensive Spending Review.

No recourse to public funds

71. The issue of “no recourse to public funds” affects women who have entered the country on their spouse’s visa and left the marriage as a result of domestic abuse within the first 2 years of their stay in the UK. This is known as the “2 year rule”. As a result of the immigration legislation that is place, they are not entitled to access public funds (for example housing benefit and benefits covering living costs) to support them while they apply for leave to remain in their
These documents relate to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

own right. Some of these women may have been forced into their marriage. This matter is reserved to the UK Government as it relates to immigration status. In addition, social security legislation is also reserved.

72. In November 2009 the Home Office established and funded the Sojourner pilot scheme, which allows those applying for indefinite leave to remain, who had no recourse to public funds and are victims of domestic abuse, to receive support for their housing and living costs. In the first 8 months of the Sojourner pilot (30 November 2009 to 31 July 2010) 34 women in Scotland were supported by the pilot to stay in women’s aid refuges.

73. It has been estimated by the UK Government that each victim supported for the 40 day period costs £2,320 (this is made up of £230 per week for accommodation and £60 per week subsistence). In addition, a mother will receive £30 for each child housed with the victim to cover additional costs. The pilot is being closely monitored to establish robust data on the number of victims who require this support and the benefits to victims and refuges of the new approach.

74. There is a possibility that the introduction of FMPOs could increase the number of women with no recourse to public funds who feel empowered to leave their forced marriage and make application for support while applying for indefinite leave to remain. Currently these estimated additional costs would be born by the UK Government.

75. The pilot has been extended until the end of March 2011. Currently the Home Office and the Scottish Government are exploring the possibilities for a long term solution to support victims of domestic abuse who have no recourse to public funds. They will continue to work both within the statutory and voluntary sectors to find ways to support this group of vulnerable women and children financially.
OVERALL SUMMARY OF COSTS

76. The additional costs to the Scottish Administration, local authorities and other bodies, individuals and businesses are estimated in the table below. Costs are based on a range of minimum and maximum costs that might be associated with between 1 and 10 FMPOs being granted in Scotland in 2011-12, and then with an additional on year increase of 25% to the maximum number of cases in the subsequent 2 years of the spending review period:

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Financial year</th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>2011-12</td>
<td>2012-13</td>
<td>2013-14</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Estimates based on a range between 1 and 10 forced marriage protection orders</td>
<td>Estimates based on a range between 1 and 13 forced marriage protection orders</td>
<td>Estimates based on a range between 1 and 16 forced marriage protection orders</td>
<td></td>
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<tr>
<td>1 FMPO per year</td>
<td>£45,000</td>
<td>£30,000</td>
<td>£15,000</td>
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<tr>
<td>10 FMPOs per year</td>
<td>£45,000</td>
<td>£30,000</td>
<td>£15,000</td>
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<td></td>
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<tr>
<td>Scottish Government</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(paragraphs 54 to 56)</td>
<td></td>
<td></td>
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<tr>
<td>Scottish Courts Service</td>
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<td>£508</td>
<td>£508</td>
<td></td>
<td></td>
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<tr>
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<td>£187,590</td>
<td>£236,906</td>
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<tr>
<td>(paragraphs 43 to 46)</td>
<td>£54,000</td>
<td>£70,200</td>
<td>£86,000</td>
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<td>£36,400</td>
<td>£44,800</td>
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<td>Police</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>(paragraphs 61 to 64)</td>
<td></td>
<td></td>
<td>ACPOS is unable to supply an estimate of expected costs.</td>
<td></td>
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<tr>
<td>TOTAL</td>
<td>£49,308</td>
<td>£34,308</td>
<td>£19,308</td>
<td>£437,377</td>
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</tr>
</tbody>
</table>

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

77. On 29 September 2010, the Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon MSP) made the following statement:

“"In my view, the provisions of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill would be within the legislative competence of the Scottish Parliament."
78. On 21 September 2010, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 29 September 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 53–EN.

BILL OVERVIEW

2. The Bill makes provision for protecting people from being forced to enter into marriage without their free and full consent and for protecting persons who have been forced to enter into marriage without such consent. It also amends the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage.

POLICY OBJECTIVES

3. The Scottish Government believes that all people in Scotland who are eligible to marry or enter into a civil partnership have a right to do so freely and without coercion. It believes that it is the duty of Government to protect citizens from pressure, harassment or threats aimed at forcing them into a marriage or civil partnership to which they have not consented or to which they are not capable of consenting.

Forced marriage protection orders

4. Part 1 of the Bill makes provision in relation to forced marriage protection orders. The following existing civil remedies may also offer some protection or assistance to a person who is being, or has been, forced into a marriage:

- a common law interdict with power of arrest under the Protection from Abuse (Scotland) Act 2001;
- an interdict or non-harassment order under the Protection from Harassment Act 1997;
This document relates to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

- a matrimonial interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under the 2001 Act (available within marriage, against the spouse only);
- an exclusion order under the 1981 Act (available within marriage, against the spouse only);
- a declarator of nullity of marriage; and
- divorce.

5. Although these existing remedies may also be available to victims of a forced marriage, they are often costly, complex and may be incomplete. In particular, there are often limitations on who can apply, who each remedy can be directed against and how breach can be remedied.

6. The policy objective of Part 1 of the Bill is therefore to simplify the process by enabling the victim, relevant third parties and others (with leave) to apply to the civil courts for a forced marriage protection order with civil remedies tailored to the needs of victims. The new remedy gives the civil courts wide discretion regarding the terms of the order, enabling the court to respond flexibly and effectively to the circumstances of an individual case. This is to ensure that the order provides the best possible support for the victim or potential victim.

7. It is intended that these orders should also be able to protect victims who are being, or have been, forced into a marriage by physical and emotional pressure, ranging from emotional pressure exerted on victims by family members, to more extreme cases involving assault, being held unlawfully captive, rape, including the threat of any of these types of conduct.

8. The remedy in Part 1 of the Bill is also intended to be available to deal with situations where a person knowingly takes advantage of a person’s incapacity (i) to consent to marriage or (ii) to understand the nature of the marriage. Over the last few years the issue of the forced marriage of people with learning disabilities has become more apparent. It is still largely a hidden problem, with little data collected on prevalence and a widespread lack of awareness of the particular features of such forced marriages, with most information coming from frontline professionals who have encountered cases. The definition of forced marriage used in the Bill is therefore shaped in a way to ensure these very vulnerable people are also protected.

9. In addition to the person seeking protection, provision is made for local authorities and the Lord Advocate to apply without leave to the courts for a FMPO. The purpose is to ensure that local authorities and the Lord Advocate are automatically entitled to make an application for a FMPO on behalf of a victim. This is particularly important where the victim feels unable or is unwilling to take action against perpetrators who may be members of the victim’s family.

10. Criminalising breach of a FMPO (and not the forced marriage itself) is consistent with the Government’s overall approach to tackling violence against women, which is based on protecting victims. As noted later, this approach also reflects the views of the majority of consultation respondents.
Statutory guidance

11. Statutory guidance is proposed to ensure that there is clarity about the responsibilities of those covered by the Bill. It is necessary to provide a clear outline of how procedures and practices should be developed to best implement the legislation. Furthermore this is new legislation in an area where there has been limited experience across the public sector. Few authorities have had to deal with forced marriage and in addition the nature of the problem has meant that few voluntary and community organisations have developed expertise in this area.

Action of declarator of nullity in sheriff court: jurisdiction

12. Part 2 makes provision for jurisdictional rules applying in the sheriff courts in relation to declarators of nullity of marriage. These jurisdictional rules parallel those that apply in the Court of Session. They are intended to remove uncertainty as to the jurisdictional rules that apply in the sheriff court and thereby minimise any perceived difficulty in victims accessing this remedy. They also reduce uncertainty for other persons and practitioners wishing to pursue these actions.

CONSULTATION

13. In March 2007 the UK Government decided to support a forced marriage Private Member’s Bill brought by Lord Lester of Herne Hill. The provisions of the Forced Marriage (Civil Protection) Act 2007 (“the 2007 Act”) which extend to England and Wales, and separate provisions that extend to Northern Ireland, both came into force on 25 November 2008. The Act provides civil remedies to protect those at risk of forced marriage, as well as those who have already been forced into marriage, but these civil remedies do not extend to Scotland.

Forced Marriage: A Civil Remedy?

14. In light of the 2007 Act, the Scottish Government made a commitment to consider whether similar legislation should be introduced in Scotland and a consultation, Forced Marriage: A Civil Remedy?, was undertaken and completed in March 2009.

15. Responses were received from a wide range of organisations and individuals, 47 in total, including the voluntary sector, local authorities, the Law Society of Scotland, the Association of Chief Police Officers Scotland, the Crown Office and Procurator Fiscal Service and judges of the Court of Session.

16. Most responses (28%) came from those working to address domestic abuse (service providers, forums and partnerships). A further 15% were received from other voluntary sector organisations (for example, organisations with a focus on women and/or other equality issues, and those working with families and children). The same proportion came from police and legal respondents. A further 13% came from other public sector respondents (for example, local authorities, NHS respondents, and partnerships). A few responses were also received from

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2 Responses to the consultation, were anonymity was not an issue, are available here: http://www.scotland.gov.uk/Publications/2009/06/22112358/0
individuals, faith organisations, educational institutions and community councils. Of the 42 responses from organisations, seven (17%) were from black and minority ethnic organisations.3

17. Consultation responses were overwhelmingly in favour of legislating to introduce civil remedies. Most respondents (91%) stated that they did not consider existing civil remedies to be sufficient to deal with cases of forced marriage. Similarly, 88% believed that the Scottish Government should introduce specific civil remedies in relation to forced marriage.

18. Almost three quarters (73%) of respondents believed that the law should be able to positively require a person to do something. Amongst the perceived benefits were that this could help to prevent forced marriage, and extend the means of protecting victims. Almost all of the respondents agreed that orders should be allowed to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator. The Bill contains provisions to this end.

19. Most respondents (90%) were also in favour of allowing third party involvement in the application process for protection orders in order to overcome some of the barriers faced by victims in seeking and obtaining civil remedies, although many identified the need for third party involvement to be carefully regulated. The Bill makes provision for applications by third parties.

20. The option of equivalent civil remedies for civil partnerships was also explored during the consultation. Although respondents were overwhelmingly in favour of making provision for this in the Bill, there is no evidence at present to show that forced civil partnerships is a problem. The Government’s policy is therefore to enable Part 1 of the Bill to be applied, by order, to civil partnerships as it applies marriages, so that the Scottish Ministers can react quickly, and subject to Parliamentary approval, to make equivalent provision if required.

21. Lack of clarity in relation to the jurisdictional rules that apply in the sheriff courts in relation to actions for declarator of nullity was raised in the consultation responses of the Law Society of Scotland and the Faculty of Advocates. The uncertainty surrounding this was seen as a barrier to individuals, including victims of forced marriage, accessing this particular civil remedy.

22. A significant number of consultation responses (97%) were in favour of the introduction of statutory guidance, and the Bill makes provision for this.

23. The Government felt, after considering the analysis of the Forced Marriage: A Civil Remedy? consultation, and the above points, that the introduction of primary legislation was required and would play an essential part in eradicating forced marriage in Scotland.

**Forced Marriage Network**

24. The Forced Marriage Network was established in 2005 by the Scottish Executive to support and inform the Government’s work to tackle forced marriage. Its membership includes representatives from the police, health services, the Law Society of Scotland and CoSLA, as well

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as a range of voluntary sector organisations that directly support those affected by forced marriage. Those organisations included Victim Support Scotland, Shakti and Hemat Gryffe Women’s Aid and Amina (the Muslim Women’s Resource Centre). The Network has been instrumental in the consultative work on forced marriage carried out by the Scottish Government over the last 5 years and will play a key role in the implementation of the legislation.

**Business Regulatory Impact Assessment**

25. During the Business Regulatory Impact Assessment of this Bill, Government officials met with a number of organisations to discuss the effect that the proposed provisions might have on their work including the financial impact (if any). The outcome of those discussions is included in the Bill’s Financial Memorandum.

**ALTERNATIVE APPROACHES**

26. Alternative options considered were:

- a non-legislative approach focusing on developing guidance, training and awareness raising on forced marriage;
- the introduction of legislation criminalising forced marriage.

**Non-legislative approach**

27. While the development of guidance, training and awareness raising are crucial to tackling forced marriage, they only go so far. Respondents to the consultation[^4] felt that legislation would:

- help change public opinion, and thus perception and practice on forced marriage;
- have a strong deterrent effect;
- empower young people, giving them more tools to negotiate with their parents and other relatives;
- simplify and clarify matters for those working in both the statutory and voluntary sectors to tackle this issue;
- raise awareness of the issue amongst the wider population; and
- send a clear message that forced marriage has no place in Scotland in the 21st century.

**Criminalising forced marriage**

28. Between September and December 2005 the UK Government and the Scottish Executive conducted a joint consultation, *Forced Marriage: A Wrong Not a Right*. The consultation sought views on whether a specific criminal offence would help to combat forced marriage. It also asked how any proposed offence might be formulated; and about connected issues surrounding

its enforcement, such as the extent to which criminal law could apply to acts undertaken overseas and what the penalties of such an offence should be.

29. The consultation report was published in June 2006. A total of 157 responses were received from organisations and individuals across the UK, with the highest number of responses coming from London and Scotland. Most of the responses were from women’s groups and domestic violence fora but responses were also received from children’s and young people’s services, health services, religious and minority ethnic groups and services, local government, solicitors and legal groups, the police and individuals.

30. The consultation yielded mixed results: 39.4% of Scottish respondents were against the creation of a new offence, while 36.4% were in favour (with others not sure or offering no preference). Those against felt that the disadvantages of creating new legislation to make forced marriage a criminal offence would outweigh the advantages. It was considered unlikely that victims would go to the police for fear that the legal proceedings would be taken out of their hands and that members of their families would be prosecuted. If a criminal offence had been introduced, the prosecution would have been brought by the state against the suspect in the public interest rather than being initiated by the victim in the victim’s own interest. It was felt that this would deter victims of forced marriage from coming forward to seek help. As a result of these responses, both Scottish and UK Ministers decided not to legislate to criminalise forced marriage.

31. As with the 2007 Act, this Bill instead provides for civil remedies to protect both the victims of a forced marriage and also individuals who are at risk of being forced into a marriage. It will enable potential victims to seek swift and effective protection to prevent a forced marriage taking place and ensure that the victim is safe. It also clarifies the circumstances in which individuals, including victims of a forced marriage, can separately seek a declaration from the sheriff court that a purported marriage is void. These civil remedies also offer a greater chance of the victim becoming reconciled with his or her family. Although the Bill will not criminalise forced marriage, it will still be a criminal offence to, knowingly and without reasonable excuse, breach a forced marriage protection order.

IMPLEMENTATION

Awareness raising

32. The Government intends to undertake awareness raising work to address the fact that many young people and their parents do not have a clear understanding of a person’s right, religious or legal, to choose their marriage partner. The Government will work with the Forced Marriage Network and other service providers to use appropriate opportunities to educate people about their rights and responsibilities in relation to marriage in a sensitive manner, promoting individual rights and informed choice.

33. In many cases victims of forced marriage are not aware that services are available to them or how to access them. Working with the Forced Marriage Network the Government will develop and increase community-based sources of information such as leaflets that can be used by the Citizens Advice Bureau as well as being accessed online to publicise the availability of
services to help victims of forced marriage. All information provided will be made available in appropriate languages.

Guidance and training

34. People on the front line of service delivery need to have the necessary knowledge and training to deal competently and sensitively with a case of forced marriage. As well as understanding the legal framework within which they operate and the needs of victims, people delivering services need access to information on forced marriage and the cultural framework in which it occurs.

35. The Bill provides for statutory guidance to set out the roles and responsibilities of public bodies in relation to cases of forced marriage and develop multi-agency practitioner guidance. This will link into the revised child protection guidance and Safe and Well education resource that provide information to front line staff on dealing with cases of forced marriage.

36. The Government also recognises the need for individual service providers to receive appropriate training so that they can acquire the necessary skills to work with different communities, taking account of different experiences and needs. Multi-agency training will also be required to ensure that the areas of overlap between the relevant agencies are identified and communication protocols established. This will be reflected in the training and information packages developed to support the Bill’s implementation. The Scottish Government’s Forced Marriage Network will be involved in the development of these training packages and the evaluation criteria which will be incorporated to make sure that the training is achieving the right results.

Data collection

37. The Government is working with the Scottish Courts Service to determine the data collection requirements for the Bill.

Monitoring and evaluation

38. The Scottish Government’s National Group to Address Violence Against Women, chaired by the Minister for Housing and Communities, and the Forced Marriage Network will have oversight of the implementation of the Bill and will be central to the development of its monitoring and evaluation framework.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

39. The Bill will have a positive effect on equal opportunities as it will offer protection against the fear and abuse associated with forced marriage, with many of the motivational triggers linked to the seven protected grounds of equality: age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.
40. Forced marriage predominantly affects women, with up to 85% of victims supported by the UK Government’s Forced Marriage Unit being young girls or women. Cases can come from all communities but the majority are from the Pakistani, Bangladeshi or Indian communities. One of the motivating factors for families to force their child to marry is if the daughter or son has a physical or mental disability, with families believing this is a justifiable way of securing long term care for their child.

41. Up to 30% of cases affect children and young people under 18 and many victims report that they were forced into marriage as a way for the families to address “unacceptable” sexual behaviour, which in many cases means that the family has identified their child as lesbian, gay, bisexual or transgender. Some perpetrators have tried to justify forced marriage on religious grounds, but no religion condones it. It is in reality a cultural rather than a religious practice. The Equality Impact Assessment for the Bill is reference SYS/0071 and will be available here: http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIASearch

**Human rights**

42. The Bill has been developed taking into account the Human Rights Act 1998 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The practice and threat of forced marriage, and the extreme mental and sometimes physical violence that can often accompany it, violate a number of human rights standards, covering:

- the right to enter into marriage freely with the full consent of both parties (Universal Declaration of Human Rights, Article 16(2); Convention for the Elimination of All Forms of Discrimination Against Women, Article 16(1)(b); General Recommendation No 21, UN Committee on the Elimination of All Forms of Discrimination Against Women; UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1; ECHR, Article 12);
- the right to liberty and security of person (ECHR, Article 5); and
- forced marriage as a form of contemporary slavery, trafficking and sexual exploitation (UN working group on contemporary forms of slavery 28th Session Geneva June 2003).

**Island communities**

43. The Bill and its implementation strategy will apply to all communities including island and rural communities. During the consultation responses were received from respondents representing rural communities including Highland Community Planning Partnership, who were in favour of the introduction of legislation. While cases of forced marriage can originate from a range of backgrounds, it is likely, given the demographic makeup of Scotland, that the majority will be concentrated in urban areas.

**Local government**

44. Local authorities will have a part to play in supporting victims of forced marriage and may be called on to act as a relevant third party, acting on behalf of victims who are unable or unwilling to take forward an application for a forced marriage protection order on their own.
This document relates to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

This very much fits with their statutory obligations in relation to adult support and protection and child protection. Officials met with representatives from CoSLA to explore any impact on local authorities and CoSLA agree that the impact would be minimal.

**Sustainable development**

45. The Bill will have no negative impact on sustainable development. The Government recognises that violence is a major issue in Scotland, and that it has significant impact on the wellbeing and potential of those affected by it. It also has cost implications for the economy and public purse.

46. It is clear therefore that to improve outcomes for people in Scotland, action must be taken to prevent and reduce the impact of violence and other forms of abuse on victims, their families and their communities. The Bill will contribute towards this aim, and the expectation that our communities are strong, resilient and safe places, offering improved life chances for all, where everyone has the opportunity to contribute to the nation’s wellbeing and economic prosperity.

47. The environmental impact of the Bill has been considered, and it is felt that the Bill is likely to have minimal effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report confirms that the Bill will have minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment is not required. The report will be published at: [http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/Register](http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/Register)
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill is divided into 18 sections and 3 Parts. Part 1 (sections 1 to 13) and Part 2 (section 14) comprise the substantive provisions. Part 3 (sections 15 to 18) makes general provision in relation to ancillary orders, subordinate legislation, crown application and commencement.

Part 1: Forced marriage protection orders (sections 1 to 13)

4. Section 1 enables the Court of Session or a sheriff to make a forced marriage protection order for the purposes of protecting a person from being forced, or from any attempt to force them, into a marriage; or to protect a person who has been forced into a marriage. Subsection (4) describes what a forced marriage means for the purposes of Part 1. Subsection (6) defines “force” to include coercion by threats or other psychological means and to knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage.

5. Section 2 provides that the court may make an order containing any terms that are considered appropriate in order to protect against conduct that may lead to a person being forced into marriage; or to protect a person who has been forced into a marriage. Subsection (2)(a) makes it clear that these terms may relate to conduct outwith Scotland.
6. Section 3 provides that the person to be protected - or a relevant third party - can apply without leave to the court. Subsection (7) defines “relevant third party” to mean a local authority, the Lord Advocate or a person specified by order made by the Scottish Ministers. Subsection (2) provides that other third parties must first get the permission of the court to make an application.

7. Sections 4 to 9 make further provision in relation to forced marriage protection orders. Section 4 enables the court to make a forced marriage protection order on its own initiative in certain circumstances when civil proceedings before the court, and to refer matters to the Lord Advocate in certain circumstances when criminal proceedings are before the court. Section 5 makes provision for interim orders. Sections 6 to 8 make further provision in relation to duration, variation, recall and extension of forced marriage protection orders. Section 9 makes it a criminal offence to breach a forced marriage protection order and sets out the penalties.

8. Section 10 enables the Scottish Ministers to make provision by order to apply the provisions (or particular provisions) in Part 1 to forced civil partnerships, with such modifications as are considered necessary.

Part 2: Declarators of nullity of marriage in sheriff court (section 14)

9. This Part amends section 8 of the Domicile and Matrimonial Proceedings Act 1973 (c.45) to clarify the existing jurisdictional rules applying to sheriffs in relation to declarators of nullity of marriage to bring these into line with those of the Court of Session.

10. Further information about the Bill’s provisions are contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 53–FM, and in the Policy Memorandum published separately as SP Bill 53–PM.

APPROACH TO USE OF DELEGATED POWERS

11. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

12. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate. Powers that are referred to here as being exercisable by order are made by statutory instrument.
PART 1 – FORCED MARRIAGE PROTECTION ORDERS

Section 3(7)(c) - Power to specify a person, or a person falling within a description of persons, as a relevant third party

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

Provision

13. Section 3(7)(c) enables the Scottish Ministers to specify a person, or person falling within a description of persons, as a relevant third party.

Reason for taking power

14. To enable the Scottish Ministers to specify other persons as relevant third parties in addition to local authorities and the Lord Advocate. Specifying a person as a relevant third party removes the requirement for that person to first obtain the permission of the court to apply for a forced marriage protection order. In future it may be felt appropriate to specify representative voluntary sector organisations as relevant third parties. It is preferable to have the capacity to do this without the need to await a suitable vehicle in primary legislation.

Choice of procedure

15. By virtue of section 16(2), any order made under section 3(7)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament. Since any specification made under this section would remove the discretion of the court to refuse to consider applications from the third parties specified, it is thought appropriate that any such specification is subject to annulment.

Section 10(1) - Power to apply Part 1 to civil partnerships

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative

Provision

16. Section 10(1) enables the Scottish Ministers to make provision applying the forced marriage protection regime in Part 1 (or any provision of it) to civil partnerships at it applies to marriages. For the purposes of applying this Part, the power enables the Scottish Ministers to make such modifications of enactments (including of the Bill itself) as they consider necessary.

Reason for taking the power

17. The Scottish Ministers recognise that individuals could be forced into a civil partnership for financial gain or to secure immigration status. However, in the absence of evidence that this is a particular problem at present, the power is sought to enable the Scottish Ministers to quickly introduce equivalent provision for the purposes of protecting individuals from forced civil partnerships should evidence show that this is needed. In order to protect potential victims from
harm, it is considered preferable to have a limited power to apply the forced marriage protection regime to civil partnerships without the need to await a suitable vehicle in primary legislation.

Choice of procedure

18. By virtue of section 16(3)(a), no order can be made under section 10(1) unless a draft of the order has been laid before, and approved by resolution of, the Scottish Parliament. Although the power is limited to the purposes of applying the provisions of Part 1 to civil partnerships, given that this can include provision modifying any enactment and that the provisions may themselves carry significant public interest, it is considered appropriate that the power is subject to affirmative procedure to enable Parliament to fully scrutinise and approve any such provision.

PART 3 – GENERAL

Section 15(1) - Power to make ancillary provision

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Negative / Affirmative</td>
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</table>

Provision

19. This section enables Scottish Ministers to make such incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of the Bill, including ones which modify any enactment (including the Bill).

Reason for taking power

20. The provisions introduced by the Bill may give rise to the need for ancillary provisions to support the full implementation of the Bill. Ancillary powers are therefore sought to enable the Scottish Ministers to make incidental, consequential, transitional, transitory or saving provision as appropriate for these purposes, especially as all the consequences cannot always be predicted or covered in advance at the primary legislation stage.

21. Without these powers to make ancillary provision, it might be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. As it would not be an effective use of Parliament’s time, or the Scottish Government’s resources to deal with such matters through primary legislation, it is thought appropriate to address these through subordinate legislation.

Choice of procedure

22. By virtue of section 16(3)(b), an order made under section 15(1) containing a provision which adds to, replaces or omits any part of the text of any Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure by virtue of section 16(2). This distinction is in line with the approach taken in most Bills and there are not considered to be any special factors justifying a different approach in this case.
Section 18(2) - Power to appoint the day(s) on which the provisions comes into force

Power conferred on:  Scottish Ministers  
Power exercisable by:  Order  
Parliamentary procedure:  None

Provision

23. Section 18(2) provides that the Bill comes into force on such day as the Scottish Ministers may by order appoint. By virtue of section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) this power may be exercised so as to appoint different days for different purposes (including different days for different provisions).

Reason for taking power

24. The Scottish Ministers wish to have the flexibility to commence the provisions on different days for different purposes so that they can ensure that they link up with implementation arrangements including relevant guidance and updated jurisdictional rules.

Choice of procedure

25. No provision is made for laying the order in Parliament as the power is limited to commencing provisions which the Parliament has already scrutinised. The Subordinate Legislation Committee will, in terms of its remit, still have the opportunity to consider the order.
Equal Opportunities Committee

1st Report, 2011 (Session 3)

Stage 1 Report on Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

Published by the Scottish Parliament on 26 January 2011
Equal Opportunities Committee

1st Report, 2011 (Session 3)

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Equal Opportunities Committee

Remit and membership

Remit:

The remit of the Equal Opportunities Committee is to consider and report on matters relating to equal opportunities and upon the observance of equal opportunities within the Parliament.

*(Standing Orders of the Scottish Parliament, Rule 6.9)*

Membership:

Malcolm Chisholm
Marilyn Glen (Deputy Convener)
Jamie Hepburn
Christina McKelvie
Stuart McMillan
Margaret Mitchell (Convener)
Hugh O'Donnell
Elaine Smith

Committee Clerking Team:

Clerk to the Committee
David McLaren

Assistant Clerk
Rebecca Lamb

Committee Assistant
Ross Fairbairn
Equal Opportunities Committee

1st Report, 2011 (Session 3)

Stage 1 Report on Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill¹ (SP Bill 53) (“the Bill”) was introduced in the Scottish Parliament on 29 September 2010 by Nicola Sturgeon MSP, Deputy First Minister and Cabinet Secretary for Health and Wellbeing. The Bill was accompanied by a Policy Memorandum,² Explanatory Notes,³ including a Financial Memorandum,⁴ and a Delegated Powers Memorandum.⁵

2. On 6 October 2010, under Rule 9.6 in the Parliament’s Standing Orders, the Parliament agreed to designate the Equal Opportunities Committee (“the Committee”) as the lead committee to consider and report on the general principles of the Bill at Stage 1.

Consultation by the Committee

3. The Committee issued a call for written evidence on 30 September 2010 and 22 submissions were received. The Committee held a roundtable evidence session on 23 November with the following witnesses—

- Louise Johnson, National Worker, Scottish Women’s Aid;

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¹ Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. Available at: http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd.pdf
² Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. Policy Memorandum. Available at: http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd-pm.pdf
• Claire Platts, Senior Solicitor, Ethnic Minorities Law Centre;
• Iain Livingstone, Assistant Chief Constable, Lothian and Borders Police, ACPOS;
• John Fotheringham, Vice-Convener, Family Law Sub-Committee, The Law Society of Scotland;
• Tanveer Parnez, Director of National Development, BEMIS; and
• Huma Awan, Racial Equality Officer, Council of British Pakistanis (Scotland).

4. It also held an oral evidence session on 14 December with three panels of witnesses which included—

• Suzelle Dickson, Joint Head, Forced Marriage Unit, UK Ministry of Justice;
• Girijamba Polubothu, Manager, Shakti Women’s Aid;
• Smina Aktar, Director, AMINA Muslim Women’s Resource Centre;
• Rajani Pandher, Chief Support Worker, Hemat Gryffe Women’s Aid;
• Laura McCrum, Development Officer, Saheliya;
• Alex Neil MSP, Minister for Housing and Communities;
• Lesley Irving, Team Leader, Gender Equality and Violence Against Women;
• Eileen Flanagan, Policy Manager, Gender Equality and Violence Against Women; and
• John St. Clair, Solicitor, Scottish Government Legal Directorate.

5. The Committee would like to express its thanks to those who submitted written evidence, and to those who took part in the oral evidence sessions on the Bill.

PURPOSE OF THE BILL

6. The Policy Memorandum states that the Bill is to make “provision for protecting people against being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent”. The Policy Memorandum also states that the Scottish Government wants to amend the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage.\(^6\)

Equal Opportunities Committee, 1st Report, 2011 (Session 3)

7. There are three parts to the Bill—

- Part 1 makes provision for forced marriage protection orders (FMPO) to protect people from being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent.

- Part 2 clarifies the circumstances in which individuals including victims of a forced marriage, can seek declaration from the sheriff court that a purported marriage is void;

- Part 3 sets out provisions in relation to ancillary orders, subordinate legislation, crown application and the short title and commencement of the Bill.

BACKGROUND TO THE BILL

What is forced marriage?

8. The Scottish Government uses the definition of forced marriage used by the UK Government’s Forced Marriage Unit (FMU) which states—

“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 cannot) consent to the marriage and duress is involved.”

9. The Committee has discussed this definition and questions the inclusion of the words “and duress is involved”. Duress is often involved but that is not always necessarily the case. If there was no consent given, because for example, one party did not understand and so could not give consent, then it could still be a forced marriage. The Committee asks the Scottish Government to reconsider its use of this definition.

10. In general, forced marriage includes situations where one or both parties are coerced into a marriage against their will and under duress. “Duress” includes both physical and emotional pressure, which can range from emotional pressure exerted by family members to more extreme cases involving assault, being held unlawfully captive, rape, and in some cases threat of murder.

11. Forced marriage is recognised as a specific manifestation of domestic abuse that can affect both men and women although in most cases it is young women

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7 A joint initiative between the Home Office and the Foreign and Commonwealth Office providing confidential information and assistance service to potential victims of forced marriage across the UK.
and girls who are likely to be forced into marriage.\textsuperscript{10} Louise Johnston of Scottish Women's Aid told the Committee—

“We recognise—and it is recognised internationally—that forced marriage is very much part of the continuum of behaviours that make up violence against women.”\textsuperscript{11}

12. The Committee learned that victims of forced marriage often presented at domestic abuse organisations, rape crisis centres or mental health support services not understanding what had happened to them or recognising that they were victims of forced marriage. Claire Platts of the Ethnic Minorities Law Centre explained that cases of forced marriage often came to the Law Centre as domestic violence problems in the first instance with forced marriage “becoming prevalent when we peel things back.”\textsuperscript{12}

13. Suzelle Dickson of the FMU, explained that the cases of forced marriage the FMU dealt with fell into three areas—

- consular assistance: a British national who has been taken overseas and either forced into marriage or has been placed at risk of being forced into marriage and is seeking assistance to return to the UK.

- domestic assistance: people who are at risk of being forced into marriage in the UK.

- reluctant sponsor: people who have been forced to marry someone overseas and, on their return to the UK, are being forced by their families to sponsor their spouse's visa to allow them to come to the UK.\textsuperscript{13}

14. The Committee invited witnesses to provide it with examples of forced marriage in Scotland in order to help it fully understand the nature of this activity, and to help provide justification for taking legislative measures to address it.

15. Rajani Pandher of Hema Gryffe told the Committee about a case of a woman now aged 21 who had been taken to Pakistan at the age of 16 and forced into marrying her cousin. The victim and her cousin were now in the UK and her parents were forcing her to apply for his indefinite leave to remain so that the husband could stay permanently in the UK. Rajani Pandher explained the affect this was having on the victim—


“She said that, initially, he did not stay with her and the marriage was not consummated. However, pressure was put on her and her parents forced them to live together, and he has sexually abused her, too. She has fled her home and is staying with a friend’s mother, who is from the same community and who is supporting her. She is looking into the help that she can receive. She says that she is distraught. Her extended family is still pressurising her to get a visa for her husband and to continue the marriage but she says that she was forced into it—there is no question about that.”

16. Shakti Women’s Aid\textsuperscript{15} and Scottish Women’s Aid\textsuperscript{16} told the Committee that they were aware of cases where women had been forced into marriage to act as carers for physically or mentally disabled spouses. Laura McCrum of Saheliya\textsuperscript{17} provided the details of a particularly disturbing case—

“The client whom we supported was the young woman in the situation, which also involved a British national who was a young disabled man with severe learning difficulties. His family decided that he was to be married, to produce an heir for them, so a young woman was brought over to marry him. I say ‘young woman’, but ‘girl’ would be a better choice of word, because she was 15.

The girl had been told nothing of his learning difficulties or his disability. Furthermore, she had little understanding of even the mechanics of sex, let alone of marriage or what any of that meant. Added to that were the possible implications of language barriers.

The people involved were from the Sikh community. By the time that we worked with the girl, her mental health was in such a state that she needed continuing support for many years.

It was heartbreaking and traumatic to hear the young man’s side of the story. His family wanted an heir, so they forced the man and woman to have sex to try to produce an heir. For him, that was incredibly frustrating and distressing, because he did not understand the situation.

The bigger issues that we dealt with for our client were isolation and the fact that she was basically kept as a slave to cook, clean and be the man’s full-time carer, as well as partner and wife. She was allowed no access to other people or to language support. Such support was available, but it was denied her. That case stays with me.”\textsuperscript{18}

17. Huma Awan of the Council of British Pakistanis (Scotland) told the Committee that sexuality can also be a factor in a forced marriage. She said that a family may witness behaviour that it deems to be inappropriate, for example a family member having a boyfriend or a girlfriend or having a same sex relationship—

“The whole family can get involved, and certain characters have a major role to play to try and stop the behaviour. Homosexuality is a major factor. In England, where there is a larger number of communities, it has been a significant factor.”19

18. John Fotheringham of the Scottish Law Society added—

“To save its honour, a family might try to force a young man to marry if they fear that he might be homosexual.”20

Arranged marriage

19. It was made clear to the Committee during its scrutiny of the Bill that it is important to ensure that there is an understanding of the clear distinction between a forced marriage and an arranged marriage.

20. A forced marriage is carried out in the absence of valid consent by one or both parties. In contrast, an arranged marriage is entered into freely by both parties. Their families may take a role in the choice of partner, but the final decision as to whether or not to accept the arrangement lies with the potential spouses. The tradition of arranged marriage has operated successfully within many communities for generations.21

21. Tanveer Parnez of BEMIS emphasised the importance of making this distinction as “people can confuse forced and arranged marriage,”22 and Suzelle Dickson of the FMU told the Committee that there had been difficulties in the past for some practitioners in trying to understand the differences between an arranged and a forced marriage. She summed up the distinction—

“Arranged marriages have happened for many years, and the Government is not trying to interfere in that practice. The problem is when people are threatened, abused and forced into marriage by being denied a choice. The Government wants to stop that practice.”23

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22. Suzelle Dickson explained how distinguishing between an arranged and a forced marriage operated in practice though the use of a victim centred approach—

“We always ask the victim how they felt and whether they were pressured into the marriage. If they say that they were—even if they say that their parents arranged it at the beginning and they were happy to go along with the process—we would take the victim's word on that, if they felt that there had been any pressure in the arrangement and were not happy to go through with it. We would say that the marriage was forced.”24

Current position in other parts of the UK

23. In 2005, the UK Government and the Scottish Government issued a joint consultation Forced Marriage: A Wrong not a Right.25 The consultation sought views on whether legislation to create a specific criminal offence would help to combat forced marriage. An analysis of consultation responses found that the majority of the respondents felt that the disadvantages of creating new legislation outweighed the advantages, with concern being raised that making forced marriage a criminal offence would deter victims from coming forward to seek help. As a result of this, both Scottish and UK Ministers decided not to legislate to criminalise forced marriage.26


25. The UK Act provides civil remedies for those at risk of forced marriage, as well as those who have already been forced into a marriage. Under the legislation, a person who has been forced into marriage or is at risk of being forced into a marriage may apply to a court for a Forced Marriage Protection Order (FMPO). Through such an order, the courts in England, Wales and Northern Ireland can require those responsible for forcing another person into marriage to stop or change their behaviour. An order can prohibit a person from doing something and may also positively require a person to do something. This differs from the current Scottish common law interdicts which can only be issued to prohibit specific actions.

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26 Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. Policy Memorandum, paragraph 30. Available at: http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd-pm.pdf
26. A review\textsuperscript{27} of the UK Act was undertaken by the Ministry of Justice in 2009, a year after the legislation came into force. Suzelle Dickson of the FMU told the Committee that the review—

“Examined general awareness in the court areas and whether people were finding the process simple or whether difficulties were arising. Where orders had been taken out, the process was becoming simpler and more straightforward; people had been trained in how to deal with cases, and court staff, the judges and so on were encouraged by how easily the act could be applied.

The level of local authority involvement was not what we had expected, but the report’s findings and recommendations for next steps included more monitoring of the numbers and the demographics of the people on whom the orders were being taken out and considering how to improve interagency working and take forward work in the different courts. For example, it was suggested that there might be some form of network to share experiences and information.

With the Ministry of Justice, we are looking at what more can be done to raise awareness in some communities, given that in certain areas orders were not taken out because of the fear of repercussions. However, we also need to raise professional organisations’ awareness of their roles and responsibilities with regard to people who are at risk of being forced into marriage, and I hope to carry out more work with those organisations in the spring.

The Ministry also looked at other things that it could do. We have, for example, updated and revised the guidance to the judicial studies board to give judges a bit more information about their role in the process. The Ministry is also considering whether to conduct more in-depth research on the 2007 Act later on but, of course, resources will have an impact on that decision.”\textsuperscript{28}

27. The UK Act applies in England and Wales and separate provisions have extended to Northern Ireland on forced marriage. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill would introduce broadly similar provisions to the UK Act in Scotland.

**Current position in Scotland**

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


29. The Bill does not propose to change any of the existing civil remedies which are:

- a common law interdict to which a power of arrest may be attached under the Protection from Abuse (Scotland) Act 2001;
- an interdict or non-harassment order under the Protection from Harassment Act 1997; and
- an interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 that is ancillary to an exclusion order and to which a power of arrest may be attached under the 2001 Act (available within marriage, against the spouse only). 29

30. There are also a number of different criminal offences in relation to forced marriage in Scotland which, depending on the circumstances, perpetrators could be prosecuted for. These can include:

- abduction;
- assault;
- rape and other sexual offences; and
- child protection offences.

31. More information can be found on civil remedies and the law of marriage in the Scottish Parliament Information Centre (2010) Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill Briefing.30

Scottish Government consultation on possible legislation

32. In light of the introduction of legislation in England, Wales and Northern Ireland, and in order to consider whether similar legislation should be introduced in Scotland, the Scottish Government published a consultation Forced Marriage: A Civil Remedy?31 which ran from November 2008 until March 2009.

33. A large majority of respondents to the Scottish Government’s consultation considered that there were difficulties in accessing and using existing civil remedies in forced marriage cases including the costs involved for victims and

29 An interdict is a court remedy forbidding the commencement or continuation of an act or course of action by a named individual.
access to legal aid, as well as a lack of awareness and understanding of civil remedies amongst members of the public, victims and legal professionals.32

34. There was also a view held in responses that the current legal structure, nature of the remedies and procedural requirements of the process were not flexible enough to deal with the particular circumstance of forced marriage. A large majority of respondents stated that they did not consider existing civil remedies to be sufficient. Similarly, a large majority believed that the Scottish Government should introduce specific remedies to tackle and prevent forced marriage and to protect victims of a forced marriage which had already taken place.33

35. Respondents to the consultation generally supported new legislation and felt that it would:

- help change public opinion, and thus perception and practice, on forced marriage;
- have a stronger deterrent effect than current civil remedies;
- provide better clarification for those working in the statutory and voluntary sectors to tackle the issue of forced marriage;
- raise awareness of the issue amongst the wider population; and
- send a clear message to the Scottish population that forced marriage has no place in Scotland.34

36. In light of the response to the consultation, the Scottish Government decided to introduce primary legislation which it considered would play an essential part in eradicating forced marriage in Scotland. The Scottish Government did not consult on the specific content of a draft bill.

SCALE OF FORCED MARRIAGE

37. In considering the need for legislation, the Committee sought to identify the prevalence and scale of forced marriage in Scotland.

38. The Committee understands that the true number of cases of forced marriage is not known as cases are often under-reported.35 It also acknowledges

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that there is difficulty in identifying the number of forced marriages given the complex nature of the practice and its linkages with other forms of abuse. Laura McCrum of Saheliya explained—

“Some women can articulate that their issue is forced marriage, but others cannot. There is therefore a massive grey area in the issues that are presented. Clients present with issues such as domestic abuse, bullying or enforced isolation. We can say that we saw six clients this year for forced marriage, but the indicators from different issues that other clients presented in their initial assessment with counsellors show that there could have been another 35 clients for forced marriage.”

UK data

39. The FMU collects data on the number of reports made to its UK-wide forced marriage helpline and the number of forced marriage cases it deals with across the UK. This data can be disaggregated on a regional basis throughout the UK. In terms of UK data presented to the Committee the FMU said that between January and November 2010, it had dealt with 437 cases of forced marriage throughout the UK, which was an increase from 377 cases in 2009. There had also been a slight increase in the percentage of cases originating in Scotland, rising from 1% in 2009 to 2.5% in 2010.

40. The FMU said in correspondence—

“The majority of cases reported to the Forced Marriage Unit to date involve South Asian families. This is partly a reflection of the fact that there is a large established South Asian population in the UK. However, it is clear that forced marriage is not solely a problem within South Asian communities, as there have been cases involving families from the Middle East, Europe and Africa.”

41. The Committee was also told in the same letter that, of the cases dealt with by the FMU in 2010, 49% involved people from Pakistan, 10% from Bangladesh, 8% from India and 5% from Africa. 2% came from Turkey and 1% came from Afghanistan, Iran and Iraq. 2% came from other Middle Eastern countries and other known countries, with the remaining 15% of cases being solely linked to the UK or of unknown origin. Suzelle Dickson of the FMU told the Committee that, of these figures, there had been an increase in the number of people affected by forced marriage in Middle Eastern, African and European countries.

42. The majority of reported cases of forced marriage involved women. In 2010, 87% of cases involved female victims with the remaining 13% involving male

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37 Forced Marriage Unit. Letter to the Equal Opportunities Committee 23 December 2010. Figures for 2010 are for January – November.
38 Forced Marriage Unit. Letter to the Equal Opportunities Committee. 23 December 2010.
victims. However, the number of cases concerning male victims has increased in recent years from 134 in 2008 to 220 in 2009 (a 65% increase).\textsuperscript{40}

43. In terms of age profile, the FMU suggested that victims of forced marriage were young people between 15-24 years of age. The oldest victim made known to the FMU was 62 with the youngest aged only nine.\textsuperscript{41}

**Scottish data**

44. Scottish based support agencies who had dealt with female victims of forced marriage told the Committee that they had also supported victims from the older age group. Laura McCrum of Saheliya explained to the Committee—

> “Interestingly, our stats threw up the fact that when we are talking about British nationals and second or third generations we are dealing with a younger population, but when we are talking about non-British nationals it is a much older population.”\textsuperscript{42}

45. Shakti Women’s Aid told the Committee that in 2006-07, it had dealt with six cases of forced marriage, with the same number of cases the following year. This reduced to four in 2008-09 but increased to seven in 2009-10. Between April and September 2010, it had dealt with seven cases.\textsuperscript{43}

46. Hemat Gryffe Women’s Aid said that it had dealt with 14 cases of forced marriage from April 2009 to January 2010 and that it had also seen an increase in cases over the last two years.\textsuperscript{44}

47. An increase in the prevalence of forced marriage was also commented upon by Assistant Chief Constable Iain Livingstone of Association of Chief Police Officers in Scotland (ACPOS) who told the Committee—

> “In the past five to 10 years, the whole concept of forced marriage and associated but different elements of so-called honour-based violence have become far more prevalent.”\textsuperscript{45}


48. A number of witnesses acknowledged that, whilst the number of forced marriage cases in Scotland appeared to be quite low, the impact of forced marriage was high. John Fotheringham of the Scottish Law Society told the Committee—

   “Because of the population demographic in Scotland, forced marriage will always be a low incidence matter. However, although forced marriage is low incidence, it has an extremely high impact.”

49. It was considered by some witnesses that whilst data is important in identifying the scale of the problem and any trends, the primary focus should not be on the figures, but on the impact that this has on the individual.

50. In terms of improving the data available, the Minister for Housing and Communities told the Committee that the Scottish Government was working with the Forced Marriage Network, the Scottish Court Service and ACPOS to consider the best approach to data collection on forced marriage in Scotland.

GENERAL RESPONSE TO THE BILL

51. The evidence the Committee received overwhelmingly welcomed the Bill as a positive step in offering protection to those who have been forced, or may be forced, into a marriage.

52. Evidence received considered that the Bill would send a strong public message that forced marriage in Scotland would not be tolerated. In this regard, the Scottish Council of Jewish Communities stated in its written submission—

   “Legislation is not merely about criminalising particular activities; it is also a means by which a society indicates its standards and ideals, and signposts its aspirations; and we therefore believe that there is a strong case for legislation relating to forced marriage. The Scottish Parliament has a duty to provide leadership to create a society in which individuals and communities feel safe to live their daily lives.”

53. Assistant Chief Constable Iain Livingstone of ACPOS told the Committee—

   “The Bill's value lies in its public message. We need to bring the matter into the open and to secure an absolute consensus that forced marriage will not be tolerated.”

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47 In 2005, the Scottish Government established the Forced Marriage Network to bring together the key statutory and voluntary agencies in Scotland to share expertise and knowledge and progress work to tackle forced marriage.
49 Scottish Council of Jewish Communities. Written submission to the Equal Opportunities Committee.
54. Laura McCrum of Saheliya believed that the Bill would bring positive benefits to victims of forced marriage—

“I see the bill as a way to offer more direct support to women and ensure that they feel more confident and more empowered to come forward and stand up for their rights in such situations.”

55. Several witnesses also highlighted support for the approach the Scottish Government had taken to introduce civil, rather than criminal, legislation on forced marriage. Amina Muslim Women’s Resource Centre argued that the introduction of civil legislation created the right balance between identifying the seriousness of breaching human rights and cultural sensitivity and avoiding the criminalisation of families—

“This civil legislation overcomes many of the concerns raised about the previous proposals for criminal legislation: many individuals would not consider pressing criminal charges against their parents even if they were potentially being forced to marry. It would be anathema to do so. By providing a civil remedy, the legislation creates accessible protection.”

56. In oral evidence, Amina’s Director, Smina Akhtar added—

“I am a practising Muslim woman and I know that there are a lot of progressive and forward-thinking imams and religious leaders in Scotland who support the bill and have spoken out publicly to support it. We, as a Muslim organisation, definitely support it.”

57. In terms of evidence received which was not supportive of the Bill, the Muslim Council of Scotland said that there was already sufficient legislation in place to prosecute the perpetrators of forced marriage and that education, mediation and raising awareness of forced marriage would be more beneficial than the introduction of legislation. It argued—

“A new law on forced marriage will have the real risk of being seen to target ethnic minorities. Any law in this regard which is promoted as a tool to help victims and deter offenders is most unlikely to be effective because of the nature of the problem and the cultural as well as familial sensitivities involved. A coercive tool in a family and cultural setting is rarely, if ever successful.”

58. The Black and Ethnic Minorities Infrastructure in Scotland (BEMIS) said in its submission—

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52 Amina Muslim Women’s Resource Centre. Written submission to the Equal Opportunities Committee.
54 Muslim Council of Scotland. Written submission to the Equal Opportunities Committee.
“The proposed bill fails to recognize the circumstances in which agency takes place; it ignores the several constraints that women face. In fact, there are multiple forms of oppression such as issues of gender compulsory heterosexuality, culture and poverty which are key to understand the complexities of forced marriage: it is in these conditions that forced marriage thrives. Forced marriage must be approached much more broadly: in relation to the communities in which it occurs, to the structural inequalities inherent in these.”

55 BEMIS. Written submission to the Equal Opportunities Committee.

59. BEMIS also commented that the Bill—

“Insists on approaching forced marriage in relation to individual choice. This approach is bound to fail because it ignores the fact that women forced into marriage inhabit families and communities where the notion of choice is meaningless.”

60. In addressing concerns raised about the Bill, Girijamba Polubothu of Shakti Women’s Aid told the Committee—

“We all accept that forced marriage is against human rights and the wrong thing to do. If we all accept that, we should do something about it. As a BME woman, I expect that from the Government. If it did nothing, it would be pulling out of its duty, and I would see that as discriminatory. The bill is necessary. Yes, there will be people who might not use it, but it is not for those who do not want to use it. The bill will ensure that women have a choice. If they do not want to use it, that is fine, but if they wanted to use it but it was not there for them, that would not be right.”

61. Laura McCrum of Saheliya added that the Bill—

“Is saying not just to Scotland but to the rest of the world, ‘this is our standpoint on forced marriage, we’re not going to condone it’.”

62. The Committee recognises that it is difficult to ascertain the true scale of forced marriage in Scotland as cases are often under reported and there is little systematic reporting of cases by support agencies and collation of such data. The Committee welcomes comments made by the Minister for Housing and Communities that the Scottish Government is working with other relevant organisations to establish the best approach to data collection on forced marriage in Scotland.

63. The Committee acknowledges that, from the evidence that is available, a relatively small number of forced marriages take place in Scotland each year. It notes that on this basis, and the fact that there are civil remedies

55 BEMIS. Written submission to the Equal Opportunities Committee.
56 BEMIS. Written submission to the Equal Opportunities Committee.
already available, a question has been raised in evidence about the need for primary legislation.

64. The Committee also notes the view expressed in evidence that instead of legislation, there needs to be a public awareness and education campaign in Scotland. The Committee strongly agrees that this is needed, in addition to the legislation, to ensure that the issue of forced marriage is understood and addressed.

65. However, having heard harrowing evidence on the damage that forced marriage does to individuals in particular and to society more generally, the Committee supports the view expressed by many witnesses that while numbers may be relatively low, the detrimental impact of forced marriage is extremely high and cannot be tolerated; that civil remedies are not sufficient; and that forced marriage must be addressed through more victim-centred legislation which is supplemented by a public education campaign to raise awareness about this abhorrent practice.

66. The Committee also recognises that the introduction of legislation would bring Scotland in line with existing legislation in terms of preventing forced marriage and protecting victims in the rest of the UK.

MAIN ISSUES CONSIDERED

Part 1


Sections 1-4: Forced Marriage Protection Orders

68. Section 1 of the Bill would enable the Court of Session or a sheriff court to make a forced marriage protection order (FMPO) for the purpose of protecting a person from being forced, or from any attempt to force them, into a marriage; or protect a person who has been forced into a marriage. Through such an order, the court can require those responsible for forcing another person into marriage to stop or change their behaviour.

69. The Policy Memorandum states that while existing civil remedies may be available to protect or assist a person who is being, or has been, forced into a marriage, this can often be “costly, complex and may be incomplete.” The Bill seeks to simplify the process and be tailored to the needs of victims.

70. The Committee received evidence from the FMU that FMPOs had been operating well in England and Wales under the Forced Marriage (Civil Protection) Act 2007. In the first year of the Act’s implementation, nearly double the number of

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60 Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. Policy Memorandum, paragraph 4-5. Available at: http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd-pm.pdf
orders that had been expected had been taken out. Between November 2008 and November 2010, 247 orders had been issued.61

71. The introduction and use of FMPOs were welcomed in the vast majority of submissions to the Committee.

72. Glasgow Community and Safety Services believed it would give victims of a forced marriage the option of taking decisive action to protect themselves and would serve as a deterrent to individuals who abuse family members in this way.62

73. The Equalities and Human Rights Commission (EHRC) welcomed provisions in the Bill which would allow the court to make both preventative and positive orders. It believed that this was particularly important where the court could make a positive order, such as requiring a person to submit passports and birth certificates to court, as it could prevent someone from being forced into marriage in an overseas jurisdiction.63

74. In oral evidence, Louise Johnson of Scottish Women's Aid, summed up the views of many who provided evidence—

“The beauty of having a forced marriage protection order is that it does what it says on the tin […] It is very clear what it is for. When it comes to promoting it and raising awareness of what it is and what it does, it is not something archaic or complicated like a non-harassment order or an interdict; it is a forced marriage protection order.”64

75. The Committee notes the broad support for the introduction of a Forced Marriage Protection Order, and accepts that this provides a simpler procedure that people can understand, in contrast to the complicated current legal recourse through an order or an interdict. It welcomes the introduction of FMPOs and supports the view of the majority of witnesses, and of the Scottish Government, that this will be an effective, preventative and protective measure in the fight against forced marriage.

**Definition of force**

76. Section 1(6)(b) of the Bill sets out a definition of “force” which includes the coercion by threats or psychological means or to knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage.

77. The Scottish Independent Advocacy Alliance particularly welcomed this provision in the Bill.65

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62 Glasgow Community and Safety Services. Written submission to the Equal Opportunities Committee.
63 EHRC. Written submission to the Equal Opportunities Committee.
65 Scottish Independent Advocacy Alliance. Written submission to the Equal Opportunities Committee.
78. In its evidence however, the EHRC considered that whilst these were positive inclusions in the definition of “force” and should be retained, the section should be broadened to include and explicitly mention—

“(a) the use of deception: where a person is given false information that prevents them from making a fully informed decision about the marriage; and

(b) the abuse of an individual’s vulnerability: this could include a particular characteristic of an individual that increases the vulnerability of their situation (such as a learning disability or language barrier); or it could be an aspect of their immediate environment that could include familial, cultural or economic pressures.”

79. Louise Johnson of Scottish Women’s Aid also called for the definition of “force” used in subsection 1(6) to be more explicit and include the physical aspect of coercion and abuse. This view was supported by Assistant Chief Constable Iain Livingstone of ACPOS who told the Committee—

“My slight fear is about the interpretation in section 13, that “force’ and related expressions have the meanings given by section 1(6).

Although that includes coercion by threats and psychological means and taking advantage of incapacity, for the purpose of being explicit we would prefer a definition of physical and actual force. Again, that may be implied but it would be easier were the bill to say it.”

80. This view was reinforced in the ACPOS submission—

“Consideration should be given to strengthening the definition of forced to include the physical aspect of coercion and abuse in addition to threats or other psychological means. Although the physical abuse of a person may be subject to criminal investigation and proceedings under specific crime or offence types, it is imperative that the legislation reinforces that physical violence will not be tolerated.”

81. Several witnesses believed there was merit in including examples of actual “psychological means” in the definition of force to make it clear to perpetrators that the activities they were taking part in could be identified as constituting force. The joint written submission from Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid explained—

“Third parties and family members have also resorted to blackmail, threatened blackmail, and emotional coercion such as threatening to harm themselves if the protected person did not go through with the marriage or disclosed the matter to the police, etc. Therefore, it would be useful for the

66 EHRC. Written submission to the Equal Opportunities Committee.
69 ACPOS. Written submission to the Equal Opportunities Committee.
Explanatory Notes covering this section to include these situations as examples of “psychological means.”

82. The Committee invited the Minister for Housing and Communities to respond to the views expressed about the definition of “force” used in the Bill and the calls to make this more explicit. The Minister explained that the Scottish Government did not consider it necessary to list all the types of physical abuse that could constitute force as the Bill was drafted in such a way as to assume that force is included—

“I think that the definition’s threshold is so low that it covers all eventualities. To list all eventualities in the bill could be counterproductive.”

83. John St Clair from the Scottish Government’s Legal Directorate added—

“The section is drafted in such a way as to assume that major force is included, and it sets out one or two other aspects, such as the psychological aspect. It is not necessary to list all the types of physical abuse that could constitute force: that is assumed, and it is in case law.”

84. The Minister did however helpfully add that he would be open to giving further consideration to the definition in light of the Committee’s comments.

85. The Committee acknowledges the Scottish Government’s view that section 1(6) is drafted in such a way as to assume that major force is included. However, it believes that the definition of “force” should be explicit in the Bill. It therefore supports the view expressed in evidence that the definition of “force” should be strengthened in the Bill by way of amendment to include the physical aspect of coercion and abuse in addition to threats or other psychological means. The Committee believes that by including this on the face of the Bill, it will reinforce the fact that physical violence will not be tolerated.

Jurisdiction of Forced Marriage Protection Orders

86. Section 2 of the Bill relates to the contents of FMPOs. Section 2(2) of the Bill provides that a FMPO may relate to ‘conduct outwith (as well as, or instead of, conduct within) Scotland’.

87. Girijamba Polubothu of Shakti Women’s Aid believed that there should be some provision for conduct outwith Scotland as most forced marriages had an international element. The Scottish Women’s Convention said that it had received evidence from women that existing civil remedies had not been

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70 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
enforceable outwith the UK and therefore, in a number of cases, the perpetrators had not been brought to account for their actions.\textsuperscript{75} 

88. Questions were also raised in evidence about whether the courts would be able to respond to actions that take place in other countries. Professors Crawford and Carruthers of the Law Faculty of the University of Glasgow in their written submission said—

\begin{quote}
“Although not \textit{per se} a piece of conflict of laws legislation, the Bill nonetheless has conflict of laws implications and, paradoxically, is bolder than many international private law provisions to date, in taking to itself power to regulate conduct outside Scotland. This raises issues concerning the territorial operation of UK/Scottish statute law. Statutes are presumed to have a strictly limited territorial effect so that, in general, they apply only to persons and property in the territory in which the legislation was enacted.”\textsuperscript{76}
\end{quote}

89. They went on to question the validity of the provision in the Bill—

\begin{quote}
“If the person is not ordinarily resident in Scotland, the Scottish Order, in practice, can be little more than a provisional, protective measure effective only so long as the protected person remains in Scotland, and is probably only effective in Scotland.”\textsuperscript{77}
\end{quote}

90. John Fotheringham of the Law Society of Scotland agreed that an FMPO would not be enforceable outwith Scotland. He accepted that an order would be breached if the individuals to whom it applied returned to Scotland, but that “the power will be therapeutic, rather than anything else.”\textsuperscript{78}

91. The Minister for Housing and Communities sought to address these concerns about jurisdiction—

\begin{quote}
“If a forced marriage protection order has been issued against someone, it will be in place worldwide as far as we are concerned, and there are certain circumstances in which we would pursue it worldwide.”\textsuperscript{79}
\end{quote}

92. He added that there were different factors which would affect how such a person would be pursued—

\begin{quote}
“The option that we would follow would depend on the territory to which the person had gone, on knowing where they are, obviously, and on the country's legal relationship with the United Kingdom for extradition.”\textsuperscript{80}
\end{quote}

\textsuperscript{75} Scottish Women’s Convention. Written submission to the Equal Opportunities Committee.
\textsuperscript{76} Professor E.B. Crawford, Professor of International Private Law and Professor J.M. Carruthers, Professor of Private Law, University of Glasgow. Written submission to the Equal Opportunities Committee.
\textsuperscript{77} Professor E.B. Crawford, Professor of International Private Law and Professor J.M. Carruthers, Professor of Private Law, University of Glasgow. Written submission to the Equal Opportunities Committee.
93. In a subsequent letter to the Committee, the Minister clarified the approach in enforcing a FMPO abroad—

“There are several ways in which orders can be effective. For example, orders in some foreign countries can be enforced directly through the local courts, if there is a treaty with the UK for the reciprocal enforcement of civil decrees. Secondly, because not obeying a forced marriage protection order creates a criminal offence in Scotland, an offender could be extradited if there is an extradition treaty with the UK. Finally, even without those formal legal machineries, the existence of an order can assist a local High Commission or consular service in their diplomatic efforts to prompt local protective action in the foreign country.”  

94. The Committee notes that the Scottish Government’s approach to enforcing FMPOs abroad mirrors the approach being undertaken by the FMU. Suzelle Dickson of the FMU emphasised that in cases in which legal proceedings have been initiated overseas, those courts had looked favourably on orders from the UK when trying to determine the risk to a person, however she acknowledged that, ultimately, an order had no jurisdiction abroad.

**Domicile of protected person**

95. Professors Crawford and Carruthers of the Law Faculty of the University of Glasgow argued in their written submission that the Bill does not make it clear how long the person applying for a FMPO has to be domiciled in Scotland—

“If the person is not ordinarily resident in Scotland, the Scottish order, in practice, can be little more than a provisional, protective measure effective only so long as the protected person remains in Scotland, and probably effective only ‘in Scotland’.”

96. In response to this concern, the Minister for Housing and Communities stated that there was no specified period someone had to be domiciled in Scotland before they could apply for an FMPO. He indicated—

“There is no specified period. Anybody who is in Scotland, and who is living in Scotland, can apply for a forced marriage protection order. The person’s stay here could be as short as just over a month – 40 days – or they could have been living here longer. There is no prescription on that. It would be up to the court to decide whether the person was domiciled in Scotland.”

97. The Scottish Government provided further clarification in a subsequent letter to the Committee—

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83 Professor E B Crawford, Professor of International Private Law and Professor J M Carruthers, Professor of Private Law, University of Glasgow. Written submission to the Equal Opportunities Committee.
“The courts will almost certainly accept jurisdiction if the person to be protected is domiciled or ordinarily resident in Scotland, but this qualification is not necessary.

This is implied in section 3(6) which entitles an action to be brought in Edinburgh sheriff court even if the person to be protected is not ordinarily resident in Scotland.

In cases where the protected person is not ordinarily resident in Scotland, the courts will look for some connection with Scotland or at least with the United Kingdom. Close members of family being resident in Scotland could well suffice. Where the connection is flimsier, the courts will look particularly closely at a) how effective any order is likely to be in preventing the mischief complained of; and b) the gravity of the mischief.”

**Removal of a protected person abroad**

98. Section 2 (3)(f) and (g) of the Bill state that an FMPO may require a person to refrain from taking the protected person abroad and to facilitate or otherwise enable the protected person or another person to return to the United Kingdom within such a period as the court may specify.

99. In their joint submission, Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid expressed concern about the use of the term “abroad” in Section 2(3)(f). They considered that this should be changed so that the reference in the Bill is “to refrain from taking the protected person to another part of Scotland or outside Scotland.” They considered that the term “abroad” would not prevent a protected person being moved to Wales, England, Northern Ireland, or the Republic of Ireland. They were also of the view that this subsection must prevent the removal of the protected person to another location within Scotland.

100. John Fotheringham of the Law Society of Scotland also expressed concern on this point—

“I see no reason why the Scottish statute should not allow the court to prohibit the removal of a person from Scotland, unless there is to be a very tight correlation between the Scottish and English systems. The order should be to prevent the removal of a person from Scotland.”

101. The Law Society of Scotland also expressed concern about section 2(3)(g) as it would not prevent a protected person being removed from Scotland only from remaining within the UK. In its written submission, it said—

“In respect of section 2(3)(g), the sub-committee would question whether it is sufficient to ensure that the protected person or other person in question is returned to the United Kingdom. Unless the Scottish Government is fully satisfied that it has clear lines of communication with forced marriage units in

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86 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
the other UK jurisdictions (and given that forced marriage legislation is already in place in England and Wales), the sub-committee would suggest substituting ‘United Kingdom’ with ‘Scotland’.

102. Suzelle Dickson of the FMU highlighted that a similar provision in the UK Act was more specific and an order could restrict a person from being removed from England or Wales or to any other part of the UK.

103. The Committee supports the approach taken in the Bill that FMPOs should also relate to ‘conduct outwith’ Scotland, given that many cases of forced marriage have an international dimension. It recognises however, that FMPOs do not have any jurisdiction abroad.

104. The Committee considers therefore that, in order to successfully implement an FMPO abroad, this will require the existence of an extradition treaty between the countries. In the absence of such a treaty, the Committee believes that there would have to be a very good working relationship with the country concerned if an FMPO is to be successfully implemented.

105. The Committee acknowledges the view of the Minister for Housing and Communities that even without formal legal machineries, the existence of an FMPO may assist a local High Commission or consular services in their diplomatic efforts to prompt local action abroad.

106. The Committee notes the concerns expressed in evidence about sections 2(3)(f) and (g) and agrees that these provisions need to be tightened up. It therefore recommends that the Scottish Government should consider an amendment to section 2(3)(f) which would make it clear that an FMPO may require a person to refrain from taking a protected person to another part of Scotland or outside of Scotland. It also recommends that the Scottish Government considers an amendment to Section 2(3)(g) to substitute “United Kingdom” with “Scotland”.

107. The Committee notes the concerns raised by some witnesses in evidence regarding how long a person has to be domiciled in Scotland before they can apply for an FMPO. It also notes comments made by the Minister for Housing and Communities who said that there is no specified period in this regard, and whether or not a person was domiciled in Scotland would be a matter for the courts to decide. The Committee acknowledges that there is no prescribed period in relation to whether someone is domiciled in Scotland, and it accepts that this would be a matter for the courts to determine in individual cases.

Naming the person who poses a risk
108. In their joint submission, Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid questioned whether an FMPO would specifically name

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88 Law Society of Scotland. Written submission to the Equal Opportunities Committee.
persons who are considered “to pose a risk of conduct or potential conduct or actings against a protected person.”

109. The Committee notes that the Bill does not make provision for this, and the Minister for Housing and Communities told the Committee—

“I am open to suggestions on that; there is a case both for and against. There are obvious dangers in naming the person, but there may be circumstances in which the person should be named.”

110. The Committee acknowledges that the Bill does not make provision for FMPOs to specifically name the person who poses the risk to a protected person. It agrees with the Minister for Housing and Communities that there may be circumstances in which naming the person may present dangers to the protected person, but that there may also be circumstances in which the person should be named. The Committee recommends that the Scottish Government gives further consideration to bringing forward an amendment which would allow for the naming of the person who poses the risk in certain circumstances, which should be defined.

Third party applications

111. Section 3 of the Bill makes provision for applications for FMPOs by third parties. A relevant third party is defined as a local authority, the Lord Advocate or a person specified by order made by the Scottish Ministers.

112. This provision was widely supported in evidence as it reduces the burden of responsibility on the victim who, by the very nature of their situation, may not be in a position to take action on their own behalf. In this regard, Assistant Chief Constable Iain Livingstone of ACPOS told the Committee—

“One of the bill’s virtues is the proposal to allow an application by a relevant third party. A person would not need to be an expert in family law or Scots law in any way, shape or form. If they came to a support agency, such as the police or the health service, and said that they had an issue, that might allow access to some form of justice. Although the current onus on the victim is a barrier, the bill will provide more support for the victim.”

113. Statistics on the use of third party applications under the UK Act show that more applications have been made to date by third parties than those made by the victims themselves. Since the UK Act came into force, 103 third party applications have been issued.

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90 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
93 FMU. Written submission to the Equal Opportunities Committee.
114. The evidence received by the Committee was supportive of local authorities being defined as a “relevant third party,” however clarification was sought on some issues.

115. For example, South Lanarkshire Council sought clarification on the statutory requirements on local authorities with regard to the requirement in the Bill which states that an FMPO may require them to “take a protected person to a place of safety designated in the order”.94

116. Scottish Borders Violence Against Women Partnership took the view that it was imperative that local authorities are supported to implement the required process and protocols to lodge applications including guidance.95

117. Some support agencies believed that it was not clear to which parts of the local authority a relevant third party is intended to refer.96 John Fotheringham of the Law Society of Scotland considered, for example, that social workers should be able to apply for an order. He also felt that there may be circumstances in which a local authority could apply for an FMPO through a teacher. He believed that teachers may be among the first people to be aware of a forced marriage, citing potential indicators such as a child not attending school, a sudden drop in academic performance or a child being removed from school without explanation.97

118. Support agencies who provided evidence to the Committee were keen to ensure that local authorities are well placed to deal with their duties under the Bill. The joint submission from Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid stated—

“Regardless of which part of a local authority this applies to, it is absolutely crucial that those directly involved in applying for Orders do not simply have this responsibility ‘bolted on’ to their other duties and that care and attention will be taken to ensure that this work is regarded as a specialised support area.”98

119. The need for relevant third parties to take ongoing responsibility for monitoring those individuals who have been the subject of an FMPO was also raised in evidence. Louise Johnson commented—

“If the protected person is still living with their family or is in close contact with them, they may be at risk of physical harm, emotional coercion, blackmail and so on while the application is being made. Provision must be made for

94 South Lanarkshire Council. Written submission to the Equal Opportunities Committee.
95 Scottish Borders Violence Against Women Partnership. Written submission to the Equal Opportunities Committee.
98 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
people who are relevant third parties to take some responsibility for the individual's safety and support while that is happening.”

120. The Minister for Housing and Communities told the Committee—

“Local authorities have a crucial role to play both in applying for a forced marriage protection order, if they so decide, and in ensuring that the totality of support is available and provided to the victim.”

121. The Minister added that there is a need for a specialist team in each local authority to deal with the Bill—

“It is up to each local authority to decide how it organises its internal affairs. Nevertheless, we have had substantial discussions with Glasgow City Council, as we believe that Glasgow is where a high proportion of the cases will come from. In the discussions that we have had with Glasgow City Council and other local authorities, there has been a recognition that there is a need for specialist training, guidance and support in the area. The lead may well fall within a particular department, such as social work; however, there is recognition of the need for a specialist team with the necessary skills to deal with this unique bill and unique circumstance.”

Specification of a relevant third party

122. Section 3(7)(c) of the Bill provides for Ministers to specify relevant third parties that will have the automatic right to apply for an order. As indicated above, these are defined as a local authority, the Lord Advocate or a person specified by an order made by the Scottish Ministers. Calls were made in evidence for consideration to be given to other organisations being designated as relevant third parties.

123. Scottish Women’s Aid asked whether the police might be regarded as a relevant third party in the Bill given its child protection responsibilities and supporting the victims of domestic abuse.

124. In response, the Minister for Housing and Communities explained that it would not be appropriate for the police to be recognised as a relevant third party—

“In every case in Scotland, the police operate through the procurator fiscal and go to court through the procurator fiscal. Given that under the bill, the Lord Advocate has the power to go straight to court without asking permission, as do the local authority and the person involved, it is better to maintain the status quo in the relationship between the police and the Crown Office and Procurator Fiscal Service.


If we went down the road of allowing the police to go straight to court rather than through the Procurator Fiscal Service, the police would have to be given their own legal advisory service.  

125. Support agencies believed that they should be included as relevant third parties. The joint submission from Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid stated—

“It would be appropriate to consider that specialist and expert voluntary sector organisations, such as Shakti Women’s Aid, who have extensive, professional experience in supporting women who are at risk of forced marriage or have been forced into marriage, should be included within the category of ‘relevant third party’.”

126. The Minister responded positively to this suggestion—

“We are open to that suggestion and we will consult on it when we issue the guidance. Such agencies will not be named in the bill, but they could be nominated once the bill was passed—we would have the ability to do that. Ideally, we would want to agree criteria for any agency that is to be nominated to have the automatic right to apply.”

127. The Committee welcomes the provisions in the Bill which allow for third parties to make applications for FMPOs. It believes that third party applications are an important part of ensuring a victim centred approach. They will help to protect the victim who, without these provisions, would be left to come forward and make an application of their own accord.

128. The Committee notes the view expressed by some witnesses that the police should be included in the list of relevant third parties. It agrees with the Scottish Government however that this may present difficulties given the relationship between the police and the Crown Office and Procurator Fiscal Service, and the fact that the Lord Advocate is listed as a relevant third party.

129. The Committee also notes the desire of specialist support agencies to be listed as relevant third parties. The Committee considers that there may be some merit in specialist support agencies being included in the list of third parties on the face of the Bill, but accepts that the list could become unwieldy. It therefore welcomes provisions in the Bill which allow for Scottish Ministers to add additional third parties by way of subordinate legislation, and also the Minister’s commitment to consult on suggestions for other agencies and on the criteria for agencies to be given the automatic right to apply for an FMPO.

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104 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
130. The Committee acknowledges the evidence it received from local authorities seeking clarification of their role in relation to being designated a relevant third party. It also notes concerns expressed by other witnesses that the term “local authority” is too general and should be more specific in terms of who within a local authority can make a third party application.

131. The Committee notes the Minister’s comments that lead responsibility within each local authority may rest within a particular area, and that there is a recognition of the need for a specialist team with the necessary skills to deal with the Bill.

132. It accepts that the term “local authority” may have been used in the Bill to cover all eventualities in terms of who within each authority can make an application for an FMPO. However, given the concerns expressed in evidence, the Committee asks the Scottish Government to look again at section 3(7)(a) and consider whether this needs to be more specific in relation to which relevant posts within a local authority can make a third party application.

133. The Committee notes that the Scottish Government is consulting with local authorities and COSLA on issues such as training and aftercare services. The Committee believes these are vital in terms of the Bill's victim centred approach. However, in light of concerns expressed in evidence about the ongoing monitoring of cases following the issue of an FMPO, the Committee asks the Scottish Government to provide it with further information on the ongoing responsibilities of all third parties to monitor and implement aftercare services, and to consider whether the Bill and the guidance on the Bill needs to reflect these important responsibilities.

Sections 5-8: Interim orders, duration, variation, recall and extension (of orders)

134. Sections 5 to 8 of the Bill enable the courts to make interim orders, specify a time period for an FMPO, and to vary, recall and extend an order on its own initiative. A person who wishes to vary, recall or extend an order must apply to the courts to do so.

135. The Committee explored the issue of an FMPOs’ duration and the circumstances in which a maximum or minimum period should be in force.

136. An example of where it would not be appropriate for an FMPO to be issued with a specific time limit, is where there is a need to protect an individual with a learning disability where the person may not understand the concept of marriage. Suzelle Dickson of the FMU explained that in such cases under the UK Act there would be an expectation that social services and social care would be involved and would contribute to the assessment of risk to the person that the court
requests. There would also be on-going assessments within the relevant agency to determine whether the person was still at risk.  

137. A further example where setting a time limit seems inappropriate, is in the kind of situation that Shakti Women’s Aid drew to the Committee’s attention, whereby a young person had been misled by her family into believing that they had changed their ways and she would not be forced into marrying. However, after a year, the young person was taken abroad and forced to marry.  

138. John Fotheringham of the Law Society of Scotland considered that if orders do not have a time limit placed upon them, they would continue until they are recalled. He provided an example of where that might be problematic—

“It is quite possible that a young woman might say that she is being forced into a marriage that she does not want, and an order will be granted, just to sit on the court file. Five years later, things might have moved on and the couple might marry, forgetting that there was an order rendering their marriage invalid, with all the implications for succession and financial provision on divorce.”  

139. The Minister for Housing and Communities told the Committee that whilst a sheriff can put a time limit on an FMPO, the Scottish Government anticipated that most orders would not be time limited—

“The order can last forever, unless it is rescinded by a court. There is no deadline for expiry of the order. It is there and will remain there.”

140. He added—

“We think it more likely that the orders that are time limited will concern situations in which, for example, a vulnerable person has to be taken to a place of safety and kept safe for three weeks. It might be that another week is needed, in which case the order could be extended. The normal orders, preventing violence, are much more likely to be open-ended, even at the interim stage.”

141. A subsequent letter from the Scottish Government explained—

“Although they [orders] are not normally formally brought to an end, with the passage of time, they usually become ‘spent’ in the sense that the mischief complained of is no longer threatened and so the need for a court order prohibiting behaviour is obsolete. So, for example, if the person interdicted

107 Shakti Women’s Aid. Written submission to the Equal Opportunities Committee.
dies or the behaviour interdicted comes to an end by the person marrying someone else or leaving the country or the protected person coming of age.

Some orders are however time limited and section 8(1) makes clear that it only applies where a forced marriage protection order specifies a period for which it is to have effect. So for example the order may say that a person is to be kept in a place of safety for a week but events transpire that this needs to be extended by a further week, or it is necessary for evidence to be kept longer than originally specified. There can be many types of situation when a time limited order is given and it might need to be extended because of new circumstances. “111

142. The Committee also heard concerns in evidence about how, if an order is varied, recalled or extended, an investigation will take place to deem whether or not that is necessary. In response, the Minister indicated—

“If it is necessary to go back to the court, the person who was the victim can do so, as can the Lord Advocate, the local authority or any organisations that we can name. Obviously, they would need to do so with the reasoning and evidence to support whatever it is that they want the court to do.”112

143. In terms of whether a court would take into account the views of the victim, the Minister said that he could not imagine any sheriff not giving a great deal of weight to the victim’s views. He pointed out that section 1(3) of the Bill deals with this issue as it states that “in ascertaining the protected person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings”.113

144. The Committee notes the concerns expressed in evidence about time limits on FMPOs. It accepts however that each case will require to be treated on its own merits in this regard. The Committee believes that the right balance has been achieved by making orders open-ended but allowing for time limits to be introduced if an individual situation warrants this approach. It is vital however, that there is close monitoring of individual situations and circumstances to ensure that an order continues to remain valid and in force or if it requires to be time limited or subjected to some form of variation.

Section 9: Offence

145. Section 9 of the Bill would make it a criminal offence to breach a FMPO and it sets out the penalties that may be imposed. These include imprisonment for up to 12 months, and/or a fine. In more serious offences, the period of imprisonment can extend up to 2 years.

146. This provision in the Bill differs from the UK Act where breach of an order in England, Wales and Northern Ireland is not a criminal offence, but is dealt with as

contempt of court. However, the respondent may still be arrested if the police believe there is reasonable cause to suspect there is a breach of the order.114

147. In oral evidence, the FMU suggested that part of the reason why, under the UK Act, a breach of an order was made a civil contempt of court rather than a criminal offence was as a result of the views received in response to the UK Government’s consultation on the Bill. The argument had been made in responses that criminal proceedings would have the counterproductive effect of making victims unwilling to engage because they would not want their families to be criminalised.115

148. In terms of the Scottish Government’s consultation on the Bill, respondents were broadly supportive of the proposal to make a breach of an order a criminal offence. It was suggested that it would discourage wider family and third party involvement, increase accountability, strengthen the message that forced marriage will not be tolerated, make a perpetrator take the issue more seriously, and provide for greater protection and safety for victims.116

149. Submissions to the Committee also reflected the view that the breach of an order should be a criminal offence. Glasgow Community and Safety Services said—

“Making it a criminal offence to breach a forced marriage order simply adds “teeth” to it and strengthens the law’s ability to effectively protect the victim.”117

150. Smina Akhtar of Amina Muslim Women’s Resource Centre also expressed support for this measure and suggested that an FMPO would be meaningless without this deterrent—

“Once an order has been issued, the perpetrator will be told that breaching it is a criminal offence, which will deter them. If they are told that not much will happen if they breach the order, what is the deterrent?”118

151. Several witnesses, including Louise Johnson of Scottish Women’s Aid,119 called for the power of arrest to be made explicit at Section 9 of the Bill. Assistant Chief Constable Iain Livingstone of ACPOS told the Committee—

“We would like an explicit power of arrest to be attached to that section, just for clarity. One could argue that such a power is inferred or implied, but why argue if we can state it explicitly? That would make the bill consistent with the legislation on matrimonial homes and the Protection from Harassment Act 1997.”

152. In its submission, the EHRC also noted that making a power of arrest explicit in the Bill would bring the legislation into line with the Domestic Abuse (Scotland) Bill which is also currently being considered by the Scottish Parliament.

153. However, the Minister for Housing and Communities believed that making an explicit power of arrest was not necessary—

“In effect, the power of arrest already exists under existing legislation. Indeed, it is possible for the sheriff, in issuing the order, to provide for the power of arrest without warrant if there is a breach of the order. That also means that it is not necessary to build in the power of arrest.”

154. The Minister did concede however, that he would be open to placing a power of arrest on the face of the Bill if there was support for this approach—

“It is, however, something that I would not go to the barricades about. If the committee feels that we should explicitly build in the power of arrest, I would not resist that, but we genuinely think that it is not necessary.”

155. Several witnesses called for clarity on the reporting and notification procedure for acting upon a breach of an FMPO. Louise Johnson of Scottish Women’s Aid sought clarification on whether the protected person would have to take the matter back to their solicitor to have the breach brought before the court, or whether it would have to be reported to the police. She also asked whether a relevant third party or another person would be able to report the breach or whether this will have to be done by the protected person.

156. In response, the Minister emphasised the importance of ensuring that the victim has continuing multi-agency support which would include local authorities and the police. He stated that the police will be responsible for enforcing orders and dealing with any breach of orders.

121 Domestic Abuse (Scotland) Bill. Available at: http://www.scottish.parliament.uk/s3/bills/45-DomesticAbuse/index.htm
122 EHRC. Written submission to the Equal Opportunities Committee.
157. In seeking to identify the extent to which breaches of an FMPO might arise, the Committee asked the FMU to provide it with details of the number of breaches that had arisen since the UK Act came into force in 2008. In its response, the FMU told the Committee that there had been five known breaches—

- two allegations of breaches (relating to the same order) were not proceeded with due to a lack of evidence and cooperation of the victim;
- one breach related to the respondent encouraging family members to intimidate the victim and resulted in an extension of the previous order by nine months;
- one breach related to the respondent entering the family home and resulted in bail conditional on restriction of behaviour of respondent in relation to some of the witnesses; and
- one breach related to a respondent making contact with the victim, breach proceedings had been adjourned.\(^{127}\)

158. The Committee supports the approach taken in the Bill that a breach of an FMPO should be a criminal offence. The Committee believes that this approach strikes the right balance between identifying and helping victims of forced marriage and overcoming the concerns about criminalising family members. It believes that this will act as a strong deterrent to perpetrators of forced marriage in an effort to successfully rid Scotland of this abhorrent activity.

159. In light of concerns expressed in evidence, the Committee calls on the Scottish Government to provide greater clarity on how the reporting and notification procedure for acting upon a breach of an FMPO will operate, particularly regarding who will have the authority to report the breach of an FMPO.

160. The Committee is persuaded by the arguments put forward by witnesses, including ACPOS, for the Bill to be consistent with other legislation by placing a power of arrest on the face of the Bill. It recommends that the Scottish Government should lodge an amendment in this regard.

Section 10: Power to apply Part 1 to civil partnerships

161. Section 10 of the Bill would enable Part 1 of the Bill to be applied, by order, to civil partnerships. According to the Policy Memorandum, this approach would enable Scottish Ministers, if required to do so, to react quickly subject to Parliamentary approval, to make equivalent provision for civil partnerships.

162. It also states that, although respondents to the Scottish Government’s consultation were overwhelmingly in favour of making provision for this in the Bill,

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\(^{127}\) FMU. Written submission to the Equal Opportunities Committee.
there is no evidence at present to show that forced civil partnerships are a problem.\textsuperscript{128}

163. John Fotheringham of the Law Society of Scotland told the Committee that, as a matter of principle, marriage and civil partnerships should be treated the same. He explained why he believed it was important that the issue of civil partnership was covered in the Bill—

“If we have good, strong and effective forced marriage provision and forced civil partnerships are not covered in the bill, those who wish to abuse the system will simply leap on forced civil partnerships. If the issue is about a visa or passport, there must be cover on both sides.”\textsuperscript{129}

164. The Committee explored with witnesses whether making this power available through secondary legislation was the correct approach or whether the power should be included on the face of the Bill.

165. Witnesses told the Committee that they were not aware of any instances of forced civil partnerships and that the approach taken in the Bill was appropriate. The FMU also told the Committee that they were not aware of a FMPO being issued in the context of a forced civil partnership under the UK Act.\textsuperscript{130}

166. The Committee acknowledges the evidence it received which suggests that there have been no forced civil partnerships in Scotland, or in the rest of the UK. However, it welcomes provisions in relation to civil partnerships, and supports the order-making power at Section 10.

Sections 11-13: Supplementary

Guidance and training

167. Section 11 of the Bill states that Scottish Ministers may issue guidance on the effect of the Bill or on other matters relating to forced marriage.

168. The majority of respondents to the Committee’s consultation supported the creation of statutory guidance stating that it was vital in order to maximise the reach and impact of the Bill. The EHRC told the Committee—

“Legislation is an important and laudable step towards tackling the issue of forced marriage in modern-day Scotland. But it must be backed-up by effective implementation comprised of robust monitoring, training and guidance.”\textsuperscript{131}

\textsuperscript{128} Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. Policy Memorandum, paragraph 20. Available at: \url{http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd-en.pdf}


\textsuperscript{131} EHRC. Written submission to the Equal Opportunities Committee.
169. Assistant Chief Constable Iain Livingstone of ACPOS stated that statutory guidance is needed “because the logistical, mechanical process is critical to ensuring that the system works properly.”

170. Support agencies welcomed the reference to guidance in the Bill, however they believed there should be a stronger commitment to issuing this and called for section 11 to state that the Scottish Ministers “will” rather than “may” issue guidance. The joint submission from Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid stated that it was “absolutely crucial to both the implementation and success of the Orders.”

171. In response, the Minister for Housing and Communities agreed and indicated that the Scottish Government would lodge an amendment to Section 11 in this regard—

“The bill says that we ‘may’ issue guidance. I make absolutely clear that we will issue guidance. At stage 2, I will lodge an amendment to change ‘may’ to ‘will’ so that there is no dubiety about whether we will bring forward guidance, which will have statutory status.”

172. During the Committee’s consideration of the Bill, witnesses commented on what the guidance should contain and who it should be aimed at.

173. Suzelle Dickson of the FMU explained that, in relation to the UK Act, guidance was issued on the day the Act came into force. The guidance was directed at all chief executives, directors and senior managers within all public agencies responsible for safeguarding children and adults. The guidance explained that organisations needed to have a framework in place so that they could respond to forced marriage. As a complement to statutory guidance, the FMU developed practice guidelines that set out what step-by-step actions agencies should take.

174. In Scotland, the Minister said that the Government would consult on the guidance and therefore it would not be issued immediately—

“I make categorically clear that we intend to commence the bill the minute that it receives royal assent and not to wait to implement it until we have the guidance. I do not want there to be a gap because we are waiting for guidance—we want to start to implement the bill right away […] If the bill receives royal assent around March or April, I hope that we can have guidance in place well before the end of the calendar year 2011.”

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133 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
175. Louise Johnson of Scottish Women’s Aid believed that the guidance should not just be about the legislation but about wider issues in relation to forced marriage. She also believed that there was a particular need for training of those people who will be designated relevant third parties.137

176. Assistant Chief Constable Iain Livingston of ACPOS agreed that training was vital as—

“The victim might not know that they need advice on forced marriage, so the training must be integrated with the work that we are doing on violence against women, violence in society, domestic abuse, domestic violence, public protection and child protection.”138

177. John Fotheringham of the Law Society of Scotland also stressed the need for the judiciary and the courts to have guidance and support available—

“There are no judges or sheriffs in Scotland who will come across many such cases; no one will build up a long course of expertise in forced marriage. When the issue comes up, it will come up suddenly. Sometimes the court will have to make its own order. That requirement will arise suddenly, because it will come up in the context of another case. There will have to be a resource in the form of a named individual or a named body of people that sheriffs and judges can contact, and there will have to be someone in the Crown Office whom the Crown can contact and who has the expertise to act as a resource. Unless sheriffs are well informed on the issue, no one will be able to learn about it sufficiently to react quickly enough.”139

178. In its written submission, the Law Society of Scotland recommended that the Bill be referred to the Judicial Studies Committee140 for consideration and preparation of a briefing note and possible inclusion in training courses for the judiciary.141 The Lord Advocate, told the Committee that she had asked her officials to draw this matter to the attention of the Judicial Services Committee.142

179. The Minister for Housing and Communities told the Committee that the Scottish Government was in discussion with the judiciary on the provision of training to ensure that people are aware of all aspects of forced marriage, including both non-statutory and statutory aspects.143

180. The importance of raising awareness of forced marriage was raised in evidence by many witnesses. The Committee notes that the Policy Memorandum

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140 The Judicial Studies Committee is the body responsible for judicial training in Scotland. The committee runs training courses for the judiciary and issues written material to all judges.

141 Law Society of Scotland. Written submission to the Equal Opportunities Committee.

142 Lord Advocate. Letter to the Equal Opportunities Committee 16 December 2010.

discusses this issue alongside the issuing of guidance, and indicates that the Scottish Government will work with the members of the Forced Marriage Network and other service providers on raising awareness.

181. A number of responses to the Committee’s consultation specifically mentioned that the health and education sectors have an important role to play in raising awareness. Louise Johnson of Scottish Women’s Aid told the Committee—

“On making everybody aware of the problem, we know that there are existing legal provisions that can deal with it, but people do not know that they exist. They do not know about interdicts and the other orders and that marriages can be nullified. If the bill is to be used to the extent that it should be, we must ensure that everybody knows about it and how to use it.”

182. This view was supported by John Fotheringham of the Law Society of Scotland who told the Committee—

“Public education matters a great deal. There is no point in having a remedy if people do not know about it. […] If people—not only potential victims, but their families, teachers, social workers and local police officers—do not know about the legislation and what they can do, they must be made fully aware of it. The more it is known about, the more the culture against forced marriages will be strengthened.”

183. Support agencies emphasised that the work on awareness raising should not just encompass minority ethnic communities, but the full range of organisations working with and supporting communities. Smina Akhtar of Amina Muslim Women’s Resource Centre told the Committee that work needed to be done directly in communities. She considered that potential victims need to feel empowered to overcome difficulties in reporting forced marriage and that potential perpetrators need to be shown that what they are doing is wrong and unlawful.

184. A number of the support agencies who gave evidence, referred to work they have been doing in schools to raise awareness of forced marriage and Smina Akhtar referred to a workshop that Amina would be holding with women in Pollokshields in Glasgow, which has a high Muslim Black and Minority Ethnic population, to explore their thinking around forced marriage.

185. The Minister for Housing and Communities acknowledged the importance of awareness raising and training in order to support the implementation of the Bill—

146 Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Joint written submission to the Equal Opportunities Committee.
“There is clearly a training requirement across a number of agencies, which is why we have an interagency, multi-agency task force looking at the issues. We will implement on-going training and awareness programmes. I do not believe that subjects such as this require just a one-off awareness campaign. It is an on-going process and people need to be continually reminded about the issue and about the options that are available to people who are under duress to engage in forced marriages. We will put together an awareness programme, which will, clearly, need to be in a number of languages to be effective.”

186. The Minister also supported the view put forward by witnesses that schools can play an important role in raising awareness. He told the Committee that an awareness programme that was specifically directed at the school population was crucial—

“It is very important to have one of our awareness programmes specifically directed at the school population, because we want people who are growing up in Scotland to be aware that forced marriage is illegal and to be aware of their rights so that they know, if they become a potential victim, that there is recourse to law to stop it happening and there are support mechanisms out there for them, both before going to court and after having been to court. An awareness programme that is specifically directed at the school population is crucial.”

187. The Committee supports the provisions at Section 11 of the Bill which provide for statutory guidance on the Bill to be published. It welcomes the commitment made by the Minister for Housing and Communities to lodge an amendment which will ensure that the Scottish Government “will” rather than “may” issue guidance.

188. The Committee acknowledges that whilst this legislation is an important step in tackling the issue of forced marriage in Scotland, it must be supplemented by guidance and training for a wide range of people who will be involved in implementing and using the legislation, including victims, third parties, schools, health services, victim support agencies, the police and the judiciary.

189. The Committee recognises the merit in commencing the Bill as soon as it receives Royal Assent. The Committee also recognises the merits of the requirement to consult on the guidance before it is issued. However, the issuing of guidance is critical to ensuring that the legislation works effectively, therefore the Committee recommends that this be issued as quickly as possible following the Bill coming into force.

Protection of existing assistance and civil legislation

190. Section 12 of the Bill provides that Part 1 of the Bill does not affect any other protection or assistance already available and lists these.

191. Assistant Chief Constable Iain Livingstone of ACPOS questioned the value of Section 12 as the legislation will be part of a wider suite of statutes, common law and practice that the police will use to address honour based violence.151

192. John Fotheringham of the Law Society of Scotland called for the section to be deleted as he believed that it “does not seem to do anything”.152 In its written submission, the Law Society of Scotland said—

“The sub-committee is not sure what the purpose of this section is. The concept of ‘equitable jurisdiction’ is not used in Scotland. The section may not be necessary in the Scottish context, but if it is to be retained at all the sub-committee would suggest substituting a provision to say that ‘the rights conferred by this Act do not prejudice any other action that might be taken at common law or under statute to prevent the occurrence of a forced marriage or any remedies available in respect of such a marriage’.”153

193. The Committee asks the Scottish Government to provide further justification for the inclusion of Section 12 in the Bill. If the Government is minded to retain this section, the Committee invites it to consider the amendment suggested by the Law Society of Scotland. Its suggested amendment would substitute a provision which provides that the rights conferred by the Act do not prejudice any other action that might be taken at common law or under statute to prevent the occurrence of a forced marriage or any remedies available in respect of such a marriage.

Part 2

194. Part 2 of the Bill makes provision for jurisdictional rules applying in the sheriff courts in relation to declarators of nullity of marriage. These rules parallel those that already apply in the Court of Session. Uncertainty surrounding the jurisdictional rules applying in the sheriff court was seen as a barrier to individuals, including victims of forced marriage, accessing this particular civil remedy. Part 2 clarifies the circumstances in which individuals, including victims of a forced marriage, can seek declaration from the sheriff court to make a marriage void.

195. The Minister for Housing and Communities explained why the Scottish Government wanted to grant this power to the sheriff court—

“The area in which we have differed slightly on the basis of experience south of the border is in making it easier to annul a forced marriage, particularly by

153 Law Society of Scotland. Written submission to the Equal Opportunities Committee.
allowing cases to be put to a lower court rather than their always having to be taken to the Court of Session; the sheriff court is easier to access. ¹⁵⁴

Interaction between civil law and religious practice

196. A concern was raised by some witnesses that a decree of divorce or declarator of nullity granted by a Scottish civil court cannot end a marriage according to the provisions of relevant religious practice. Until the appropriate action is taken under religious practice to end a forced marriage, an individual may be regarded as still being married even if it was declared a forced marriage and annulled in the civil courts.

197. Smina Akhtar of Amina Muslim Women’s Resource Centre told the Committee that, under Islam, neither a woman nor a man can remarry until the ceremony has been nullified by the Islamic Sharia Council in the UK. ¹⁵⁵

198. The Council of British Pakistanis (Scotland) and the Scottish Council of Jewish Communities recommended that statutory guidance should advise victims and their legal advisors to consult with relevant religious authorities in order to ensure that a victim is freed from all aspects of a forced marriage. ¹⁵⁶

199. In response to these concerns, the Minister for Housing and Communities told the Committee—

“Interfering in the governance of any particular religion or church has never been part of Scots law, and that will be no different as a result of the bill. We will not intervene legally in the governance of religious organisations. That said, we have had extensive discussions with religious leaders, all of whom supported the principles of the bill and all of whom assured us that, in its practicalities, their religion would respect legal decisions on nullifications.” ¹⁵⁷

200. The Committee welcomes Part 2 of the Bill and the provision for jurisdictional rules applying in the sheriff courts in relation to declarators of nullity of marriage, as this will help remove barriers to access.

201. The Committee acknowledges that the Bill cannot make changes to religious and governance practices. However, the Committee calls on the Scottish Government to continue to engage with relevant religious authorities on the issue of nullification of forced marriages and to raise awareness of the Bill among all religious organisations and communities.

¹⁵⁶ Council of British Pakistanis (Scotland). Written submission to the Equal Opportunities Committee and Scottish Council of Jewish Communities. Written submission to the Equal Opportunities Committee.
Part 3


Subordinate legislation

203. The Parliament’s Standing Orders Rule 9.4A provides that, where an Executive Bill confers powers to make subordinate legislation, a Delegated Powers Memorandum (DPM) must be provided.

204. The Subordinate Legislation Committee (SLC) considered the DPM on 23 November and 7 December 2010 and a copy of its report is provided in Annexe B.

205. The Committee notes that whilst the SLC determined that it did not need to draw the attention of the Parliament to the delegated powers in sections 10(1), 11, 15(1) and 18(2), it did make a recommendation in relation to the power at section 3(7)(c).

206. The Subordinate Legislation Committee recommends that the power at section 3(7)(c), to specify a person, or a person falling within a description of persons, as a relevant third party, should be amended so that it is subject to a requirement on Ministers to consult the Lord President prior to making an order. The Committee agrees with this recommendation.

Crown Application

207. Section 17 of the Bill deals with situations where the Crown might breach a forced marriage protection order and be declared to have acted unlawfully.

208. It was suggested in evidence by John Fotheringham of the Law Society of Scotland that such a situation may arise where the immigration status of a victim of forced marriage makes the Crown’s actions in relation to an FMPO unlawful.158

209. In a written response on this point, the Lord Advocate told the Committee—

“In relation to the impact on the Crown, section 17 of the Bill protects the Crown from criminal liability if it were to breach a forced marriage protection order, but allows a public body to seek a declaration from the Court of Session that the Crown has acted unlawfully. I do not anticipate practical difficulties in the application of these provisions to the Crown Office and Procurator Fiscal Service.”159

210. This touched upon another issue raised during the Committee’s consideration of the Bill, which is that if a person’s marriage is deemed to be false, this may affect their eligibility to live in the UK. If a person is not eligible to stay in the UK, then they will have no recourse to public funds to apply for indefinite leave to remain.

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159 Lord Advocate. Letter to the Equal Opportunities Committee 16 December 2010.
211. Louise Johnson of Scottish Women’s Aid told the Committee that she was aware of instances whereby women, who have had to leave their partners before the end of the two year probationary period, did not have access to public funds to help fight their case. She hoped that an FMPO would assist a woman’s application to stay in the country with indefinite leave to remain as a result of domestic abuse.\textsuperscript{160}

212. Suzelle Dickson of the FMU was aware of such cases and agreed that if a forced marriage breaks down due to domestic violence, a person “could be eligible to apply under the domestic violence rules to get indefinite leave to remain in the UK”. She added that the UK Border Agency is looking for a long term solution to support people who come to the UK and whose marriage breaks down due to domestic violence, adding “we hope that we can ensure that forced marriage is very much part of that”.\textsuperscript{161}

213. The EHRC’s written submission called for consideration to be given to examining the interaction that immigration status will have on the treatment of an applicant following an FMPO being made—

“It is the Commission’s belief that individuals who have been forced into marriage should be treated sensitively and viewed in terms of victims of human rights abuse, rather than solely in terms of their immigration status.”\textsuperscript{162}

214. The Committee acknowledges that a situation may arise where the immigration status of a victim of a forced marriage makes the Crown’s actions in relation to an FMPO unlawful. The Committee notes the Lord Advocate’s response that section 17 protects the Crown from criminal liability if it were to breach an FMPO, but allows a public body to seek a declaration from the Court of Session that the Crown has acted unlawfully. It further notes that the Lord Advocate does not anticipate practical difficulties in the application of these provisions to the Crown Office and the Procurator Fiscal Service.

215. The Committee asks the Scottish Government to clarify the position in relation to the interaction that immigration status will have on the treatment of an applicant following an FMPO being made.

COMPATIBILITY WITH OTHER LEGISLATION

216. The Committee received evidence regarding the prevalence of forced marriage amongst children. The FMU told the Committee that it had dealt with a number of cases in which the victim had been 16, which is the legal minimum age

\textsuperscript{162} EHRC. Written submission to the Equal Opportunities Committee.
for getting married in Scotland. In 2009, 37.5% of cases assisted by the FMU involved minors (people under 18) and 16.5% involved under 16s.163

217. Both Shakti Women’s Aid and Hemat Gryffe Women’s Aid spoke of instances of children who had been forced to marry at 13 and 14 and then have children. Girijamba Polubothu of Shakti Women’s Aid provided an example of a particularly disturbing case of forced marriage which had involved an eight year old child—

“A few years ago, I dealt with a forced marriage case in which the adult daughter fled a forced marriage. As a result of that, the family took all three girls abroad and somehow blackmailed the young woman who had fled the forced marriage into getting married abroad. The parents then got the other two girls, who were under 13—one was aged eight; I cannot remember the other’s age—engaged to two of their cousins, to be married later. I do not know at what stage they got married, but they were at primary school here in Edinburgh when they got engaged.”164

218. Concerns were also raised by witnesses that the linkages between child protection proceedings under the Bill and the Children’s Hearing System were not as clear as they could be. The submission received from the Scottish Children’s Reporter referred to the Children Hearings (Scotland) Bill165 which had been amended at Stage 2 to include forced marriage as a specific ground for referral to a Children’s Hearing Panel—

“It is important for the necessary linkages between these two pieces of legislation to be made so that children who are either being forced into marriage themselves, or who may be at risk due to a parent or sibling being so forced, can be fully protected and so that there is no confusion over which legislation should apply in which circumstances.”166

219. The Committee discussed with the Minister for Housing and Communities, the need for the grounds of referral in the Children’s Hearings (Scotland) Act to be modified by a Scottish Statutory Instrument, because there is currently no definition of a forced marriage in that Act. The Minister sought to assure the Committee that this was in hand—

165 The submission was received while the Bill was still under scrutiny by the Scottish Parliament. The Children’s Hearing Scotland Bill was passed on 25 November 2010 and received Royal Assent on 6 January 2011. Section 67 of the Act states that grounds for referral to a children hearing panel will now include a child that “is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a marriage or civil partnership, or is, or it likely to become, a member of the same household of such a child.”
166 Scottish Children’s Reporter. Written submission to the Equal Opportunities Committee.
“Obviously, we have taken measures to clarify any consequences of the bill for any other legislation. The SSI to which you refer is already within our power in existing legislation.”

220. The Committee also sought assurances from the Minister about how a Child Protection Order and an FMPO would work together and how existing legislation regarding child protection would be compatible with the Bill. In response, he said that they should be complementary to each other—

“Let us take the example of the existing legislation on how children are treated in Scotland. The law is very clear that a person cannot be married if they are under 16 years of age. That applies to forced marriages in the same way that it applies to every other circumstance in Scotland. Similarly, a child protection order, irrespective of whether there is an issue about forced marriage in the family, will be pursued and implemented accordingly.”

221. The Committee accepts the assurances provided by the Minister that the Scottish Government will ensure that provisions in the Bill are compatible with the Children Hearings (Scotland) Act 2011 and other relevant legislation.

FINANCIAL MEMORANDUM

222. Rule 9.3.2 of Standing Orders requires a Financial Memorandum to be provided to accompany a Bill when it is introduced. The Financial Memorandum must “set out the best estimates of the administrative, compliance and other costs to which the provision of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

223. The Finance Committee considered the Financial Memorandum and agreed to undertake level 1 scrutiny, which involves sending a standard questionnaire to affected bodies. The Finance Committee sought written evidence on the Financial Memorandum but did not take oral evidence or publish a report. It received three written submission from: Orkney Islands Council; Scottish Court Service and the Scottish Legal Aid Board.

224. The Finance Committee wrote to the Equal Opportunities Committee on 8 December 2010 and a letter is provided at Annexe C.

FINAL RECOMMENDATION AND CONCLUSION

The Committee recommends that the Parliament agrees to the general principles of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill.

ANNEXE A: EXTRACTS FROM THE MINUTES OF THE EQUAL OPPORTUNITIES COMMITTEE

18th Meeting, 2010 (Session 3), Tuesday 26 October 2010

2. **Decision on taking business in private**: The Committee agreed to take item 4 in private.

4. **Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (in private)**: The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

21st Meeting, 2010 (Session 3), Tuesday 23 November 2010

**Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill**: The Committee took evidence on the Bill at Stage 1 from—

Louise Johnson, National Worker, Scottish Women's Aid;
Claire Platts, Senior Solicitor, Ethnic Minorities Law Centre;
Iain Livingstone, Assistant Chief Constable, Lothian and Borders Police, ACPOS;
John Fotheringham, Vice-Convener, Family Law Sub-Committee, The Law Society of Scotland;
Tanveer Parnez, Director of National Development, BEMIS;
Huma Awan, Racial Equality Officer, Council of British Pakistanis (Scotland).

23rd Meeting, 2010 (Session 3), Tuesday 7 December 2010

**Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill**: The Committee deferred evidence taking until a future meeting.

24th Meeting, 2010 (Session 3), Tuesday 14 December 2010

**Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill**: The Committee took evidence on the Bill at Stage 1 from—

Suzelle Dickson, Joint Head, Forced Marriage Unit, UK Ministry of Justice;
Girijamba Polubothu, Manager, Shakti Women’s Aid;
Smina Aktar, Director, AMINA Muslim Women’s Resource Centre;
Rajani Pandher, Chief Support Worker, Hemat Gryffe Women’s Aid;
Laura McCrum, Development Officer, Saheliya;
Alex Neil MSP, Minister for Housing and Communities;
Lesley Irving, Team Leader, Gender Equality and Violence Against Women;
Eileen Flanagan, Policy Manager, Gender Equality and Violence Against Women and;
John St Clair, Solicitor, Scottish Government.

1st Meeting, 2011 (Session 3) Tuesday 18 January 2011

1. Decision on taking business in private: The Committee decided to take items 2 and 3 in private; and to consider its draft report on the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill in private at future meetings.

2. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

2nd Meeting, 2011 (Session 3) Tuesday 25 January 2011

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (in private): The Committee agreed its draft Stage 1 report.
ANNEXE B: SUBORDINATE LEGISLATION COMMITTEE REPORT

Subordinate Legislation Committee

67th Report, 2010 (Session 3)

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 23 November and 7 December 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill at Stage 1. The Committee submits this report to the Equal Opportunities Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (“the Bill”) was introduced in the Parliament on 29 September 2010 by the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon MSP.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

4. Correspondence between the Committee and the Scottish Government is reproduced in the Annexe.

5. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in sections: 10(1), 11, 15(1) and 18(2).

169 Forced Marriages etc. (Scotland) Bill Delegated Powers Memorandum
Delegated powers provisions

Section 3(7)(c) - Power to specify a person, or a person falling within a description of persons, as a relevant third party

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

6. In addition to protected persons only “relevant third parties” have an automatic right to apply for a forced marriage protection order (“FMPO”). Other persons need to apply for the permission of the court before they are entitled to do so. Local authorities and the Lord Advocate are specified in the Bill as relevant third parties. Section 3(7)(c) enables the Scottish Ministers to specify a person, or person falling within a description of persons, as additional relevant third parties who would not need the court’s permission to apply for a FMPO.

7. The DPM advises that in the future it may be felt appropriate to specify representative voluntary sector organisations as relevant third parties. It is considered it would be preferable to be able to do so using subordinate legislation rather than awaiting primary legislation. The Committee accepts that some flexibility may be required as the system beds in. The DPM states that “since any specification made under this section would remove the discretion of the court to refuse to consider applications from third parties specified, it is thought appropriate that any such specification is subject to annulment.”.

8. The Committee considered that since restricting the right to apply for a FMPO is clearly considered a necessary part of the regime, alteration of that aspect of the regime should properly involve scrutiny by the Parliament as opposed to no scrutiny procedure at all.

9. The question is therefore whether negative procedure is sufficient as opposed to the higher level of scrutiny afforded by affirmative procedure. There is no assessment of the difference between the two in the DPM or as to whether the subject matter of the order is an issue which might have significant practical implications for the operation and/or effectiveness of the FMPO system.

10. The Committee therefore asked the Scottish Government for more information as to why negative procedure is considered the appropriate level of scrutiny before it considered whether it is content with this power.

11. The Government have provided a fuller explanation. Their response indicates that it is thought that the power to add additional third parties with automatic rights to apply for a FMPO would be used only rarely, that the police are perhaps the only candidate for specification and those parties which would be specified by Ministers would only be those to whom the court would be likely to grant permission.

12. The response differs from the DPM in terms of who are considered the most likely candidates as additional third parties - which suggests to the Committee that policy on this matter is still evolving. However, having considered the further
information provided, the Committee agrees that negative procedure would be sufficient scrutiny were the Parliament clear that the courts had been consulted on the proposed change.

13. **The Committee therefore accepts negative procedure but recommends that the Government amend the power so that it is subject to a requirement on Ministers to consult the Lord President prior to making an order.**

Section 11 - Guidance

14. Section 11 permits the Scottish Ministers to issue guidance about the effect of the Bill or forced marriage generally to persons they consider appropriate (other than a court or tribunal). The Committee did not consider that this guidance should take the form of subordinate legislation but sought the views of the Scottish Government on whether the guidance should be laid before the Parliament in the interests of transparency and so that the Parliament should be aware of its terms.

15. The Scottish Government considers that given the limited scope and effect of the guidance in this case, and since separate guidance may be issued from time to time for different purposes, it was not thought appropriate to require the guidance to be laid before the Parliament. While it is not a statutory requirement, as a matter of practice, the Scottish Government intends to submit a final draft of the first substantive guidance to the Equal Opportunities Committee for consideration prior to publication.

16. **The Committee is content with this response.**
Correspondence with the Scottish Government

In the letter the Scottish Government was asked for a fuller explanation as to why it has chosen negative rather than affirmative procedure in relation to the power under section 3(7) (c) and to explain whether it considers that guidance made under section 11 should be laid before the Scottish Parliament in the interests of transparency and in order that the Parliament is aware of its terms.

Section 3(7) (c) - Power to specify a person, or a person falling within a description of persons, as a relevant third party

Ministers consider it important to get the balance right in setting out who has an automatic right to apply for an order as opposed to requiring leave of the court. Those third parties having the automatic right are those who are likely to be granted leave by the court as a matter of course. Other third parties will still need to satisfy the court that it is appropriate for them to be allowed to apply, having regard to all the circumstances of the particular case.

The power in section 3(7)(c) to add to the list of third parties having the automatic right to apply is likely to be used only rarely and, in practice, it is envisaged that perhaps only the police would be a candidate. Any such proposed change will depend on how often a third party applies and whether they are invariably granted leave.

Since the proposed change may be non-controversial, it was not thought appropriate to require a debate on every occasion. Members will either agree or disagree with the proposal and, if they disagree, negative procedure will allow Members to force a debate as appropriate.

Section 11 – Guidance

Guidance may be provided under section 11 on any matter relating to forced marriage but the main focus will be to facilitate the implementation of the provisions in Part 1. There is a statutory obligation on those exercising public functions to have regard to it, but it was not thought appropriate to have it laid before Parliament.

The circumstances in which it may also be appropriate to require guidance to be laid before the Scottish Parliament will depend on its scope and effect. The Licensing (Scotland) Act 2005, for example, required the first set of draft guidance to Licensing Boards to be laid before, but also approved by resolution of, the Scottish Parliament.

Where the effect of the guidance is less far-reaching but still critical to the effective delivery of the relevant provisions, it may be appropriate to require a copy to be laid before Parliament after it is issued. See, for example, section 31 (duties to provide information) of the Public Services Reform (Scotland) Act 2010. In other cases, it is rare to require guidance to be laid before Parliament. See, for example,
section 113 (guidance on user focus) and section 114 (duty of cooperation) of the same Act.

Given the limited scope and effect of guidance under section 11, and the fact that separate guidance may be issued from time to time and for different purposes, it is not thought to be appropriate to require such guidance to be laid before the Scottish Parliament. However, Ministers would propose to submit a final draft of the first such substantive guidance to the Equal Opportunities Committee for consideration, once it has gone through the formal public consultation process, prior to its publication and wider dissemination.
Dear Margaret

Finance Committee – consideration of the Financial Memorandum of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

As you are aware, the Finance Committee examines the financial implications of all legislation, through the scrutiny of Financial Memoranda. The Committee agreed to adopt level one scrutiny in relation to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill. Applying this level of scrutiny means that the Committee does not take oral evidence or produce a report, but it does seek written evidence from affected organisations.

The Committee received three submissions on the FM, which are attached to this letter. If you have any questions about the Committee’s scrutiny of the FM, please contact the clerks to the Committee via the contact details above.

Yours sincerely

Andrew Welsh MSP,
Convener
**Submission from Orkney Islands Council**

We consider the Forced Marriage Etc (Protection and Jurisdiction) (Scotland) Bill will have no financial impact whatsoever.

Gareth Waterson  
Director of Finance and Housing

**Submission from the Scottish Court Service**

**Consultation**

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

   The Scottish Court Service did not participate in the consultation exercise. However, we have liaised with Scottish Government on the financial implications arising from the Bill.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

   Our views on the potential costs arising from the Bill are reflected in the Financial Memorandum.

3. Did you have sufficient time to contribute to the consultation exercise?

   Yes.

**Costs**

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

   The Financial Memorandum accurately reflects the financial implications for the Scottish Court Service.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
Provided that the increases in civil applications and criminal prosecutions are within the volumes projected in the Financial Memorandum, then we would expect that the Scottish Court Service would be in a position to absorb the additional work.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

We have no reason to doubt the projections made in the Financial Memorandum.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

We are unaware of any related wider policy initiative.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We are unaware of any further related costs.

Submission from the Scottish Legal Aid Board

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Board provided initial information on costs and also a written response to the consultation issued on behalf of the Equal Opportunities Committee.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes- it reflect the Board’s comments.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.
Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The potential costs have been accurately reflected.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Board is content to meet the costs.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes there are no problems with this aspect.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not applicable

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The Board does not envisage any costs beyond those detailed in its responses.
ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

The Committee took oral evidence from the witnesses listed below on the dates show. Some of these witnesses provided written evidence in advance of the meeting in question: some also provided supplementary written evidence afterwards.

21st Meeting, 2010 (Session 3), Tuesday 23 November 2010

WRITTEN EVIDENCE

ACPOS
BEMIS (Black and Ethnic Minorities Infrastructure in Scotland)
Council of British Pakistanis (Scotland)
The Law Society of Scotland
Scottish Women's Aid, Shakti Women's Aid and Hemat Gryffe Women's Aid – Joint Submission

ORAL EVIDENCE

Louise Johnson, National Worker, Scottish Women’s Aid;
Claire Platts, Senior Solicitor, Ethnic Minorities Law Centre;
Iain Livingstone, Assistant Chief Constable, Lothian and Borders Police, ACPOS;
John Fotheringham, Vice-Convener, Family Law Sub-Committee, The Law Society of Scotland;
Tanveer Parnez, Director of National Development, BEMIS;
Huma Awan, Racial Equality Officer, Council of British Pakistanis (Scotland).

24th Meeting, 2010 (Session 3), Tuesday 14 December 2010

WRITTEN EVIDENCE

Amina Muslim Women’s Resource Centre
Hemat Gryffe Women’s Aid
Shakti Women’s Aid

ORAL EVIDENCE

Suzelle Dickson, Joint Head, Forced Marriage Unit, UK Ministry of Justice;
Girijamba Polubothu, Manager, Shakti Women’s Aid;
Smina Akhtar, Director, Amina Muslim Women's Resource Centre;
Elaine McLaughlan, Outreach and Development Worker, Hemat Gryffe Women’s Aid;
Laura McCrum, Development Officer, Saheliya;
Alex Neil MSP, Minister for Housing and Communities;
Lesley Irving, Team Leader, Gender Equality and Violence Against Women; Eileen Flanagan, Policy Manager, Gender Equality and Violence Against Women and; John St Clair, Solicitor, Scottish Government.

SUPPLEMENTARY EVIDENCE

Saheliya
Letter from the Scottish Government
Letter from the Forced Marriage Unit, UK Government
Shakti Women’s Aid
1. ACPOS are committed to ensure the protection of those, within the communities we serve, who are vulnerable to, or affected by, forced marriage. We are also committed to the facilitation of effective action against perpetrators, in order that these persons can be held accountable through the criminal justice system. We therefore welcome the introduction of this Bill and the opportunity to provide the following comments:

2. ACPOS are supportive of the clear definitions included in the Bill; however, would suggest that consideration be given to strengthening the definition of “force” to include the physical aspect of coercion and abuse in addition to “threats or other psychological means”. Although the physical abuse of a person may be subject to criminal investigation and proceedings under specific crime or offence types, it is imperative that the legislation reinforces that physical violence will not be tolerated. The unambiguous language used in other areas of the Bill, for example in Section 2, Contents of Orders “to refrain from violent, threatening or intimidating conduct”, clearly emphasises the Governments no-nonsense approach to tackling violence against women and reflecting this message in the definition of force would be helpful.

3. ACPOS are supportive of the importance placed on the court considering the “health, safety and well-being of the protected person” when deciding whether to make an order. It should also be explicit that the rights and interests of that person must also be a significant component of the decision making process. We know that persons affected by Forced Marriage often have their liberty of movement constrained and fundamental rights withheld, for example, attending school or other educational establishment, attending a place of work, seeking medical advice or accessing support services. Often persons affected are unaware of their own rights and they may not make these considerations unprompted; they would therefore benefit from the court taking full cognisance of these issues.

4. ACPOS support the provision for application by a relevant third party. As stated within the ACPOS response to the previous consultation on the introduction of civil legislation for Forced Marriage, “Third party involvement can reduce the burden of responsibility on a victim and facilitate greater security for them. Third party involvement must however always be mindful of the best interests and wishes of the victim. Applications must be measured and proportionate”. The experience of our colleagues in ACPO illustrates that having the local authority as the relevant party underlines the critical importance of joint agency working in all areas of public protection.
5. ACPOS support the provision for the courts to make orders without application. The ability to introduce protection for persons, whether they are party to the proceedings or not, offers a further opportunity to maximise safety and security without compromising the best interests and rights of the person. As previously discussed, the cultural dynamics of forced marriage often prove to be a significant obstacle to the person(s) requiring protection. Enabling the court to make an order in these circumstances ensures that there is recognition of the importance of this legislation and the preventative and protective measures it can provide without hampering the due process of ongoing judicial matters.

6. ACPOS supports the capacity of the legislation to respond to the wide-ranging circumstances of incidents reported and the persons affected, by not restricting the period of time for which an order applies. When the court has fully considered an order application, it will be best placed to determine the most appropriate period an order requires to be effective. Likewise, the diverse nature of events and array of persons that may be involved in a report of forced marriage are accounted for in the provision for varying and recalling orders.

7. ACPOS supports the creation of the criminal offence of breaching an order; however, it is suggested that power of arrest should be explicit rather than silent within the legislation. In addition, clarity is required as to what notification framework will be in place to ensure that, where orders are granted, the relevant agencies are provided with that information.

8. ACPOS supports the creation and implementation of statutory guidance to ensure that there is an obvious and comprehensible framework on which procedures and practices can be developed. The responsibilities of individuals, organisations and agencies across the public, private and third sector must be unambiguous to facilitate an effective response, in both emergency and non-emergency situations.

9. ACPOS supports the simplification and minimisation of difficulty for persons accessing an action of declarator of nullity in the sheriff court that is presented by the jurisdictional rules within the Bill.

10. Overall, it is essential that the structure of the Bill supports the existing frameworks employed by those individuals, organisations and agencies that will be an integral part of the implementation of this legislation. Our experience thus far has directed that the spectrum of Public Protection i.e. Child Protection, Adult Support and Protection, Offender Management, Domestic Abuse and Sexual Crime, and the legislation and service provision relevant to these issues, are essential to providing an effective response to those affected by, and at risk of, forced marriage. Committed partnership arrangements will be key to enabling the successful management of the application and enforcement of orders granted under the terms of this legislation.
11. The experiences of our colleagues in ACPO, as detailed in the Ministry of Justice report “One year on”, that measures the impact of the introduction of civil Forced Marriage legislation, indicates that there has been limited success in creating confidence to use Forced Marriage legislation alongside established procedures and processes. There have also been issues around cultural sensitivity and family dynamics. Guidance, training and public awareness is key to the successful and consistent application of this legislation across Scotland.

12. In conclusion, ACPOS welcomes the introduction of this legislation and is dedicated to raising awareness and understanding of the nature and extent of Forced Marriage in Scotland. We are committed to work effectively with our partners to prevent and detect crime and provide protection and support for those affected by this intolerable practice.

13. I trust these comments are of assistance and look forward to further discussion.

Iain Livingstone
Assistant Chief Constable
Chair, Public Protection Portfolio Crime Business Area
19 November
EQUAL OPPORTUNITIES
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL
WRITTEN SUBMISSION FROM BEMIS

1. BEMIS (Black and Ethnic Minorities Infrastructure in Scotland) is the Ethnic Minorities led national umbrella organisation for the Ethnic Minority Voluntary Sector & the communities that this sector represents. As a strategic national infrastructure organisation, BEMIS aims to empower the diverse Ethnic Minority third sector. We are committed to promoting inclusion, democratic active citizenship, recognition of diversity, human rights education, and wider representation. Our vision is of a Scotland that is Equal, Inclusive, and Responsive: A society where people from the diverse communities are valued, treated with dignity and respect, have equal citizenship, opportunities and quality of life, and who actively participate in civic society.

2. BEMIS welcomes the opportunity to respond to the Equal Opportunities Committee on the general principles of the Forced Marriage (Protection and Jurisdiction) (Scotland) Bill. Throughout the following response, we will focus on matters significantly pertinent to BEMIS’ agenda and concerns in relation to equality and diversity.

WRITTEN EVIDENCE

3. Beginning from the definition of ‘forced marriage’ is a crucial step to approach this issue. In policy literature this is dealt with in a rather straightforward manner where the distinction between ‘forced marriage’ and ‘arranged marriage’ revolves around consent. This is a simplified approach to coerced and consensual marriage because it fails to acknowledge the complexities of the issue and the enormous pressures on individuals both to accept the marriage and to remain within it.

4. In order to fully understand the difference between consent and coercion it is vital to acknowledge and comprehend the several aspects of inequality as well as the social, historical, political and cultural contexts in which women live.

5. Studies show that many women – who have been coerced into marrying – actually do not identify themselves as being in a ‘forced marriage’. A number of responses were elicited from women in the context of focus groups by using the formula ‘pressurized to marry’. This allowed to record a variety of experiences of emotional and psychological pressures related to marriage. (‘Forced Marriage in the UK: Religious, cultural, economic or state violence?’ Critical Social Policy 2009:29).

6. This is a telling example of the complex and contradictory ways in which women exercise agency. Factors like control, pressure, persuasion, threat and force have to be understood in a context of gender inequalities and patriarchal structures. Within these constraints and despite various forms of subjugations, women’s ‘choice’ is a result of
their needs as well as of the expectations weighing upon them. “BME women’s experiences of coercion in matters of marriage are not coherent, explicit, identifiable and distinct from their experiences within other structures of inequality. Only by addressing these structures can there be a lasting solution to the problem of violence against women”. (‘Coercion, Consent and the Forced Marriage Debate in the UK’ Feminist Legal Studies (2009) 17:165 – 184).

7. The proposed bill fails to recognize the circumstances in which agency takes place; it ignores the several constraints that women face. In fact, there are multiple forms of oppression such as issues of gender compulsory heterosexuality, culture and poverty which are key to understand the complexities of forced marriage: it is in these conditions that forced marriage thrives. Forced marriage must be approached much more broadly: in relation to the communities in which it occurs, to the structural inequalities inherent in these.

8. It should also be noted that disadvantaged women, and women from diverse ethnic minorities, are marginalized by the legal discourse of the UK. “When cultural diversity is ignored or denied, there is a danger that policy will write in the practices and assumptions of majority groups as unquestioned norms. Members of minority groups may then find themselves less protected than others in their cultural or religious practices.” (‘UK initiatives on forced marriage: regulation, dialogue and exit’ - LSE research online 2004; Phillips A. and Dustin M.)

9. The proposed bill addresses very well the option of EXIT from forced marriage. Whilst we wholeheartedly welcome this opportunity, we wish to flag up that this is not the best way to address the issue. Research shows that not all women seek to leave abusive families or initiate criminal or civil proceedings against them. There are different ways to tackle forced marriage: REGULATION, EXIT, DIALOGUE.

10. The proposed bill seeks to act according to the first two ways. Regulating the practice of force marriage, whilst seeking to tackle significant abuses of human rights, it can also foster culture stereotyping and antagonism against some groups. ‘Intervening against what are deemed the unacceptable practices of a minority group can end up reinforcing ethno-cultural stereotypes, demonizing cultural minorities, encouraging racist attacks….When public authorities set out to ‘protect’ individuals from their cultural group, their actions have often been highly damaging.” (‘UK initiatives on forced marriage: regulation, dialogue and exit’ - LSE research online 2004; Phillips A. and Dustin M.). The current proposals are not empowering women, rather, they are reinforcing cultural divides. It is important to bear in mind the wide range of communities where forced marriage is practiced. These include also some ‘white’ communities. “A sole focus on South Asian communities detracts from the factors contributing to forced marriage in other communities, thus making those experiences invisible. The danger of gearing policy and practice towards specific communities and on age is a far from satisfactory response to tackling forced marriage.” (‘Forced Marriage in the UK: Religious, cultural, economic or state violence?’ Critical Social Policy 2009:29).
11. The proposed route to Exit, whilst effective for some, can be absolutely devastating for others. In fact, it leaves many people without a choice: often rejecting a partner entails being rejected by one’s family. This is a price too high to pay. There is also the financial aspect to consider. Many minoritised communities value interdependence: in joint family systems, duty and obligations are owed to other family members and this is deemed as ‘normal’. Dominant western practices – in which policies and practices are generated – ignore these social forms and value instead an individualistic culture. Thus, the option of EXIT has financial implications which are difficult to comprehend without bearing in mind cultural values. “Given the diversity in family structures between individualistic cultures and collectivist cultures and the way in which resources (financial and emotional) are used differently, and the fact that many young people (of all cultures) are returning to the family home, the notion of financial independence may be an impossibility for many young adults”. (‘Protecting Victims of Forced Marriage: Is Age a Protective Factor?’ Feminist Legal Studies (2009) 17:267 – 288).

12. Another option is Dialogue. This way of addressing forced marriage allows for a better engagement with the communities and for a more participatory role of the individuals involved. Indeed, rather than regulation and exit, policies should offer a wider range of responses to this issue. Examples could be

- Outreach services,
- Raising awareness and
- Developing Human Rights Education in schools and within the communities;
- Securing welfare services;
- Providing childcare structures;
- Providing refuge spaces in which multicultural approaches are adopted (Research shows that many EM women have experienced isolation and discrimination within these structures).


14. The option of dialogue is a long term approach. This will ultimately address the underlying power relations within the involved communities. In order to be successful, dialogue should aim at achieving a cultural shift: young individuals refusing a forced marriage would not have to feel the burden of familial disapproval; and families would not feel the unbearable shame if their children refuse the imposed partner. All this requires an inter-generational social change, but is the one measure which tackles more effectively forced marriage.
CONCLUSIONS

15. BEMIS points out that the proposed intervention by the Equal Opportunities Committee, whilst valid in some respect, it fails to address oppression faced by women. It insists on approaching ‘forced marriages’ in relation to individual choice. This approach is bound to fail because it ignores the fact that women forced into marriage inhabit families and communities where the notion of choice is meaningless. Individuals coerced in forced marriage must not be seen as helpless victims to be rescued and offered an EXIT option. Public authorities should approach forced marriage by initiating a long-term dialogue with the affected communities and by ensuring appropriate provisions.


BEMIS
24 November 2010
EQUAL OPPORTUNITIES
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL
WRITTEN SUBMISSION FROM THE COUNCIL OF BRITISH PAKISTANIS
(Scotland)

1. Inaugurated in 1990, the Council of British Pakistanis (Scotland), CBP(S), is recognised for its work with ethnic minority communities and its tireless efforts to pursue policies that will make a positive impact on race relations. In this context over the years we have assisted members from **44 different nationalities in as many areas**, ranging from simple advice to complex tax problems where race or culture has been an issue. Our work on racial equality has required us to work with solicitors, tribunals, local authorities and the Scottish Government as well as various departments of the Westminster Government in order to achieve results.

2. In 2001 the CBP(S) launched the Incompatible Marriages Project in Scotland which aimed to support victims of Forced and Incompatible Marriages as well as carry out an education programme to highlight the issue. The three year project dealt with over 300 cases and found that almost 40% of Forced Marriage cases involved male victims. It also found that a vast majority of Forced Marriages were conducted overseas.

3. The CBP(S) represents the views of its members and the communities it supports and after wide consultation with them we welcome the introduction of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. We are positive that this Bill will help to address the issue effectively and send a strong message to the perpetrators. However we feel that the following points need to be considered in order to ensure that the Bill is successful in eliminating this totally intolerable practice.

4. For any legislation to be successful it needs to be accompanied by a wide education programme for the concerned communities and funding needs to be made available to enable this as well as provide support to victims.

5. Training is required for key individuals who are likely to be the first point of contact for victims as well as enabling such individuals to identify that there is a forced marriage involved. Such individuals would include teachers, police officers, health workers or other support workers.

6. Consideration needs to be given to nullifying forced marriages and whether a civil court’s decision would apply to religious marriages. There would be little benefit if a person was not free to marry under religious law having undergone the process of nullifying their marriage in the courts.

7. As most forced marriages are conducted abroad the Bill would need to consider this important factor if legislation in Scotland is to be effective and real help is to be provided to victims and potential victims.

British Council of Pakistanis
22 November 2010
Incompatible Marriages Project (IMP)

Three Year Report
April 2001-March 2004

&

Forced Marriages Conference Report
24th March 2004

By

The Council of British Pakistanis (Scotland), CBP(S)
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‘I thought we were just going on holiday...’
FOREWORD

The Council of British Pakistanis (Scotland) has been in existence for 13 years and in that time has made a pivotal contribution in Scotland in the fields of race relations and immigration. It has never been slow to engage in difficult and controversial issues affecting law and society.

The question of forced marriages has come before the Scottish Courts, and in some cases has resulted in the marriage being annulled. In April 2001 the CBP(S), with the support of the Community Fund, decided to examine some of the preconceptions and lack of understanding surrounding perfectly acceptable Arranged Marriages and the controversies resulting from unacceptable Forced Marriages. Their research is certainly pioneering and the results and conclusions are reflected in this Report. It is clear from the Report that the CBP(S) has, through the Incompatible Marriages Project (IMP), shed new light on the understanding required in dealing with Forced marriages. Reading through this Report it is clear that the CBP(S) has a continuing role in developing this important area of social research. The research also identifies the need for the issues to be considered and developed within a mainstream context. It is equally convincing that voluntary and statutory agencies, including local authorities and the Scottish Executive, will recognise the contribution that they can make in this area.

From the quality of the research and its analysis, it is satisfying to see that the Community Fund project was right in supporting this work. Suffice to say that the CBP(S) deserve support from other external agencies because they have led the field in this challenging and dynamic area and they are well placed to advise, where appropriate, the direction of this important social issue. It is beyond doubt that the CBP(S) will be able to further develop this work within the context of a fuller and more detailed research through ongoing work.

In reading this Report it is obvious that the CBP(S) through the IMP project has made a valuable contribution to many who have had to suffer the untold misery that arises from Forced marriages. This Report speaks out for those who have had to suffer in silence.

I commend this Report to others and I congratulate the CBP(S) for their efforts in making a significant contribution in this important legal and social debate.

Raj Jandoo, LLB, PhD, D.F.M., DipLP
Advocate
Edinburgh
On behalf of the Council of British Pakistanis (Scotland) I have much pleasure in presenting this report on the Incompatible Marriages Project (IMP) which includes Forced Marriages. This study is the first of its kind in Scotland. It has been a very sensitive and difficult area of work in the race relations context and most organisations have been unable or unwilling to tackle this issue. This Council, with a grassroots base particularly within ethnic minority communities and its leadership, decided that it was important to bring the issue into the open no matter what the opposition. We present the report based on 3 years of work with some emotional and real life phrases and we hope that this area of work, with our assistance, would be developed by the voluntary and statutory sector.

The IMP report launched at the Forced Marriages Conference on 24/03/04 generated a great deal of TV, Radio and Print Media coverage. At the Conference, the report of which commences on page 13, it was evident that there was little work done on this issue in Scotland and indeed the UK. The local authorities, particularly the City of Edinburgh Council, whilst had done a great deal of work on domestic violence against women had done virtually nothing on Forced and Incompatible Marriages. The Conference concluded that it was a serious and growing problem which needed to be tackled urgently. The CBP(S) appreciates the support at the Conference for its work in this area.

It remains for me to acknowledge that without the dedication and skill of present and past Project Workers it would not have been possible to conclude this Project. The support to IMP from the Executive Committee Members has been invaluable and I am indebted to them for that. As much of the work has had an immigration angle, our excellent and mutually beneficial working relationship with UKvisas, particularly British High Commission in Islamabad, has paid dividends. Long may this continue. We also worked closely with the Community Liaison Unit of the Foreign and Commonwealth Office. The unstinting support from CBP in Birmingham and particularly its Chairperson, Mr Qayyum Chaudhry, on all aspects of our work is warmly acknowledged.

We are most grateful to Community Fund for funding the IMP and to Lloyds TSB Foundation for assisting the precursor study on which IMP is based.

The core work of this Council for this period and beyond has been funded by ScottishPower, Bank of Scotland, BT Scotland, and Clydesdale Bank. Without their help and especially that of ScottishPower, which has also tackled the issue of race equality in employment and service provision in partnership with us, the work of IMP would not have been possible.

In concluding the remarks I want to emphasise that we feel privileged that so many victims of Forced and Incompatible Marriages have confided in us and that as a result their lives have become more tolerable. We will continue to deal with the issue in the most appropriate manner with complete confidentiality and in the victims’ best interest.

Mr Mohammed Akram JP
President
30th March 2004
Introduction

Arranged Marriages are a central and integral part of Asian culture and have been practiced for centuries throughout the world and not just south Asia. They are a perfectly acceptable form of introducing two individuals who may then decide to marry. However problems arise when this concept is misused and consent is not sought from one or both of the prospective partners and they are forced to marry. A Forced Marriage comes into being when a couple is coerced into the marriage. Such marriages are often the result of a family reaction to what may be seen as inappropriate behaviour on the part of the child or an attempt to preserve their cultural identity in the face of perceived alien culture. Difficulties also arise when marriages are entered into without considering the compatibility of the couple. Important factors such as cultural background, education and even aspirations of the individual are overlooked. The serious error of assuming that what worked for the parents will also work for their children, especially in the Scottish context, can in many cases lead to incompatible relationships. An Incompatible Marriage can result from the outset or the marriage becoming strained and incompatible after a period of time due to the expanding cultural gap between the couple. These three categories have been the basis of the Project.

The need for a project like The Incompatible Marriages Project (IMP) was highlighted by the work done under the Reluctant Spouses Rehabilitation Project by The Council of British Pakistanis (Scotland) CBP(S), funded by Lloyds TSB Foundation for two years. Through this project it became very clear that there were limited services for people in Scottish Asian Forced Marriages. Many organisations were not geared towards understanding Asian customs and traditions and therefore it was imperative for the CBP(S) to provide a service that would be in the interests of individuals disadvantaged by their social circumstances.

The prime aim of the IMP was to prevent reluctant spouses from entering into doomed marriages in the first place. Services provided under the umbrella of the Project include primarily giving pre-marital advice and assistance to the UK spouse who is identified at the time of sponsoring his/her spouse from abroad. In other cases intensive one-to-one counselling is provided to couples that have become estranged through the passage of time; which may involve exploring the possibility of reconciliation. Further involvement of police, social work department, solicitors, benefits agencies, courts, local authorities and other voluntary and race relations organisations and ethnic minority communities is continually practiced. The Project provides guidance to the worried prospective spouses and their families as well as supporting those already caught up in Forced and Incompatible Marriages.

Since its inception in April 2001, the IMP has been carrying out support and advocacy work for victims and survivors of Forced and Incompatible Marriages. It has gained widespread respect. The demand for this service has been tremendous, this particularly so after the Project’s official launch in November 2001 where senior officials from the Forced Marriages Unit of the Foreign and Commonwealth Office, UKvisas, Lothian and Borders Police and the City of Edinburgh Council welcomed the Project.
The Work of IMP

The two Project Workers have extended their support and guidance on issues of immigration, housing, benefits, and matters of a legal nature as well as provision of psychological support. All attempts are made to focus on reconciliation and rehabilitation of the couples, where conflicts can be resolved by mediation of independent advisors. The Project aimed to strengthen and reinforce the institution of marriage and achieved this through a wide education programme to raise awareness among parents and extended families and encourage them to consider the social and emotional needs as well as aspirations of their children when proposing such marriages.

In the last 3 years over 300 individuals have benefited from the Project directly. Clients have used the offices as a drop in centre for counselling and mediation. The IMP has provided advice and support on pre-marriage as well as re-marriage issues to individuals and their families. Victims of Forced and Incompatible Marriages have had a direct input into the Project leading to the creation of a ‘user panel’ which met regularly to discuss issues arising from their experiences and assist in certain aspects of project work. The panel has also had an active role in publicising the Project.

The IMP has worked with over 50 statutory and voluntary organisations throughout Scotland in order to increase the understanding of the issue of Forced and Incompatible Marriages. This has also helped to direct victims to appropriate service providers. Presentations and discussion groups have been held at the centres to raise awareness amongst the concerned communities on the issue. A close working relationship has been established with the Scottish Police Forces, especially Lothian and Borders Police, through the provision of training to officers and has helped to highlight important cultural factors that need to be addressed when an officer attends a domestic issue involving a Forced Marriage. The IMP was engaged in the first Scottish Police Conference on Dealing with Cases of Forced Marriages. This was a joint venture with the Police and was sponsored by the Foreign and Commonwealth Office and supported by the Association of Chief Police Officers in Scotland Race and Community Relations Standing Committee. At this Conference guidelines for officers dealing with Forced Marriage victims were launched. The work of IMP was welcomed by the delegates and reinforced the importance of a partnership approach. The IMP also provided a startling view of a victim by involving a member of the user-panel to narrate her story. The victim’s perspective helped to inspire agencies to focus on the long term effects of a Forced Marriage on victims and survivors.

Particular emphasis has been placed upon young victims of Forced Marriages. Three Edinburgh schools were contacted in this regard and over 150 pupils have been addressed. Religious Centres have also been contacted in order to urge community leaders to raise awareness of the unacceptability of Forced and Incompatible Marriages. Assistance has also been sought from them regarding individual clients seeking Islamic marriages and divorces. Local ministers have also assisted in resolving disputes of a religious nature between parties.

In order to further raise awareness on the issue of Forced and Incompatible Marriages the IMP has embarked upon a unique education project in collaboration with Community Development Theatre, Queen Margaret University College. The project is supported by a consultation group comprising of representatives from multicultural organisations based
in Edinburgh. Survivors of Forced and Incompatible Marriages as well as others who may have experienced oppression in relationships are taking part in this drama project. The participants have to date drafted their own script and are attending lectures on various forms of theatre to equip them with performance skills necessary for this piece of work. Funding from The Scottish Arts Council and Awards For All has been secured for this project. It is envisaged that the first performance will take place in July 2004.

Through the work of IMP it was highlighted that a website which provided useful advice to individuals who were unable to come to the offices should be created. The website www.incompatiblemarriages.co.uk, gives a background into Arranged Marriages and the cultural complexities involved in Forced and Incompatible Marriages. The website also provides useful links to the Foreign and Commonwealth Office, Home Office and The City of Edinburgh Council.

The IMP in the last 3 years has provided a lifeline to many who otherwise would have nowhere to turn and it is hoped that the Project will be successful in engaging central government including the Scottish Executive, local authorities, the legal profession, the judiciary, ethnic minority organisations, and other voluntary and religious agencies to engage in a wider collective effort to address the issue of Forced and Incompatible Marriages.
Findings and Statistical Analysis

The IMP has directly benefited over 300 individuals in the last 3 years. Work has identified trends that need to be considered when providing services to individuals as well as targeting certain sections within communities when raising awareness on Forced and Incompatible Marriages. The following charts provide a breakdown of the figures collected over the last three years.

![Forced and Incompatible Marriages](image)

The figures above indicate that the incidence of Forced Marriages is twice as much as was initially estimated by the Project. Work has also pointed out that almost 80% of the clients have had problems in an incompatibly arranged marriage.

![Male/Female Ratio](image)

The work of IMP has highlighted the plight of male victims who have been to a great extent ignored by most service providers. The issue of Forced and Incompatible Marriages is widely seen as a female issue; however the figures shown above clearly show that this is not the case. This imbalance needs to be redressed.
The incidence of abuse in forced or incompatible relationships has been calculated based on both mental and physical abuse. These figures also indicate that there is a need for service providers to recognise that such cases may appear as simple marital problems however may conceal serious abuse issues which will need to be addressed.

The figures above clearly show that the incidence of abuse in Forced Marriages is twice as much as in other Incompatible Marriage cases. This is a serious factor which needs to be considered by all service providers when dealing with cases of Forced Marriage. Victims in such cases often face abuse not only from the partner but also from their own parents initially and then from their in-laws who feel that the victim is to blame for not being happy in the relationship. In other cases the individual who has been forced to marry can become the abuser as they see their spouse as the cause of all their difficulties.

An important aspect in many of the cases dealt by IMP is that of immigration status. In 88% of the cases dealt by IMP one partner was from abroad, usually from the parents’ country of origin. The immigration status is then used by the UK spouse to control the partner. Often passports are confiscated and applications not made to the Home Office for leave to remain in the UK in order to keep the spouse dependent and less likely to leave the situation for fear of removal to the country of origin.
The chart above shows the age of victims of Forced Marriages. These figures suggest that teenagers are more likely to face Forced Marriage issues and thus highlighting the need for greater work with youth in raising awareness. This figure also emphasises the need to educate parents on the unacceptability of forcing someone into marriage both on religious and humanitarian grounds.

Since April 2001 almost 85% of the IMP clients have been from Edinburgh, 9% from Glasgow and the rest of Scotland and 6% from cities in England. This highlights the intensive work carried out in Edinburgh and also the scope for developing work in other areas in Scotland.

The breakdown of clients dealt by this Project into ethnic origin is shown below.

Having worked with over 300 beneficiaries it has become clear that each case has its own unique situation and set of circumstances. It has been important in this Project not to stereotype or compartmentalise cases and deal with each person as an individual with their own distinctive issues. To carry out this work effectively and in a sensitive manner it is crucial to have sound knowledge of the religious and cultural background of the individual as well as value the importance of client confidentiality.
Conclusions

The work of IMP over the last 3 years leads us to the following conclusions:

1. Forced and Incompatible Marriages is a serious and growing issue which needs to be tackled head on. It is estimated that 50% of the newly married in Scotland, where one party is from abroad, fall into this category.

2. For the record in almost 90% of the cases dealt with by IMP one party was from abroad.

3. Unless this issue is dealt with effectively there will be serious flaws in cultural identity which will have a negative impact on good race relations.

4. Services for victims in this area are very limited.

5. The plight of male victims is almost ignored.

6. Broader education, especially amongst community and religious leaders from ethnic minority communities as well as parents and extended family members, is essential to combat this problem.

7. Greater awareness amongst statutory and voluntary sectors especially Social Work and Education Departments is essential.

8. The knowledge on this issue of the Scottish Legal profession and Judiciary is meager. This needs to be addressed.

9. Family Mediation and Relate need to give this area much greater priority.

10. Victims need to be encouraged to make use of all the available facilities.

11. The role of ethnic minority organisations in this area remains critical.

Recommendations

1. Statutory organisations in the Scottish context, particularly the Scottish Executive and local authorities need to give this issue much higher priority within their own framework.

2. Family Mediation and Relate need to develop and implement distinct policies on the subject of Forced and Incompatible Marriages as at present they are substantially neglecting the needs of ethnic minority communities.

3. The continuous catalytic and pivotal role of ethnic minority voluntary sector is essential. Therefore ethnic minority organisations, including CBP(S), need to be properly supported and funded by the Scottish Executive, local authorities as well as the charitable foundations and private sector.

4. As most cases had an immigration angle, closer involvement with the UK immigration service, particularly UKvisas and its appropriate posts abroad, is essential. As this recommendation is multi-faceted and complex operationally it will be developed further with appropriate personnel.
Case Studies

FORCED MARRIAGE
A.K was 16 when she was taken to Pakistan on holiday. Both her parents pressurised her to get married to her first cousin. She was told that they knew what was best for her and that she should not bring shame to the family by refusing. She agreed as she did not understand what marriage really meant. After the marriage her husband was refused entry to the UK based on the ‘primary purpose rule’. Her parents then convinced her to live with her partner in Pakistan as man and wife in order to show the immigration authorities that they were genuinely married. Her in laws put pressure on her to conceive in the hope that this would aid her husband’s entry clearance application. Her husband forced himself upon her a number of times to achieve this. A.K became very ill and had to return to the UK where she discovered that she was pregnant. She had a very complicated delivery and soon after suffered from post natal depression. Her husband joined her in the UK but was unable to provide her the emotional support she needed. He did not understand her needs and did not try to find out. He left home leaving her to deal with her problems on her own and bring up her child. She strongly feels that her husband used her to obtain entry into the UK and once he had his indefinite leave to remain he saw no reason to stay with her.

Advice and Assistance
A.K faced many difficulties as a single mother but has worked hard to overcome this and has moved on with her life. The IMP helped her to come to terms with being a single parent as well as assist her in seeking legal and financial advice on various matters. The couple have been separated for almost 2 years and her husband has raised divorce proceedings and is seeking contact with the child. In the last two years he has shown no interest in meeting his child and A.K feels this is just another method of causing her stress. She seeks an Islamic divorce and this Council is assisting her to obtain this.

The IMP continues to assist the above in child contact and divorce issues.

INCOMPATIBLE MARRIAGE
S.A was married to a British citizen abroad. Their marriage was arranged by the families and both parties consented to it. Soon after his arrival in the UK the couple developed problems. The couple had nothing in common and were unable to communicate with each other. His movements were restricted by his spouse and in laws and his documents were confiscated. He was stopped from seeking employment and forced to help in the family business in England without any pay. Nine months after his arrival he was told to leave the house. S.A found accommodation with relatives in Edinburgh.

Advice and Assistance
S.A came to the office with his uncle and wanted to find out what options were open to him. He did want to reconcile with his wife but said that her brothers did not allow him to speak to her. He asked this office to attempt to mediate between the two parties. This was done with the assistance of CBP head office in Birmingham however his spouse refused to discuss anything.

S.A feels that his return to his country of origin will bring shame on his family and is therefore working to maintain himself in the UK. This office is currently helping him to put together his application to the Home Office for indefinite leave to remain in the UK as well as assisting him in divorce issues.
Forced Marriages Conference Report
24th March 2004

The three year IMP report was launched at the Conference on Wednesday 24th March 2004 which included eminent speakers from the Police, Foreign and Commonwealth Office, the City of Edinburgh Council, the Community as well as two survivors of Forced Marriage. It was attended by over 65 people, approximately half male and half female, representing the Scottish Police Forces, Procurator Fiscal, the Scottish Executive, Local Authorities, The Legal Profession, Immigration Service, Ethnic Minority Communities-including Religious Leaders, the Voluntary Sector and people with a special interest in this area. There was a fair representation of young people.

Mr Qayyum Chaudhry, Chair of CBP in Birmingham welcomed everyone to the Conference and explained that Mr Mohammed Akram, President of CBP(S), would be chairing the Conference. He said that he was proud of the initiative that had been taken to tackle such a sensitive issue. The CBP had been in operation for 20 years and works closely with its sister organisation in Scotland. The Report was distributed at the outset.

Mr Akram acknowledged the support of the CBP in Birmingham and introduced each of the speakers. He then asked Huma Awan, Senior Project Worker and Sadaf Aziz, Project Worker to present the IMP report.

The mains points covered by the Project Workers were the difference between perfectly acceptable Arranged Marriages and totally unacceptable Forced and Incompatible Marriages (hereafter called FIM) and the work carried out with the ethnic minority community, religious leaders, youngsters and the voluntary and statutory sectors. The statistics collected over the duration of IMP were discussed and important conclusions explained. Huma finished by stating that FIM could not be justified on any grounds and that organisations had to take a proactive role in preventing such marriages.

Two survivors of Forced Marriage then spoke about their experiences. Navida explained how she had been taken abroad on holiday and discovered that her parents had planned her marriage. She talked of her isolation and loss of faith in her parents and gave a very moving and vivid description of the abuse and intimidation she had suffered. It had been a physical and emotional battle but she knew she had to get back to the UK which she eventually did and decided to move away from her family. She then talked about her work on a drama project with CBP(S) and Queen Margaret University College which was based on Forced Marriage and oppression in relationships. A script had been drafted by the participants and they were attending lectures and workshops. To her this was a great opportunity to educate parents and children on the pain and suffering of victims. The second survivor, who preferred to remain anonymous, explained how she had also been taken abroad and forced to marry. However she had a child from this marriage and explained how her decision to leave the marriage had led to her being ostracised from the community. She emphasised the need for the prevention of such marriages through education and the central role of CBP(S) in her case and others. The Chair thanked both survivors for sharing very painful and personal experiences of their lives.

Ellan Kelly, Equalities Manager of the Equalities Unit of the City of Edinburgh Council started by explaining that the issue of FIM was an intergenerational issue which could not be addressed by one local authority. She gave credit to the IMP for dealing with such an
issue and explained that the work of the City of Edinburgh Council focused mainly on domestic violence. At present the City of Edinburgh Council has no figures which look at cases of FIM within their statistics on domestic violence or even on homelessness. The City of Edinburgh Council ensured that its staff, the organisations it funded and its contractors followed race relations requirements. She said that there was need for an education programme and as this was a national issue the Scottish Executive had a role to play.

The Chair added that the Scottish Executive had been invited to speak but was unable to do so. A member of the audience from the Justice Department agreed that this was a sensitive and serious issue and that the Scottish Executive was looking at how this could be addressed. At this stage the Chair mentioned the letter from Lord Cullen, President of the Court of Session Scotland, in which the Lord President had said that whilst it was inappropriate for him or a member of the judiciary to speak at the Conference he had volunteered Lady Smith, a senior judge, to meet with CBP(S) and other interested parties to look at the work done by judges in cases of child abduction, some of which arise in the context of Forced Marriages.

During questions the Chair highlighted that FIM were not just an abuse issue and there were many other aspects to such cases including reconciliation. It was important not to confuse the two issues as abuse formed only part of the whole problem in FIM. All of the work by the City of Edinburgh Council focused on domestic violence and no work at present was being done on FIM. He added that at present no organisations including Shakti and NKS dealt with the issue of FIM and particularly the plight of the male victim. When questioned by a solicitor from the audience on how firms could do more to help, he said that it was important that solicitors were able to provide a one stop service which assisted on immigration, marital issues and child custody. This would be developed appropriately.

In introducing David Grahame, Head of the Community Liaison Unit of the Foreign and Commonwealth Office, the Chair stated that his predecessor, David Burton, had been at the Launch of IMP in November 2001. He covered 3 main points:

- The work of his Unit
- The significant points of the IMP report
- The way forward

He stated that the Unit had been set up 3 years ago to stop Forced Marriages. Over 250 cases had been dealt with including 50 emergency repatriations in the last year. The Unit dealt with cases from across the world, however 60% were from Pakistan. They worked with the British High Commissions and Embassies abroad who had a role to play when processing applications from spouses of Forced Marriage victims. There was still more that could be done and the Unit was open to all suggestions. The Unit had also issued guidelines for police officers in dealing with Forced Marriages and was currently arranging to launch guidelines for social workers. He said that he was heartened by the work of IMP, under the auspices of CBP(S), and felt that the key areas of the report included the plight of the male victim, the issue of serious abuse and the age of victims of Forced Marriage. He said that the way forward was to establish networks with NGO’s and others to develop an education programme.

In introducing Paddy Tomkins, the Chief Constable of Lothian and Borders Police, the Chair acknowledged that his Police Force was the first, in the early 80’s, to keep a separate record of racial incidences. Mr Paddy Tomkins was regarded as a ‘friend’ by
ethnic minority communities and had their full support in all aspects of his work including that of combating terrorism. The Chief Constable gave the police perspective on FIM. He said he was the Chair of the Diversity Standing Committee for Scotland. He covered the myths surrounding abuse and highlighted the distinction between an Arranged and Forced Marriage and talked about the issues facing victims and the difficult decisions that often had to be made. He spoke of the guidelines for police officers that had been launched at the Scottish Police College and of the involvement of IMP. The training package had been developed in collaboration with IMP and Shakti for officers. He explained that by building links with colleagues abroad, the police would be able to transcend jurisdiction. He concluded by recognising that FIM was a complex issue which needed to be faced directly. He was encouraged by the debate and was confident that the police would play its part in the joint commitment to make progress on this issue. A member of the audience asked whether it was worth making Forced Marriage illegal. The Chief Constable thought that this would have to be considered very carefully as the fear of imprisoning parents may stop victims coming forward. A great deal of discussion took place around the ‘abuse’ of victims and the role of the Police in bringing changes. Once individuals had been charged by the police and Procurator Fiscal this could not be rescinded. There was concern that in the context of Forced Marriages a great deal of sensitivity was necessary and charging individuals was not necessarily the right answer. Each case had to be dealt with on its merit.

Rashpal Nottay, Ethnic Minority Project Coordinator at the Royal Edinburgh Hospital and a senior member of CBP(S) Executive Committee, covered the incidence of mental health amongst south Asians and how this involved marital issues including FIM. She spoke of the stigmatisation of mental health and issues of confidentiality. A great deal of work had to be done on this issue and an education programme developed that was based on experiences.

Throughout the conference the audience asked questions and made comments. The question of repatriation from abroad and child abduction was raised and the panel members explained that the British High Commissions and Embassies were active on this issue. The Chair added that this was also a question for the Scottish Courts and a meeting with Lady Smith would take this issue forward. It was stated that British Asians born in the UK had a unique identity and it was important for parents and children to work together to find a balance. A suggestion was also made to train teachers on how to tackle FIM issues. It was said that this was only the beginning and that it was the responsibility of everyone present to take this message back and continue this work and take practical action. It was emphasised that education was the key and that community leaders and parents had to be taken on board. Many members of the audience stated that it was important for this work to be taken forward as a priority.

In concluding the Conference Mr Qayyum Chaudhry congratulated CBP(S) on organising a thought provoking conference. He said that the interest of the audience highlighted the seriousness of the issue. The findings of the IMP report needed to be addressed as the issue would not go away unless it was tackled with the involvement of communities and that one could not ignore the circumstances and environment that one lived in. He thanked the two survivors for their brave contribution and each of the other speakers. He said that it was important for the audience to take this message forward. The Conference closed with a measure of success.

The main conclusions reached at the Forced Marriages Conference were:
The clear distinction between perfectly acceptable Arranged Marriages and unacceptable FIM needs to be continually stressed. 

FIM were a serious and growing issue and very little work was done on this throughout Scotland and indeed the UK.

A broad programme of education on the issues was the key to resolving the problem.

A great deal of further work was to be done with the ethnic minority community leadership and the communities at large and that organisations like CBP(S) had an immediate and long term role in this.

Establish dialogue with the Scottish Executive and local authorities to take this work forward. It was primarily a social work and education issue. The COSLA had a central role in this.

Work with Foreign and Commonwealth Office to develop programmes to raise awareness on the issue.

Work with the UK immigration services and in particular UKvisas must be given high priority.

The importance of developing an action plan to work with young victims of Forced Marriages.

Recognising that this was an issue that concerned males too and the need for services for them.

The need for voluntary and statutory organisations to work together to address this issue.

Work with Scottish courts to be developed.

Scottish Police Forces, the Lord Advocate’s Office and the Procurator Fiscal services need to develop their policies further in this sensitive but complex area. The Lothian and Borders Police can lead the way based on their firm grasp of the situation already.

More awareness of the issue amongst the legal profession is highly desirable and more firms of solicitors need to develop an integrated approach.

The mental health of victims of FIM requires further examination.

30th March 2004

'I was betrayed by my parents
and suffered a lot of emotional abuse'
Summary of the Work of CBP(S)

Inaugurated in December 1990, the Council of British Pakistanis (Scotland), CBP(S), covers the whole of Scotland. It is a registered charitable voluntary organisation through its Head Office in Birmingham, although it operates autonomously. Since its inception it has seen its due role as providing services to individuals from ethnic minority communities and to pursue policies arising there from which are conducive to the promotion of good race relations. In this context over the years we have assisted members from 44 different nationalities in as many areas, ranging from simple advice to complex tax problems where race or culture has been an issue. In fact, a lot of time is spent on legally oriented matters which include work with solicitors, employment and medical tribunals, racial discrimination and matters pertaining to local authorities and Scottish Government as well as various departments of the Westminster Government. Other areas have involved social work type cases mainly concerned with cultural and language issues as well as benefit cases, health and consumer issues as well as education.

At policy level the CBP(S) was instrumental in bringing the Immigration Appeals Tribunal to sit in Scotland in 1997. We have worked closely with the police and local authorities as employers and service providers. A number of the issues have concerned the Scottish Legal Aid Board, Scottish legal profession and the Judiciary. We have particularly worked closely with financial institutions, utilities such as ScottishPower and have had input into many civil service departments on race awareness. In education, it is worth noting that we played a pivotal role in implementing Urdu as a modern language at exam level in Scottish schools through the Scottish Qualifications Agency.

Our work with UKvisas and the British High Commission Visa Section in Islamabad and other posts in Pakistan has been very constructive in building a strong working relationship. We also represent the Council on UKvisas User Panel.

Through the work of the CBP(S) it became very clear that the question of Forced Marriages was a key but neglected issue. Therefore from April 2001 the CBP(S) has been running a three year Incompatible Marriages Project funded by Community Fund on this issue. This project was officially launched on 14th November 2001 by senior officials from UKvisas, Lothian & Borders Police and the Forced Marriages Unit of the Foreign and Commonwealth Office. The attendance was spectacular and in the evening of the same day we had the 10th anniversary celebratory dinner. At basic level we carry out a broad programme of education in this regard highlighting the distinction between greatly cherished Arranged Marriages and unwelcome Forced Marriages. Individual victims are the key beneficiaries and a programme of education at every level is essential. The Final report of the Project was launched on 24th March 2004.

As the world and Britain enter the most turbulent period, the CBP(S) promotes, particularly with Police support, the right image of our community as peace loving people who are a totally integrated part of the Scottish society. We are just as much against terrorism as the person next door. The fight is a common one and a common platform must prevail.

In future we would be focused in promoting multi-culturalism and integration in its truest sense and ensure that we, Scottish Asians, are a full and integral part of Scotland with all the privileges, rights and more importantly, responsibilities that this entails.

M. Akram JP
President, 30th March 2004.
List of Executive Committee Members of CBP(S)

1. MOHAMMED AKRAM, BA JP, PRESIDENT
2. GHAZALA FAROOQ, MBE JP, SENIOR VICE PRESIDENT
3. LIAQUAT ALI, BSc (Hons) JP, VICE PRESIDENT
4. FASAHAT ALI SYED, MA, GENERAL SECRETARY
5. MOHAMMED AFZAL, TREASURER
6. GHULAM MUSTAFA, BA, DipEng, ASSISTANT TREASURER
7. HARVINDER PAL KAUR, PUBLICITY OFFICER
8. SHAUkat MUSTAFA, BA, ASSISTANT PUBLICITY OFFICER
9. RASHPAL NOTTAY, WELFARE OFFICER
10. GURBAIG SINGH, ASSISTANT WELFARE OFFICER

As at March 2004

IMP Staff

1. SADIA SHINWARI, SENIOR PROJECT WORKER – April 2001 – Sept 2003
2. BEENA KUMARI, PROJECT WORKER – April 2001 – Sept 2002
5. SADAF AZIZ, PROJECT WORKER - November 2003 – March 2004

'Being a man, I found it very difficult to speak about my experiences.'
AIMS AND OBJECTIVES OF INCOMPATIBLE MARRIAGES PROJECT

- Carrying out intensive advocacy work to educate parents, grandparents and communities at large on the unacceptability of such marriage arrangements. This in turn will avoid marriage break ups, support cultural identity and strengthen family and community unity.

- Embark upon a wider educational programme for the concerned communities.

- Assist in prevention of incompatible and forced marriages by giving pre-marriage advice to the individuals concerned and their families.

- Offer counselling services to reluctant spouses and their extended families.

- Provide crisis support and a drop in centre for those already caught up in the situation.

- Promote reconciliation and mediation between spouses and their families.

- Liaise with statutory and voluntary agencies on an operational and policy making level.

AIMS AND OBJECTIVES OF CBP(s)

- Provide advice and assistance to individuals from ethnic minority communities on a wide range of subjects.

- Pursue policies arising out of casework in order to challenge discrimination and to promote race equality.

- Initiate projects to continue ongoing work and to meet unmet needs.

- Bring cultural awareness between the indigenous Scottish community and ethnic minority communities.

- Educate the community at large on the benefits of a multicultural and multiracial Scottish society.

- Encourage participation and integration of ethnic minorities into mainstream Scottish society.

- Encourage ethnic minority communities to access their rights and to face responsibilities that flow from it.

- Work closely with institutions as employers and service providers and make them more accessible to ethnic minorities and free from racial bias.

- Strengthen the family structure of ethnic minority communities.
‘Her parents had painted a very different picture of me to get her to consent. I didn’t have what she wanted, it could never have worked.’

Contact Details for
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&
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‘I thought we were just going on holiday...’
INTRODUCTION

The Family Law sub-committee ("the sub-committee") of the Law Society of Scotland welcomes the opportunity to comment on the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill as introduced in the Scottish Parliament on 29 September 2010 and has the following observations to make.

GENERAL COMMENTS

Subject to some specific comments below, the sub-committee is pleased with the terms of the bill as it has clearly been informed by the considerable consultation undertaken by the Scottish Government’s Equality Unit and it addresses many of the concerns which the sub-committee was itself given the opportunity to express. Although instances of forced marriage in Scotland may be quite low, the impact of each individual case is high and it is important that the legislation is in place which will have the capacity to address the issue effectively.

That said, the sub-committee is of the view that legislation alone will not be sufficient to reduce instances of forced marriage. A proactive approach of educating communities where this problem occurs is crucial in efforts to eradicate forced marriage. Resources should be allocated to educate children from an early age that forced marriage is wrong and that in addition to legal remedies, support is available for victims and potential victims.

With the introduction of the Domestic Abuse (Scotland) Bill, there has been consideration of the possibility of legal aid provision for women who are at immediate risk of abuse to allow them to seek an interdict or non-harassment order, regardless of their financial position. Forced marriage is an issue which requires similar immediacy of action and the sub-committee is of the view that from a legal aid perspective, despite having expressed reservations about the viability of “free legal aid” for victims of domestic abuse and the fairness of providing it to one party only in an adversarial process, these issues should at least be considered together.

SPECIFIC COMMENTS

Section 1

The sub-committee appreciates that a very wide definition of forced marriage is required to allow the legislation to cover as many potential instances of forced marriage as possible but nonetheless it has slight concerns about the generality of subsection (4). As is the case with some of the sub-committee’s other concerns, it is possible that only once a body of case law has been built up will there be sufficient evidence of whether the legislation gives rise to problems of interpretation.
Section 2

In respect of section 2(3)(g), the sub-committee would question whether it is sufficient to ensure that the protected person or other person in question is returned to the United Kingdom. Unless the Scottish Government is fully satisfied that it has clear lines of communication with forced marriage units in the other UK jurisdictions (and given that forced marriage legislation is already in place in England and Wales), the sub-committee would suggest substituting "United Kingdom" with "Scotland".

Section 3

The sub-committee's comments on this section are linked with the comments on sections 7 and 8. The sub-committee has concerns about the phrase "any other person affected by the order" which is used in relation to variation, recall and extension in sections 7 and 8. There may be difficulties in identifying such persons. For example would a prospective fiancé of the protected person or a sibling or other relative of the protected person qualify? A solution that would cover the possibilities would be to make the court the arbiter of who should be permitted to make applications. This could most easily be achieved by making a person who is allowed to make an application with the leave of the court in terms of section 3(2) "a relevant third party" (in section 3(7)) and then allowing “a relevant third party” (including a person who becomes such at the time of the application for variation, recall of extension), to make an application in terms of sections 7 and 8.

Section 4

The sub-committee is of the view that in most cases, it is likely that the sheriff (or the High Court) will refer the matter to the Lord Advocate, who already has a considerable workload. In order to ensure that this legislation is more than just aspirational, it will be necessary to provide resources to ensure that cases are dealt with efficiently. Resources will also need to be made available to ensure that those who require information about forced marriage remedies know where to access it. A designated contact in Crown Office is likely to be a helpful resource. Judicial training will also be required and the sub-committee would suggest referring the bill to the Judicial Studies Committee for consideration of the preparation of a briefing note and possible inclusion in training courses.

Section 5

The sub-committee has no comment to make on this section.

Section 6

The sub-committee has no comment to make on this section.
Section 7

See the comments on section 3. The sub-committee is of the view that “any other person affected by the order” is insufficiently clear and could give rise to problems of interpretation. The sub-committee would recommend substituting it with “relevant third party” as defined in section 3, subject to the amendment suggested in the sub-committee’s comments on that section.

Section 8

As above.

Section 9

The sub-committee has no comment to make on this section.

Section 10

The sub-committee has no comment to make on this section.

Section 11

The sub-committee has no comment to make on this section.

Section 12

The sub-committee is not sure what the purpose of this section is. The concept of “equitable jurisdiction” is not used in Scotland. The section may not be necessary in the Scottish context, but if it is to be retained at all the sub-committee would suggest substituting a provision to say that “the rights conferred by this Act do not prejudice any other action that might be taken at common law or under statute to prevent the occurrence of a forced marriage or any remedies available in respect of such a marriage”.

Section 13

The sub-committee has no comment to make on this section.

Section 14

The sub-committee has no comment to make on this section.
Section 15
The sub-committee has no comment to make on this section.

Section 16
The sub-committee has no comment to make on this section.

Section 17
The sub-committee has difficulty envisaging situations where the Crown might breach a forced marriage protection order. However, assuming that it is possible, it is difficult to see how subsection (2) will function. Who is it envisaged will make an application for declarator that the Crown has acted unlawfully, and to what effect? The sub-committee would in any event suggest that it should also be possible for relevant third parties to make application to declare an act or omission of the Crown unlawful and that the section should explicitly state that its terms are without prejudice to the remedy of judicial review.

Section 18
The sub-committee has no comment to make on this section.

The Law Society of Scotland
15 November 2010
Foreword

Scottish Women’s Aid is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role campaigning and lobbying for effective responses to domestic abuse.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get the services they need, both from local Women’s Aid groups and from the agencies they are likely to contact.

Our members are local Women’s Aid groups which provide specialist services to women, children and young people. These include safe refuge accommodation, information and support. We provide advice, information, training and publications to members and non-members.

Hemat Gryffe Womens Aid is the first Asian, Black and Minority ethnic Women’s Aid group in Scotland. Established in 1981 and now based in Glasgow, they are an affiliated member organisation of Scottish Women’s Aid and offer support, advocacy, information and refuge accommodation to all black / minority ethnic women, children and young people experiencing and/or fleeing domestic abuse.

Shakti Women’s Aid is also an affiliated member organisation of Scottish Women’s Aid; based in Edinburgh, they have been working since 1986 to offer support, advocacy, information and refuge accommodation to all black / minority ethnic women, children and young people experiencing and/or fleeing domestic abuse.

Introduction

This response has been prepared by Scottish Women’s Aid in collaboration with our sister members, Shakti Women’s Aid and Hemat Gryffe Women’s Aid.

Forced marriage involves abuse, violence, abuse of trust, compelling a person to act against their will, kidnapping, imprisonment, denial of basic rights and freedoms and contact with friends, restriction on activities and money, removal of passports, perpetrated by those who should rightly be protecting and supporting.
It is accepted and acknowledged that forced marriage is a specific manifestation of domestic abuse so, while forced marriage has its own causes and solutions, it must rightly sit within the broader context of domestic abuse and, thus, the overall violence against women agenda.

A specific remedy will go far towards offering protection to those at risk and must be supported by:

- a change in attitudes and the development of an understanding on the part of those who would perpetrate forced marriage of the great wrong that is being done to women, children and young people
- ensuring that there is widespread awareness of the legislative protection and support services available to those at risk
- robust use of these legislative protections and remedies
- appropriate training for all relevant agencies who may be called upon to support those at risk of forced marriage

We commend the Scottish Government for their commitment to ending forced marriage by the introduction of this Bill and their extensive ongoing work with the Forced Marriage Network of which we are all members.

We support the provisions and intentions of the Bill, particularly the introduction of the Forced Marriage Protection Order (“the Order”) as a civil order with criminal penalties. The attraction and value of such an instrument is that being a civil order initially, those likely to engage in the prohibited behaviour will not be penalised until, and if, they breach the Order and the law by attempting to force their son or daughter into marriage, and only then do they face criminal proceedings.

A specific, robust, legal remedy, combined with awareness-raising and appropriate training for all relevant agencies involved in supporting partners forced into marriage, will go far towards offering protection and help those women still at risk and we are pleased to have the opportunity to comment on the proposals within the Bill.

**Section 1- Forced Marriage Protection Orders**

This section is particularly helpful in covering actual and threatened behaviour

Subsection 1(3) states that (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.”

We consider that the judiciary and courts must have guidance and support in relation to how they will go about ascertaining a person’s wishes and feelings, which includes guidance on speaking to and taking the evidence of children. Presumably their evidence gathering may include ordering reports prepared by a Bar or Court Reporter, Safeguarder or Curator, who will undertake this work on behalf of the court, in which case the recommendations 74-76 in Lord Gill’s Report of the Scottish Civil Courts
Review proposing the introduction of an open fair and transparent system of recruitment, qualifications, experience, guidance, training, accreditation, quality assurance and standards of practice and conduct are very much relevant in such a person’s role in advising the court.¹

There must be clarity on what will be considered as constituting “appropriate” in terms of ascertaining the protected person’s wishes and feelings and it should be remembered that young children are often competent and credible in terms of expressing their concerns and wishes, particularly where they are given appropriate support and questioned by a trained person. In this regard, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, which are already supporting the protected person or to whom they have come for help or information.

Further the courts must take steps to ensure that the protected person has access to support when engaging in this process with the courts and this may extend to ensuring the physical safety of the protected person where their giving information to the court may endanger them, by, for instance, precipitating action or violence from third parties or family members.

Subsection 1(6) defines “force” and whilst it includes threats, it does not mention actual physical violence, which must be included. Third parties and family members have also resorted to blackmail, threatened blackmail, and emotional coercion such as threatening to harm themselves if the protected person did not go through with the marriage or disclosed the matter to the police, etc. Therefore, it would be useful for the Explanatory Notes covering this section to include these situations as examples of “psychological means”.

Section 2- Contents of Orders

Presumably the Order will specifically name persons who are considered to pose a risk of conduct or potential conduct or actings covered by the Act.

Subsection 2(f) should read “to refrain from taking the protected person to another part of Scotland or outside Scotland.” The term “abroad” would not prevent a protected person being moved to Wales, England, Northern Ireland, or Eire and this subsection must also prevent the removal of the protected person to another location within Scotland.

Subsection 4 should include emotional black mail and coercion of another person as a way of involving them in forcing a protected person into a marriage, along with emotional black mail and coercion used against directly against the protected person themselves in order to force, or to attempt to force, them to enter into a marriage. We would also comment that the wording used in this subsection refers to “a person” being forced to enter into a marriage and to ensure consistency with the rest of the Bill, it may be that the term “protected person” should be used instead, viz

“(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 protected person to enter into a marriage,
(b) conspiring to force, or to attempt to force, a protected person to enter into a
marriage.”

Section 3- Applications for Orders.

The safety of the protected person must be of paramount consideration to the court
during the time between the application being made to, and then subsequently granted
by, the court, as putting those parties likely to be involved in forcing the protected
person into marriage on notice may precipitate them into action sooner rather than
later- for instance bringing forward a marriage ceremony.

This is of particular relevance where the protected person is still living with their family
or remains in contact with close and extended family and other persons who could pose
a risk. They may be at risk of physical harm, emotional coercion, blackmail and or
threats, so the Bill must make provision for support or intervention from the police or
another agency which could monitor their safety.

In terms of applications, the person or organisation making the application as a
“relevant third party” or “any other person” must be required to address this and be
responsible for assisting the protected person in ensuring their safety or ensuring that
another agency or organisation takes responsibility for this.

The Bill does not make clear where the responsibility will lie for “policing” Orders once
they are made, in terms of follow-on support for the protected person, monitoring their
safety and the compliance of those named in the Order.

Section 3(5) states that application for Orders will be made under Summary procedure.
While this will offer the benefit of a quicker process, we would query whether Summary
Procedure is competent to deal with what is essentially a very important matter and
where parties may choose to enter a defence. In these situations, the protected person
is very likely to qualify as a vulnerable witness and it is not clear whether Summary
Procedure caters for the use of special measures. Also, it may be that other orders
such as interdicts are being sought at the same time, which would involve a different
process under Ordinary Cause.

Relevant Third Parties

Section 3(7) (a) indicates that local authorities will be one of the bodies recognised as
“relevant third parties.” This should make clear which part of a local authority this will
include- for instance police forces, Social Work, Education, Health, the Children’s
Reporter and Children’s Hearing members?
In terms of the latter, we note that section 65 of the Children’s Hearings (Scotland) Bill which sets out the grounds upon which a child can be referred to a children’s hearing, has been amended by subsection 65(2)(p) to include “protect(ing) a child who is being, or is likely to be, subject to physical, emotional or other pressure to enter into a marriage or civil partnership, or is, or is likely to become, a member of the same household as such a child.”

This would specifically provide for Reporters, Panel members and Chairs, Social Workers and Education authorities to take into account in the children’s hearings system whether a child is at risk, and as a result they may be supported by the system until their 18th birthday. Therefore, the interaction between the Children’s Hearings legislation and the current Bill will have to be considered as applications for Forced Marriage Protection Orders are likely to be part of the actions they will consider. Regardless of which part of a local authority this applies to, it is absolutely crucial that those directly involved in applying for Orders do not simply have this responsibility “bolted on” to their other duties and that care and attention will be taken to ensure that this work is regarded as a specialised support area.

This will involve the setting up of dedicated teams with a named person responsible for making the application and taking responsibility for monitoring the safety of the protected person; this person and the team will require specialist training from expert community organisations, such as Shakti Women’s Aid and Hemat Gryffe Women’s Aid, on the dynamics of forced marriage, religious and cultural issues impacting on this and the position of forced marriage in relation to violence against women, and on the importance of taking a person-centred approach when applying for Orders or supporting a protected person.

These “relevant third parties” must be accountable for their decisions and actions. It is likely that where children are involved, this issue would part of the work of Child Protection Committees and would be discussed and actioned at a case conference. Again, having specific, trained and experienced persons taking responsibility for potential forced marriage situations at such case conferences is essential and they must be part of the specialised teams we have recommended above.

Forced marriage is recognised as being part of the continuum of violent and abusive behaviour perpetrated against women and both Shakti Women’s Aid and Hemat Gryffe Women’s Aid report that some women fleeing domestic abuse also disclose that either they or their partner was forced into marriage.

It would therefore be appropriate to consider that specialist and expert voluntary sector organisations, such as Shakti Women’s Aid and Hemat Gryffe Women’s Aid, who have extensive, professional experience in supporting women who are at risk of forced marriage or have been forced into marriage, should be included within the category of “relevant third party.”

As the Policy Memorandum states at paragraph 19, third party involvement, whether by a “relevant third party” or otherwise, must be carefully regulated, but must also be monitored.
Section 3(2) indicates that an application may be made by any other person only with the leave of the court. We would recommend that the court is cautious in deciding whether an application from any such person(s) is appropriate and competent, paying close attention to the nature and extent of any relationship this person has with the protected person and the applicant’s motives, as this process could be used inappropriately to harass families and individuals. Consequently, it is vital that these matters are covered in the guidance for the court we suggested in relation to section one and that there are clear, specific guidelines on persons who would be considered appropriate, in addition to the other matters we have raised.

Section 4- Power to make orders without application

This section does not make clear that the conditions stated in section 1(2) and 1(3), viz (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” will also apply in this situation, in both civil and criminal actions, where the court has unilaterally made an Order, or on application by the Lord Advocate. We consider that there is merit in emphasising this on the face of the Bill for the avoidance of doubt.

Section 5- Interim Orders

The section should clarify whether an interim order can be made in the absence of the protected person as it is unclear whether the reference to “a person who is, or would be, a party to the proceedings” covers them.

In terms of the court “having regard to all the circumstances”, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, already supporting the protected person or to whom they have come for help or information and it would be helpful to include this in the Explanatory Notes and guidance produced for the court.

Section 6- Duration of Orders

Although this section does not make reference to maximum and minimum periods for which an Order can be granted, it would be useful for the Explanatory Notes to expand on this and give some parameters.
Section 7- Variation and recall of Orders

The categories of person eligible for applying to the court for variation and recall of Orders do not appear to include “relevant third parties” or “any other person with leave of the court” under section 3(1) (b) and 3(2), or the Lord Advocate, in terms of section 4(3). Since these persons or organisations could have applied for an Order in the first instance, they must also be capable of applying for an extension. The wording in section 8 to the effect that “any other person affected by the Order” is eligible to apply does not make clear that they are included and this should be explicitly stated on the face of the Bill.

While section 1 states that the court will have regard to the protected person’s views, etc, when making an Order, it does not state that this process of investigation and consultation will also be undertaken when the court is considering varying or recalling an Order.

Therefore section 7 must also contain the wording below, subject to the points we have raised on section 1 in relation to the conduct of this consultation process:-

“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.

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”

For clarity, the situations or conditions where it would be competent or necessary for the court to consider varying or recalling an Order should either be clearly stated on the face of the Bill or set out in the Explanatory Notes.

Again in terms of the court “having regard to all the circumstances”, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, already supporting the protected person or to whom they have come for help or information and it would be helpful to include this in the Explanatory Notes and guidance produced for the court.

Section 8- Extension of Orders

We would reiterate the comments made in relation to section 7 in relation to the absence of relevant third parties” or “any other person with leave of the court” under section 3(1) (b) and 3(2,) or the Lord Advocate in terms of section 4(3), in the category of persons eligible for applying to the court for an extension of Orders.

Similarly, while section 1 states that the court will have regard to the protected person’s views, etc, when making an Order, it does not state that this process of investigation and consultation will also be undertaken when the court is considering extending an order. Therefore section 8 must also contain the wording below, subject to the points we have raised on section 1 in relation to the conduct of this consultation process:-
“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. 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.”

For clarity, the situations or conditions where it would be competent or necessary for the court to consider extending an Order should either be clearly stated on the face of the Bill or set out in the Explanatory Notes.

Again in terms of the court “having regard to all the circumstances”, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, already supporting the protected person or to whom they have come for help or information and it would be helpful to include this in the Explanatory Notes and guidance produced for the court.

Section 9- Offence of breaching order

This section requires clarity on the procedure that will be followed in reporting and acting upon a breach.

- Does the protected person have to take the matter back to their solicitor to have the breach brought before the court, or will the breach simply have to be reported to the police?
- Can breach be reported by a relevant third party or other person?
- Can the police arrest on suspicion of breach or only on actual evidence of breach. We were thinking of the application of section 4(1) of the Protection From Abuse (Scotland) Act 2001 and the police power of arrest, viz “Where a power of arrest attached to an interdict has effect a constable may arrest the interdicted person without warrant if the constable—
  (a) has reasonable cause for suspecting that person of being in breach of the interdict; and
  (b) considers that there would, if that person were not arrested, be a risk of abuse or further abuse by that person in breach of the interdict.”

- It is possible that the Order may be breached outwith Scotland, for instance, where a protected person has ostensibly gone on holiday with their family and finds that they will be put through a marriage ceremony against their will. If that protected person is then forced to remain abroad with their “spouse”, how will an Order be enforced abroad?
In terms of the ability of the police to arrest a person in breach of an Order, similar to the provisions enacted at section 49(2) of the Criminal Justice (Scotland) Act 2003, albeit this relates to Non Harassment Orders, there should be a comparable provision within this Bill for the police to have a statutory power of arrest without warrant, for breach of a Forced Marriage Protection Order. This would require the insertion of wording along the lines of:-

“9(4) A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (1).
9(5) Subsection (4) is without prejudice to any power of arrest conferred by law apart from that subsection.”

Section 11- Guidance

We are pleased to this that the issue of guidance has been included on the face of the Bill. We would stress, however, that this section should read that the Scottish Ministers “shall” and not “may” give guidance, as it is absolutely crucial to both the implementation and success of the Orders, to the work which is underway, and will be taken, against forced marriage, that this is produced.

We note that the Policy Memorandum specifically discusses the issues of awareness raising and guidance, noting that that the Scottish Government will work with the members of the Forced Marriage Network and other service providers in relation to awareness raising. This work on awareness-raising must encompass not just minority ethnic communities themselves and those potentially at risk, but also the range of statutory and other organisations working with, and supporting, members of these communities; the health and education sectors have a particularly important role here. There must a commitment to undertaking and sustaining a long-term dialogue with minority ethnic communities.

In relation to the necessity of having guidance and training, we overwhelmingly support the statement at paragraph 34 of the Policy Memorandum, viz “34. People on the front line of service delivery need to have the necessary knowledge and training to deal competently and sensitively with a case of forced marriage. As well as understanding the legal framework within which they operate and the needs of victims, people delivering services need access to information on forced marriage and the cultural framework in which it occurs.”

Paragraphs 35 and 36 are very helpful in setting out the need for individual service providers to receive appropriate training, the need for multi-agency training and in underlining that the Forced Marriage Network members will be involved in the development of this training. We would also add that members such as Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid already deliver training on the experiences of black and minority ethnic women in relation to domestic abuse and forced marriage and we would very keen to use our experience and expertise to support the Scottish Government’s commitment to deliver training and awareness raising on the guidance and forced marriage generally, once these materials are developed.
It is particularly important that the guidance addresses the issue of supporting those at risk of forced marriage where no Order has been made as it may not always be possible or practical for this to happen. In addition, it must cover the role and responsibilities of relevant third parties and the “other” category of persons who may make an application for an Order with the consent of the court, how compliance with and Order will be monitored, and human rights.

Also, the term “a person exercising public functions” used in this section should be included in the definition listed at section 13

**Section12- Other protection or assistance against forced marriage**

Section 12(2), which outlines the civil remedies that can be applied for despite the existence of an Order, should also include a common law interdict with a power of arrest under the Protection from Abuse (Scotland) Act 2001 and also matrimonial and domestic interdicts under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under the 2001 Act.

**Section 14- Action of declarator of nullity in sheriff court: jurisdiction**

We fully support this section. The Scottish Government are to be commended for introducing this provision which will dramatically lower the cost of applications for declarator by giving the Sheriff Courts parallel jurisdiction with the Court of Session in such matters.

We would welcome clarification as to whether actions for nullity will cover situations:-

- where a non-UK citizen was forced into marriage with another non-UK citizen abroad, they are now resident in Scotland, and the party forced into marriage wishes to have the married annulled?

- where a non-UK citizen who has indefinite leave to remain in the UK, was forced into marriage with another non-UK citizen abroad who has entered the UK on a spousal visa, they are now resident in Scotland, and the party forced into marriage wishes to have the married annulled?

- where an EU citizen has been forced into marriage with another EU citizen abroad, they are now resident in Scotland and the party forced into marriage wishes to have the married annulled?
Matters not covered by the Bill

Interaction of the Bill with Section 15 of the Family Law (Scotland) Act 2006 covering postponement of decree of divorce where religious impediment to remarry exists

This section inserted a new section 3A into the Divorce (Scotland) Act 1976 which provides the court with the discretion to postpone decree of divorce where a religious impediment to remarry exists, viz “Regardless of the fact that irretrievable breakdown of a marriage has been established in an action of divorce, the court may postpone granting decree of divorce until it is satisfied that the other party has removed or has contributed to the removal of the impediment which prevents that marriage. If this is the case, the court may order the other party to produce a certificate from a relevant religious body confirming that the other party has acted in the way described above. A power is given to Scottish Ministers to make regulations to prescribe the religious faiths which can rely on this provision.”

We are concerned that even where a woman obtains annulment of marriage under Scots law due to forced marriage in terms of the Bill, she may still be regarded as being married under the terms of any religious ceremony she has undergone and this must be addressed.

Further, will the court impose similar requirements in relation to the removal of religious impediments where a woman is seeking annulment due to forced marriage?

We look forward to working further with the Scottish Parliament and Scottish Government to progress this Bill and the important work being done in this area.

Scottish Women’s Aid
Shakti Women’s Aid
Hemat Gryffe Women’s Aid
26 November 2010
Scottish Parliament

Equal Opportunities Committee

Tuesday 23 November 2010

[The Convener opened the meeting at 10:00]

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the Equal Opportunities Committee’s 21st meeting in 2010. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely, as they interfere with the sound system even if they are switched to silent. We have apologies from Elaine Smith.

Agenda item 1 is an evidence session on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. The session will be held in a round-table format. It is worth reminding everyone that, although the format is less formal than normal, this is still a public meeting and a transcript will be produced.

We will start with introductions. I am the convener of the committee.

Louise Johnson (Scottish Women’s Aid): I am a national worker for legal issues at Scottish Women’s Aid.

Hugh O’Donnell (Central Scotland) (LD): I am a member of the committee.

Claire Platts (Ethnic Minorities Law Centre): I am a solicitor with the Ethnic Minorities Law Centre in Glasgow.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I am a member of the committee.

Assistant Chief Constable Iain Livingstone (Association of Chief Police Officers in Scotland): I am an assistant chief constable with Lothian and Borders Police, but I am here in my capacity as lead for the Association of Chief Police Officers in Scotland in regard to public protection, which includes all elements of honour-based violence.

Stuart McMillan (West of Scotland) (SNP): I am a member of the committee.

Tanveer Parnez (Black and Ethnic Minority Infrastructure in Scotland): I am from BEMIS—the Black and Ethnic Minority Infrastructure in Scotland.

John Fotheringham (Law Society of Scotland): I am representing the Law Society of Scotland.

Jamie Hepburn (Central Scotland) (SNP): I am also a member of the committee.

Huma Awan (Council of British Pakistanis (Scotland)): I am from the Council of British Pakistanis (Scotland).

Christina McKelvie (Central Scotland) (SNP): I am also a member of the committee.

Marilyn Glen (North East Scotland) (Lab): I am the deputy convener of the committee.

The Convener: I will start with general questions about the nature and extent of forced marriages in Scotland. What is the prevalence of forced marriage and how does it impact on the community? What is the profile of forced marriage victims? I am looking for information on age group and gender. Could we have a little bit of detail or any information that you can provide on the profile of the victims?

Tanveer Parnez: We need to differentiate between forced marriages and arranged marriages, as people can confuse the two. A forced marriage is a marriage that is carried out in the absence of valid consent by one party, or both parties, and where duress, with either physical or psychological factors, occurs. Arranged marriages are those that are entered into freely by both parties through the families. The parties may take a leading role in choosing the partner. Especially among the wider community, there is confusion about what is a forced marriage and what is an arranged marriage, so I thought that it would be better to clarify that.

The Convener: That is helpful, and it is a point that is well made in several submissions. Now that Tanveer Parnez has opened the discussion, I ask her to tell us about the nature and extent of forced marriage, in her experience.

Tanveer Parnez: I grew up in Scotland. From my experience of growing up in Glasgow, none of my friends went through a forced marriage. However, there are people who have had that experience, particularly those in the second generation. There are various types of forced marriages. There are civic marriages, but also trade marriages, which are organised by migrant communities to access visas. In gang culture, people can be forced into marriage because of the money or to get a visa.

The Convener: So there can be financial gain and perhaps the aim of gaining United Kingdom citizenship.

Tanveer Parnez: Yes.
Louise Johnson: As the committee might know, as part of the Scottish Women’s Aid network, we have two groups that specifically support black and minority ethnic women. In Edinburgh, we have Shakti Women’s Aid and in Glasgow we have Hemat Gryffe Women’s Aid. In reading the submissions, I noticed that the Scottish Legal Aid Board mentioned that, in 2009-10, Shakti supported seven cases of forced marriage and Hemat Gryffe supported 13 cases. The two groups have reported that it is often when women come to seek assistance from them in relation to domestic abuse that the issue of forced marriage comes to the fore. Alternatively, if women come to see the groups about issues relating to forced marriage, domestic abuse can be revealed at that point. We recognise—and it is recognised internationally—that forced marriage is very much part of the continuum of behaviours that make up violence against women.

Shakti and Hemat Gryffe will give evidence to the committee in, I think, December. They will be able to give you much more information about the prevalence of forced marriages. Hemat Gryffe carried out a research project earlier this year, the results of which I hope will be with the Scottish Government soon. The witnesses from Hemat Gryffe will be able to speak about that.

The Convener: So the issue is identified after people initially come to Women’s Aid for another reason.

Louise Johnson: Yes.

The Convener: Can you give us information on the profile of the victims, such as their age?

Louise Johnson: Unfortunately, I do not have any more information on that. However, from talking to both groups about their experiences of supporting women, I know that a lot of younger women look for support. It is younger women, to almost children.

John Fotheringham: We have discussed the distinction between a forced marriage and an arranged marriage. We must be careful about that distinction. By no means is every arranged marriage a forced marriage—of course that is correct—but every forced marriage is an arranged marriage. They are different points on a continuum. The difficulties in the court arise at the interface between the two, when the court has to consider whether a marriage was really forced. The literal shotgun marriage is a rarity. Different kinds of force cause the difficulty in interpretation for the court. Just because a marriage is apparently arranged, that does not mean that it is not forced.

The convener asked about the incidence of the problem. I have been doing family law as a specialist for 35 years in Scotland and I have never seen a case that had even a hint of a forced marriage about it. Partly, that is because much of my work has been in Fife and forced marriage does not happen there very much, apparently. The difficult profile of forced marriages leads to their being underreported. Therefore, the fact that I have never seen a case does not mean that it is not happening. One purpose of the bill is to let such cases, which have been underreported, come to the fore.

Because of the population demographic in Scotland, forced marriage will always be a low incidence matter. However, although forced marriage is low incidence, it has an extremely high impact, which is why it is important that we are discussing the bill. Louise Johnson rightly mentioned that forced marriages are part of violence against women, but it exists against men as well. Particularly when someone is trying to make a commercial profit by forcing a marriage, it is just as likely to happen against men. Because of the way that the numbers work, forced marriage is more likely to be against women—and domestic violence is much more a problem against women—but let us not forget that it is against men as well.

The Convener: That helps us to understand the profile.

Huma Awan: The Council of British Pakistanis has been working on incompatible and forced marriages since April 2001. Based on the three-year project that ended in 2004, the CBP dealt with about 300 cases throughout Scotland over those three years. Of the victims, 55 per cent were aged between 16 and 20 and almost 40 per cent were male. Forced marriage is always seen as a female issue, but our work, through the project and in dealing with people directly, highlights that it concerns both sexes almost equally. We need to bear that in mind.

The Convener: Was a general reason given? Do the reasons vary much?

Huma Awan: Each situation was very much an individual one. It depended on the family and the set-up. I would not say that there are 100 cases in a year—many of the forced marriage cases that came forward concerned what had taken place previously. In other words, some of the cases that we dealt with, involving divorce issues and so on, had built up among people who had experienced forced marriages in the past.

As Louise Johnson highlighted, people do not come forward because of the forced marriage; there are other angles of the situation that explain why they come into the office to seek advice, on either immigration matters or divorce. From that, it can transpire that there had been a forced
marriage, or a possible forced marriage, in the first place.

**The Convener:** How far back might we go with some of the people who have been identified?

**Huma Awan:** Of the 55 per cent who were 16 to 20-year-olds, it was more recent: they had typically just come back from a holiday abroad and had been forced into marriage. Their parents had sent them to us to seek immigration advice for sponsoring their spouse. As for the older groups, some people were married three, four, five or even 10 years previously. They had been forced into the marriage and were now seeking advice on how to get a divorce. There could also be domestic violence issues, which we refer to the relevant people. It depends on the age. The younger people are, the more likely it is that their marriage will have been recent.

**Marilyn Glen:** We started off with a clear differentiation between forced marriages and arranged marriages. I wish to clarify the difference between either of those and incompatible marriages. A marriage can become incompatible no matter how it started. I sound a cautionary note about the reporting that has been mentioned. It does not merely concern forced marriages.

I was interested in the statistics. An arranged marriage can become incompatible, or it can be incompatible from the beginning. As has been reported, the people might not even speak the same language—not that that necessarily means that the marriage is incompatible. We will have to look out for the statistics on that. In particular, I noted the percentage of victims who are male. John Fotheringham said that male victims are just as prevalent as female victims—I think he said that people are brought into the country and forced to marry for the purpose of visa applications.

**John Fotheringham:** I was not suggesting that it was just as prevalent for males, but we should not forget the issue. As far as numbers are concerned, we are all guessing—we do not know. I see no reason why it should be less prevalent for males.

**Marilyn Glen:** In some ways—unless we are talking about support—it does not really matter whether the victims are male or female for the purposes of legislation. From a statistics point of view, we need to gather evidence on the issue. I am really concerned, however, about taking the statistics that have been reported as being about forced marriage, as they are not.

**The Convener:** Could you comment on that aspect, referring to incompatibility?

**Huma Awan:** As John Fotheringham said at the outset, it is sometimes difficult to put a marriage into a particular box. It might be incompatible, and it could be forced. It depends on what the individual felt at the time. Was there coercion? Were the people being manipulated into a situation? Aged 16, someone might think, “This sounds great.” They might go to Pakistan, India or wherever and have a holiday, and they might have a great wedding with singing, dancing and all the rest of it. They go along with it. Then, everything hits home. They have come back with a husband or wife and they wonder, “Wait a minute: what happened here?” When they take stock of the situation, they realise that their parents put lots of ideas into their head and made them think that they were doing the right thing.

In such cases, it can be seen that the marriage was incompatible. In 90 per cent of our cases, the marriage has taken place abroad. We might be able to see that the marriage was not going to work. The person was aged 16, say, and did not really know what they were getting into. Language was an issue, and their cultural experience was different. Their economic and financial background was different. It was indeed incompatible, but there was coercion involved. Each individual case is different, however.

10:15

**Hugh O’Donnell:** The number of males involved struck me as considerable, and the participants have partly explained that point. Marilyn Glen has spoken about statistics and data. Commercial gain has also been mentioned, as have family tradition and cultural tradition. To what extent do you have evidence that sexuality plays a part in relation to forced marriages? I am thinking of a situation in which an individual has been identified as homosexual and been obliged to marry to avoid or minimise any social or cultural impact. Do you have data about that?

**Huma Awan:** The Council of British Pakistanis did not deal with any such cases in its three-year project. However, being involved with communities, we know that that is a significant factor, particularly when it comes to forced marriage. If the family see any kind of behaviour that they deem to be inappropriate, whether it is having a boyfriend or a girlfriend or having a same-sex relationship, that can be the trigger point for rectifying the situation. The whole family can get involved, and certain characters have a major role to play to try and stop the behaviour. Homosexuality is a major factor. In England, where there is a larger number of communities, it has been a significant factor.

**Assistant Chief Constable Livingstone:** All the evidence that you hear today will just give you an indicative feel for the matter. There is an absence of definitive data. The recording practices among the police, local authorities and the
voluntary or third sector are all different. In the past five to 10 years, however, the whole concept of forced marriage and associated but different elements of so-called honour-based violence have become far more prevalent. Every agency will tell you that. How accurate the data are is difficult to say, and it is also difficult to say what lies behind the increase. I understand your thirst for data, but such information is missing at the moment.

From the police perspective, we think that there is a social mischief that the bill appropriately addresses. However, it is just one part of the issue. As we have discussed, there are also arranged marriages where there may well be domestic violence, and there has to be some form of intervention in that regard. That will come not under the bill, but through other legislation, other practice or information sharing and support. We have come a long way over the past five to 10 years, in any case.

The bill’s other value lies in its public message. We need to bring the matter into the open and to secure an absolute consensus that forced marriage will not be tolerated and that violence—violence against women and violence against men—will not be tolerated. A whole suite of measures should be available, in statute law, in practice change and in voluntary support for victims.

The convener’s first question was about the extent of forced marriages, and the answer is that we do not know. That is the most valid answer. However, we know that forced marriage is there and that its prevalence is growing, partly through generational changes. I think that the bill will enhance our level of knowledge.

The Convener: That is a fair point. Now we have something through which we can identify the problem and put cases in the category of forced marriage. That must be helpful.

I invite Claire Platts to comment.

Claire Platts: Our organisation operates a telephone advice line. We deal with a high number of domestic violence cases in which there is an immigration perspective, with individuals seeking advice having been victims of domestic violence. In my experience of dealing with such cases, the prevalence of forced marriage being a catalyst to ensuing domestic violence issues has been quite limited. We have received a small number of inquiries that have been related to forced marriages, but people seem to present with domestic violence problems first and foremost. That echoes what has been said about forced marriage not usually being the issue at the forefront when people first present; rather, it becomes prevalent when we peel things back.

The Convener: Do you have any indication of the profile of victims? To introduce another aspect, is the same issue prevalent in civil partnerships?

Claire Platts: I have certainly not come across any issues in civil partnerships. In the limited number of inquiries that we have had, the people who have come to us and sought advice have tended to be younger people in their late teens or early twenties. That is the profile of the individuals who have approached us.

The Convener: That is helpful.

John Fotheringham: It is important to combine the issues of sexuality and civil partnerships in the bill because marriages and civil partnerships ought to be treated similarly in the legislature and because, if we have good, strong and effective forced marriage provision and forced civil partnerships are not covered in the bill, those who wish to abuse the system will simply leap on forced civil partnerships. If the issue is about a visa or passport, there must be cover on both sides.

There is an English study that backed up the English statute in 2007 concerning forced civil partnerships. There is the idea that, to save its honour, a family might try to force a young man to marry if they fear that he might be homosexual. I do not know what the relevant statistics are, but I am sure that they will be available from the Home Office. The matter has been considered.

Louise Johnson: On the statistics, I am aware that the Home Office’s forced marriage unit dealt with around 400 cases last year. I think that 85 per cent of those who had been forced into marriage were women and 15 per cent were men, but I do not know how many of those cases were Scottish. People might still be phoning the Home Office to deal with that, but we do not know. Part of the reason for the bill is that it will provide a Scottish solution. That is why we welcome it.

We have experience in Shakti Women’s Aid and Hemat Gryffe Women’s Aid of women being forced into marriage to act as carers for their physically or mentally disabled spouses. There have certainly been incidences of that in Glasgow. I have talked to people about that.

I echo what Iain Livingstone said. The bill cannot be passed without there being training and awareness raising. That is one of the most important issues. Young people, say, are already engaging probably because there is the problem to a certain extent in their own social circle and because of their knowledge as a result of their access to the internet and social networking. They are able to discuss the issue. However, accessing the internet might be more difficult for older women—I am talking about women, but I
acknowledge that men are also forced into marriages.

On making everybody aware of the problem, we know that there are existing legal provisions that can deal with it, but people do not know that they exist. They do not know about interdicts and the other orders and that marriages can be nullified. If the bill is to be used to the extent that it should be, we must ensure that everybody knows about it and how to use it.

**The Convener:** I think that Hugh O'Donnell wants to develop that theme.

**Hugh O'Donnell:** Most of the questions that I had in mind have been addressed.

Perhaps another committee member has a handle on what I want to ask about. It strikes me that we are talking about the legal process of marriage or civil partnership, but I wonder about the religious implications. Religions such as Judaism, Islam and Roman Catholicism have their own ceremonies, and I am interested in that issue. I am also interested in how we know what the main barriers are to accessing the existing civil remedies. What are the challenges around—

**The Convener:** I think that we will go on to that specific question later; we have not quite got to that stage yet. I would like to establish first what awareness exists. Louise Johnson made an important point.

**Christina McKelvie:** I have a question for John Fotheringham. I picked up on the possibility of the bill being a bit stronger on civil partnerships. Section 10 is on the power of the Scottish ministers to apply the legislation to civil partnerships. Does that provision need to be stronger?

**John Fotheringham:** If the power is used, that is fine, but as a matter of principle, we ought to treat marriage and civil partnership the same in this context. If we do not, we will invite those who treat matters on a commercial basis—for visas or passports—to move from one form of sexuality into another.

To answer the question about the validity of marriage, a marriage in Scotland is not valid unless there is a marriage schedule and it has been registered. People can be married by the moderator of the Church of the Scotland in St Giles' cathedral, but they will not be married if there is no schedule. That is the definition. That was one good reason why, when we were sitting in this room some years ago, we were happy to see the cohabitation provisions in the Family Law (Scotland) Act 2006 go through. Those provisions allow a woman who was married with an Islamic nikah but was not registered to have a remedy under Scots law if, 10 years later, her husband kicked her out. Although she would not be married, she would be cohabiting within the meaning of the 2006 act.

There is no separate ground of divorce because a person is in a forced marriage. If a person stays in a forced marriage for a long time, that does not prevent them from divorcing. If a truly forced marriage overcomes consent, that can result in a nullity; that is, the marriage will never have existed as a matter of law. The financial remedies in a nullity are exactly the same as those in a divorce. That sounds a little illogical, but it works because we are saying that, although the marriage never happened, the person has been financially prejudiced and they will want their remedy.

**Hugh O'Donnell:** Is there awareness of those things?

**John Fotheringham:** There is not. I am sure that everybody here will say at some point in the day that public education matters a great deal. There is no point in having a remedy if people do not know about it. That is a problem with cohabitation, which I mentioned before, and it is certainly a problem with forced marriages. If people—not only potential victims, but their families, teachers, social workers and local police officers—do not know about the legislation and what they can do, they must be made fully aware of it. The more it is known about, the more the culture against forced marriages will be strengthened. The member has made a good point.

**Marlyn Glen:** We have talked quite a lot about the current awareness of the problem, and I think that people around the table agree that that awareness must be increased. Everybody around the table is aware of it, but I do not think that there is such awareness in wider society in Scotland. Before we proceed to discuss the provisions in the bill, does anybody want to comment on the responses that we have received on preventing and tackling forced marriages? Whether we need a bill has been discussed.

**John Fotheringham:** I think that evidence on that should come from others. As I have said, a forced marriage case has never crossed my desk in 35 years.

**The Convener:** Is that partly because people are not aware that forced marriage is an issue?

**John Fotheringham:** For me, the reason is partly geographical. I have spent much of those 35 years in Fife, and the cases have not got that far yet.

**Assistant Chief Constable Livingstone:** I will reiterate a couple of observations that have been made.
I think that we need the bill and that awareness has increased, perhaps because of the generational issues that Huma Awan talked about. Perhaps younger women are coming through from two or three generations back and challenging. People’s norms, social contacts and networks are different. Generational challenges can often create a number of referrals. We have definitely seen a far greater increase in younger females in particular coming to the police, especially in urban areas, such as in Glasgow and the city of Edinburgh—particularly on its north side—and in particular geographic areas.

We need a specific forced marriage act. To reiterate what I said earlier, the fact that such an act had been passed would answer some of John Fotheringham’s concerns and the points that Louise Johnson and others have made about our needing to vocalise and articulate the fact that the problem is intolerable. The proposed legislation in itself would assist with the awareness raising that you all seek.

10:30
Tanveer Parnez: John Fotheringham spoke about annulled marriages. I think that there has been only one case—I think it was in the 80s—when a Pakistani woman’s marriage was annulled here in Scotland. It was quite widely televised.

John Fotheringham: There have been a few more than that, but just a handful.

Tanveer Parnez: BEMIS has been working in partnership with the Equality Network on various gender and sexuality issues to raise awareness. Most of the young people are coming forward within the community—we are changing attitudes among the community groups, who were previously attacking BEMIS and asking us why we were doing this project on homosexuality. Now people are coming forward and we have various action organisations where people meet; training is being given to people within the organisations and in the communities. Faith communities are coming on board, too. There is a need for social marketing and a humorous approach to education, both of which will play a part in changing people’s perceptions, attitudes and use of stereotyping. All organisations should take part in that.

The Convener: Louise Johnson raised an interesting point about technology. Younger people might have more access to information via the internet. Is that an issue for older people who have been in a forced marriage?

Tanveer Parnez: Again, we need different mechanisms to reach out to the various community groups, especially the elderly, through elderly centres and other means. We need to work with the communities, bringing them on board and raising awareness of forced marriages to change attitudes and stop forced marriages altogether.

Christina McKelvie: We have covered some of the issues that I was going to bring up. We got evidence that interdicts were not particularly effective; there was a lack of understanding about the difference between civil and criminal law; and there was a lack of awareness of support, which we have already discussed. A specific point that was made was that there was a lack of awareness of victims’ rights and of support for victims. Will the panel comment on the sufficiency of the existing legal protection for victims? What do they think could resolve some of the problems that have arisen?

Louise Johnson: The existing protections that are available are exclusion orders—a way to keep someone out of the property—interdicts with the power of arrest under the Protection from Abuse (Scotland) Act 2001; interdicts under the Matrimonial Homes (Family Protection) (Scotland) Act 1981; and non-harassment orders. The problem is that people have to know that those protections exist and what they cover. At the best of times there are people who live in Scotland who have difficulty understanding what an interdict is. We might be talking about women who are not familiar with the Scottish legal system, do not know what an interdict is, do not have information about it, or, for whatever reason, are prohibited from getting information about it. Even if you have an interdict, what do you do with it? You have to go and engage with a solicitor and then there is the whole issue of how you pay for it.

There are parallels between some of the difficulties that we see with women obtaining protective orders, but women in this situation are dealing with a legal system that is quite complex and completely different. The terminology is difficult for most of the citizenry when they are trying to engage.

The beauty of having a forced marriage protection order is that it does what it says on the tin—to use that ghastly expression. It is very clear what it is for. When it comes to promoting it and raising awareness of what it is and what it does, it is not something archaic or complicated like a non-harassment order or an interdict; it is a forced marriage protection order.

By awareness raising, selling this to people and interacting with communities, we will make it very clear, first, to those who are at risk, that the provision is in place for their protection and, secondly, to those in communities who might be involved—families and extended families—that there is now a legal instrument to deal with what they are doing. The forced marriage protection order is a clear legal provision; it is not an interdict that can be construed in a variety of ways.
The Convener: So, the order sends out that message clearly to the victim and extended family.

John Fotheringham: The point will probably be discussed when we come to section 9 of the bill, but Louise made a point that I want to pick up on. Public education depends on the public being interested in it. One of the major differences between the bill and the English provision is that the bill creates a specific criminal offence. That was much consulted on. It is the right thing to do. We are saying, "If you breach a forced marriage protection order, we in this country regard that as a crime." We are saying clearly that that is a separate and public crime, which in England it is not.

The difference in practice could be said to be more illusory than real. If an order is breached in England, a contempt of court has occurred. That is also a crime, but not the specific crime of breaching a forced marriage protection order, which is the case under the bill that is before us. That is an important move forward. We are telling people, "This is not on." We are educating the public to the fact that this country is saying, "This is not on." We are talking not about throwing something into the bill that is about the dignity of the court, as contempt of court might be described, but a specific crime. The Scottish Parliament is saying, "This is not on."

The Convener: Do you want to follow up on any other aspect, Christina?

Christina McKelvie: No, the question was pretty well covered. The replies echoed the evidence that we have received in the submissions. Interdicts tend not to work properly either because people do not understand them or do not access them.

Louise Johnson: People become confused when they see references to injunctions. You would be surprised at the number of people who think that an injunction is an order that applies across the United Kingdom. They may have been reading literature from down south before they come to see us. They say, "I need an injunction", but that does not apply up here. They do not seem to know that something else applies—an interdict. We are perhaps seeing more younger people coming forward. That may be due in part to education in schools. For example, Shakti Women's Aid and Hemat Gryffe Women's Aid have been doing work with students and pupils.

As my colleague from BEMIS said, two levels of education are involved, the first of which involves younger people. At that stage in the game, we have the opportunity to inform young people before anything happens. The second stage is education for older women, where the need is to support them if they wish to do something. A woman may come to realise that not only is she experiencing domestic abuse or some other form of abuse or violence but that her marriage was entered into not of her complete will.

The Convener: We now move on to the point that John Fotheringham raised earlier. Hugh O'Donnell will lead our questioning.

Hugh O'Donnell: Many of the points have been covered, convener, particularly the existing civil remedies. Has anyone a sense of the main barriers? Is one barrier, as Louise Johnson indicated, the complicated nature of the problem? Does the bill simplify current legislation? If so, is it more valuable?

John Fotheringham: There has been no barrier up until now because we have had no statutory remedy up until now. One barrier that we may have to—

Hugh O'Donnell: Just to be clear, I was thinking about the existing legislative framework.

John Fotheringham: Right. Even without the bill, it would be possible for someone who is the potential victim of a forced marriage to seek to use an existing statutory remedy. One barrier to doing that is financial, another is educational and a strong barrier is cultural. The young woman—and it is usually a young woman—has to go against the strongly expressed view of the family. We have to get past that, which is probably the most effective barrier to somebody using a statutory remedy against forced marriage. That is where education comes in. There could also be financial problems, if someone does not qualify for legal aid. The young probably will, but they have to know where to get it. Although it is a different matter entirely, the number of solicitors accepting civil legal aid cases is declining—that is a barrier, too.

Hugh O'Donnell: Anyone else?

Tanveer Parnez: Women who have no recourse to public funds would face the barrier of being unable to access any services from lawyers. They might even be scared to go to a lawyer if they did not have that sort of provision.

Claire Platts: Cost is a major barrier. Finding practitioners with the legal expertise to deal with particular issues may also be a barrier, because these are not run-of-the-mill, everyday family law matters. There is also the issue of whether someone going into a high street practice and presenting this issue to a solicitor will experience cultural sensitivity. All those factors would marry into an individual having difficulties in seeking legal advice in the first instance.

The Convener: Yes, they would be reluctant to walk in the door in the first place.
Assistant Chief Constable Livingstone: One of the existing barriers may be the fact that the onus is very much on the victim—or individual. One of the bill’s virtues is the proposal to allow an application by a relevant third party. A person would not need to be an expert in family law or Scots law in any way, shape or form. If they came to a support agency, such as the police or the health service, and said that they had an issue, that might allow access to some form of justice. Although the current onus on the victim is a barrier, the bill will provide more support for the victim.

Huma Awan: I completely agree with what Iain Livingstone described as the barrier, particularly for women. The process of going to the police or getting any kind of legal remedy against their own family is a great hindrance. They do not want to bring any kind of shame. There is the whole idea of honour, and to be criminalising your own parents, brother or grandparents is a huge burden. Many of the people whom we have dealt with would come to us to talk about their problem, but they would not want any kind of legal remedy for it or to have any kind of action taken against those people, because they are family.

Hugh O’Donnell: Convener, I think that everyone has encapsulated the challenges in relation to the existing framework and that they tend to be, if I have understood everyone clearly, supportive of the bill’s proposals.

The Convener: Do the witnesses feel that the balance is right in terms of making the breach of a forced marriage protection order a criminal offence, as opposed to making forced marriage a criminal offence in the first instance, as it is, I think, in Norway and some other countries? The feeling that I am getting is that everyone is in agreement with that balance. Is that right? Does John Fotheringham want to elaborate on that point?

John Fotheringham: I was just going to agree that the balance is entirely right. Of course, many things are done in the context of a forced marriage that will be crimes anyway. In the extreme cases that might persuade one to make forced marriage itself a crime, there will be crimes of breach of the peace, if nothing else, and probably threats of violence, if not actual violence—the bill will take nothing away from that situation.

The Convener: I suppose, in terms of the reluctance of someone to come forward, it would help a little if forced marriage was not a criminal offence in the first instance.

Stuart McMillan: The witnesses have answered my first question, which was about the level of sentence. My second question is probably directed more to ACPOS. If the bill were to be passed in some shape or form, would you expect that the offence created would be one of the areas that would be plea bargained a bit more often in dealing with individual cases, or would you suspect that elements of existing legislation would be plea bargained more as compared to this one? I pose that question because I sit on another committee that is considering another bill, and that issue came up.

10:45

The Convener: I defer to the solicitors on the panel to see whether plea bargaining would be a possibility.

John Fotheringham: I do not think that it would be a major issue. You would have to ask the Crown about it, but I would not expect any bargaining to be done because you have a different opponent in this case. There is an applicant, as opposed to a civil pursuer and as opposed to the Crown Office and Procurator Fiscal Service. You could not bargain one off against the other. If there were a breach, the fiscal would have to take up the case, but it is unlikely that the fiscal would wish to abandon any form of complaint under the act—if the bill becomes an act—against one of the crimes potentially committed in the course of trying to encourage a forced marriage. One of the difficulties will not be at the stage of pleading after the service of any criminal complaint but at the stage of giving the police powers to do something practical about the situation. We might want to look at powers of arrest later when we come to do the detailed examination of the bill.

Hugh O’Donnell: If the enforcement of a protection order could coincide with the period in which a victim had no recourse to public funds of any kind, would that mean that the bill would clash with the Home Office’s rule about a marriage not coming to an end for two years and people being returned to their country of origin?

John Fotheringham: I regret that there could always be issues with the Home Office’s attitude to things. I do not think that that is within the competence of this committee and it is certainly beyond the victim’s solicitor’s range of competence. I am sorry, but there would not be much that we could do about that.

Provisions towards the end of the bill will allow the court to declare an action of the Crown unlawful. Nothing done by the Crown will be a crime, but the sheriff can declare an action or threatened action of the Crown to be unlawful. You can imagine a decision under immigration legislation being declared unlawful by the sheriff court—you would then have an interesting clash of cultures. I do not know whether that was thought of by those who framed the bill, although I strongly
suspect that it was, which is why it is there. I do not know what negotiations there might be between the procurator fiscal here and this Parliament or the Home Office.

Louise Johnson: The precarious position that the member describes already exists. Scottish Women’s Aid network members have been supporting women who have had to leave their partners before the end of the two-year probationary period and are therefore experiencing the very difficulties that Hugh O’Donnell describes—they do not have access to public funds. However, that does not compromise their access to legal aid. Strictly speaking, if they wish to apply for a forced marriage protection order, legal aid access should not be an issue. The issue is about their being able to apply for indefinite leave to remain. There will be problems with that in relation to immigration legislation. The proposed changes to legal aid in England and Wales will not affect it. Discussions about that are going on just now. Hopefully, a forced marriage protection order will assist a woman’s application to stay in the country with indefinite leave to remain as a result of domestic abuse.

Hugh O’Donnell: Thanks for that clarification.

Assistant Chief Constable Livingstone: I was just going to respond briefly to Stuart McMillan’s query and concur with John Fotheringham. I do not know whether the Crown has given evidence or whether you will invite it to do so.

The Convener: I think that we might have invited it.

Assistant Chief Constable Livingstone: Again, we do not expect the numbers to be exceedingly high, but my take on the issue is that, given the public interest that is at play, if the police arrest someone for breach of an order and there is a sufficiency of evidence and the factual test is met, it is extremely unlikely that the police would not proceed with a specific charge under the act. As ever, the crime will speak for itself, but that is my general observation from my experience.

The Convener: That is interesting. Before we leave this section, we are conscious that we in the Parliament can pass as much legislation as we like, but if people are not aware of it and there is not enough training from the people in the various agencies, it will not be as effective as we would all hope. Are there any comments on that from the police perspective?

Assistant Chief Constable Livingstone: I said at the outset that forced marriage is an element of so-called honour-based violence—I stress that it is “so called”. A couple of months ago, the police and our partners, including a number of colleagues who are here this morning, attended a significant conference at the Scottish Police College. Given that all sorts of things of media interest were happening at the time—significant trials were starting and various other things were at play—we were surprised and pleased at the level of media interest in the conference. It was just a police conference, but the media were keen to report it because of the issue. When the Deputy First Minister and Cabinet Secretary for Health and Wellbeing launched the bill, there was again a significant level of media interest. People recognise forced marriage as an emerging issue of concern and interest, so it is incumbent on us all to shine as much light on the issue as we can. Even this morning’s session contributes to that.

The Convener: Where does the training need to come from? Where is the information likely to come from? Obviously, it will come from organisations such as yours, but can you think of any other agencies that will need to be aware of the issue and do training so that, when they are approached, they are aware of the legislation?

Huma Awan: Particularly in relation to youngsters, people such as teachers and health workers need to be trained up to be able to identify the issue. I know from the cases that I have dealt with that very few people come forward and say, “I am worried. I think I might be forced into a marriage.” There are a lot of other, underlying issues, so people need to be able to identify that there is a likelihood that the person is having other problems at home. If the bill is to work, training needs to be in place. People need to be able to identify the issue, so teachers, health workers, the police and people who work directly with youngsters in the area need to be trained up.

Louise Johnson: Of the groups within Scottish Women’s Aid, Shakti Women’s Aid in Edinburgh and Hemat Gryffe Women’s Aid have been doing training on aspects of violence against women, including forced marriage. That resource would certainly be open to others. I absolutely agree that training is important. I am pleased to see that the bill specifically mentions guidance, which must be not just about the legislation but about the wider issues in relation to forced marriage. Training should cover teachers, health workers, social workers, the police and other support organisations—anybody who is likely to come into contact with a person who wants information or support on forced marriage. That is vital, especially if people are going to be designated relevant third parties. Also, we must have both statutory guidance and codes of practice.

Assistant Chief Constable Livingstone: I stress that the victim might not know that they need advice on forced marriage, so the training must be integrated with the work that we are doing on violence against women, violence in society, domestic abuse, domestic violence, public
Our experience is that forced marriage will not necessarily be the first issue at the point of contact. The training has to be fully integrated with existing local and national training programmes. Within the sphere of public protection, through child protection and other areas, we try to do as much joint training as we can within our own separate disciplines.

There will not be any specific forced marriage training—it will be integrated into existing greater awareness training, which covers front-line officers, fresh recruits and specialist officers who work in domestic abuse and family protection/public protection units.

The Convener: It goes without saying that it would probably cover third sector organisations such as carer organisations, as well, given that they are among the bodies that have highlighted forced marriage as an issue.

John Fotheringham: We mentioned in our submission that we want to look at judicial training, too. There are no judges or sheriffs in Scotland who will come across many such cases; no one will build up a long course of expertise in forced marriage. When the issue comes up, it will come up suddenly. Sometimes the court will have to make its own order. That requirement will arise suddenly, because it will come up in the context of another case. There will have to be a resource in the form of a named individual or a named body of people that sheriffs and judges can contact, and there will have to be someone in the Crown Office whom the Crown can contact and who has the expertise to act as a resource. Unless sheriffs are well informed on the issue, no one will be able to learn about it sufficiently to react quickly enough. The recommendation that we make with regard to the Judicial Studies Committee would be a very good idea.

The Convener: That is helpful.

Tanveer Parnez: I just wanted to share with the committee the fact that BEMIS has been showing a series of films on human rights education, trafficking, holocaust and other issues that concern civic society. We have a set of films that we show for 20 or 30 minutes, after which we have a discussion. That raises awareness among communities and gives them information on empowering women to take action, how to contact their MSP, their MP, their councillor or any other organisation through which they could access information that they could cascade to other community groups and raise awareness.

I think that the training needs to go wider than just some of the agencies. We have delivered training to a number of Women’s Aid agencies, such as Hemat Gryffe Women’s Aid, but the training needs to be wider and it should be culturally sensitive. Account should be taken of the rural dimension, in particular. If a woman is trying to seek information on forced marriage from a Women’s Aid group in a rural area, there will not be much information available or anyone who is an expert on the legislation, on forced marriage or on diversity issues. We should be aware that there needs to be more human rights education across the board, which should cover councillors and all public bodies.

The Convener: Is there an issue in rural areas? Someone who walks into a big Women’s Aid centre in Glasgow will immediately have a bit of anonymity. Is it the case that there is not the same anonymity in a rural setting?

Tanveer Parnez: We have been contacted by people from the Highlands and from Dumfries, where such provision is not available. People in those areas have to get lawyers from Glasgow and are always trying to find out whether there is anyone who deals with forced marriages or marriages under Islamic law. That has been quite a difficulty. We need to know who people can go to in the legal system. There needs to be more awareness raising throughout the system, which should cover institutions as well as communities.

The Convener: So it is more a question of the expertise not being available than it is to do with sensitivities about anonymity.

Tanveer Parnez: Yes.

Hugh O’Donnell: That brings us on to the bill’s main provisions, on which the committee would be interested in hearing comments—positive or negative—as well as suggestions about tweaking them.

11:00

The Convener: Who is desperate to kick off?

Hugh O’Donnell: I can see that John Fotheringham is chewing at the bit.

John Fotheringham: The Law Society has made proposals in our written submissions, but I will just go over them.

There is a very wide definition of forced marriage in section 1, as is entirely appropriate. It could cause difficulties, but once there have been a few cases the courts will tell us what is meant and what is not meant by forced marriage. They will say what the boundaries are. The statute should have a wide definition, and I am glad to see that we have exactly that.

We propose one small change in section 2. Under section 2(3),

“A forced marriage protection order may, among other things, require a person ...
(f) to refrain from taking the protected person abroad,

(g) to facilitate or otherwise enable the protected person or another person to return to the United Kingdom within such period as the court may specify.

First, what is meant by “abroad” in paragraph (f)? Secondly, there is no provision in paragraph (g) for not removing the protected person from Scotland—just from the United Kingdom. One analogy is with the Children (Scotland) Act 1995, in which the provision is against removing children from the United Kingdom, although equivalent English provisions usually prevent the children being removed from England and Wales. I see no reason why the Scottish statute should not allow the court to prohibit the removal of a person from Scotland, unless there is to be very tight correlation between the Scottish and English systems. The order should be to prevent the removal of a person from Scotland. If a person were removed from Glasgow and taken to Wolverhampton, Salford or Tower Hamlets, the problem could be replicated. We—and the victim—cannot afford that, so that provision could usefully be changed to refer to Scotland.

The major issue that we wanted to look at is covered by section 3, which defines who can make an application. Section 3(2) provides that “An application may be made by any other person”—other than the protected person and relevant third party—“only with the leave of the court.”

Later on, the section provides that: “a relevant third party’ means—

(a) a local authority,

(b) the Lord Advocate—

the Crown, or—

c) a person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.”

We do not know who that is going to be, but the Law Society proposal is that the relevant third party could include anyone whom the court allows to be a relevant third party. That would mean that any friend, relative or other third party who does not fall within that definition could apply to the court to be the person who makes the application.

I would rather have that than a reference to “any person”, which would be the busybody’s charter; for example, for the next-door neighbour who just wants to be involved. We might find that there are vexatious “relevant persons”—some people could do it maliciously for political or racial reasons, and one would not want any of that. Under our proposal, the relevant third party would have to prove to the court that it is appropriate that they have that power. We would therefore like “relevant third party” in section 3(1) to be redefined as including the person referred to in section 3(2).

The same point comes up again in sections 7 and 8, which deal with the variation, recall and extension of orders. Again, one would wish the relevant person to be someone whom the court authorises to be a relevant person. We cannot say in advance who that will be in every case. Sections 7 and 8 refer to “any other person affected by the order.”

Does that include the fiancé? The bill does not say so. We believe that the relevant third party must be somebody whom the court understands to be a relevant person and who ought to have a voice in the situation. It is a small change to the words of the bill, but it would be very useful in many cases.

Section 4 refers to the power of the court to make orders without application. That brings in the matter that was raised earlier about judicial studies being important. Such orders will arise rarely and suddenly, so there ought to be training and a designated contact in the Crown Office for the courts to contact for expertise in the issue.

We have no comments to make about sections 5 and 6.

I mentioned sections 7 and 8 in my comments about section 3. That is really the most important thing that the Law Society has to say.

Our recommendation on section 12 is simply that it be deleted in its entirety, because it does not seem to do anything. It says that part 1 “does not affect any other protection or assistance available to a person”.

Of course it does not. It also says that part 1 “does not affect ... any criminal liability”.

Of course it does not. Why do we have a section in the bill saying so? It could usefully be deleted.

Section 12 also says:

“In particular, it does not affect ... the equitable jurisdiction of the High Court or the Court of Session”.

What? That includes an English legal phrase that does not apply here. I think that it means the nobile officium, but we do not need to put that in. Section 12 could really just go. I think that there is an equivalent section in the English statute, which is why section 12 has been included, but we do not need it. Let us just cut it.

We have no comments to make on sections 13 to 16.

Our last comment is on section 17, which has, to some extent, been covered. It states:

“No contravention by the Crown of ... section 9(1)” — that is the offence section, which is important—
"makes the Crown criminally liable."

There is no great surprise there. It continues:

“But the Court of Session may, on the application of any public body or office holder having responsibility for enforcing section 9(1) ... declare unlawful any act or omission of the Crown which constitutes such a contravention.”

That is where you may find a clash with the immigration authorities. The committee may wish to consider widening the range of people who can make that application to the Court of Session or even allowing an application to the sheriff court. Why should someone in Kirkwall or Stranraer have to go to the expense of doing it all through the Court of Session? There are perfectly good sheriff courts—why could the application not be made there?

Interestingly, section 17(4) states:

“Nothing in this section affects Her Majesty in Her private capacity.”

One wonders why that is there. Do we expect Her Majesty to indulge in forced marriage of any kind? I do not think that that belongs in a Scottish statute. It may have resonance in English procedure but, if it has been a cut-and-paste job, let us delete it.

The Convener: We are looking at the main provisions and it is good to get on record the Law Society’s detailed suggestions about where the bill could be improved, but can you give us an overview of the main provisions, to give us a feel for them? Now that we have your comments on specific provisions, we can tackle them in a moment—Malcolm Chisholm will bring up some stuff in relation to that. Can you say anything on the main provisions generally?

Assistant Chief Constable Livingstone: I will make three points. The first is on the enforcement of the section 9 offence of breaching the order. I reiterate what we have said in writing: we would like an explicit power of arrest to be attached to that section, just for clarity. One could argue that such a power is inferred or implied, but why argue if we can state it explicitly? That would make the bill consistent with the legislation on matrimonial homes and the Protection from Harassment Act 1997.

The second point relates to the definition of force. I take John Fotheringham’s point about the breadth of the definition. My slight fear is about the interpretation in section 13, that

“force’ and related expressions have the meanings given by section 1(6)”.

Although that includes coercion by threats and psychological means and taking advantage of incapacity, for the purpose of being explicit we would prefer a definition of physical and actual force. Again, that may be implied but it would be easier were the bill to say it.

My third point—apart from what we have said in writing—is that I support John Fotheringham’s observation about the value of section 12. As we have said from the outset, the legislation on forced marriage will be part of a suite of statutes, common law and practice that we will use to address honour-based violence.

The Convener: Does anyone else have general comments on the provisions?

Louise Johnson: I will reflect and agree with what John Fotheringham and Iain Livingstone said. Those matters will all be covered in depth in our submission, so it is good to see that we have got it right.

Guidance for the judiciary is definitely an issue. We also presume that the bench will look for a report. If we have the bar, reporters, safeguarders and curators, it will be important that they, too, have an obligation to undertake training or to be aware of the situation. We see such a problem arising in relation to contact orders, so it would be most unfortunate if that were to be replicated under the bill.

The bill mentions threats, but I do not think that it mentions physical violence, which must be mentioned, too.

We wonder what constitutes “appropriate” in ascertaining the protected person’s wishes. That could be clearer, because “appropriate” can mean different things to different people.

On applications, we are concerned about who would be a relevant third party. It is important to have guidance for them and not to assume that, because someone happens to be part of a statutory organisation, they automatically have knowledge. The task cannot just be bolted on to whatever job they do.

We make detailed points on other sections in our submission. As Iain Livingstone said, a specific power of arrest is needed for the offence of breaching an order. We wonder how section 9 will work. Will the protected person have to take the matter back to their solicitor to have the breach brought before the court, or will it have to be reported to the police? Will a relevant third party or another person be able to report the breach or will that have to be done by the protected person? An order might be breached outwith Scotland—for example, a protected person might ostensibly go on holiday with her family and find that she is put through a marriage ceremony against her will. If that protected person is forced to remain abroad with her spouse, how will the order be enforced abroad?

The Convener: Those comments are helpful.
Malcolm Chisholm: Much of what I had planned to ask about has been covered. Central to the bill are forced marriage protection orders. I will raise a few issues on them, some of which some people have covered. The general question is whether the orders will provide sufficient preventive and protective measures for forced marriage cases. What are the witnesses' views on the provisions that will allow applications for forced marriage protection orders via third parties on victims' behalf? How appropriate is it for local authorities to have that role? I will touch on Louise Johnson's last point. How well will the application of protection orders to conduct outwith Scotland work in practice?

John Fotheringham: We will have to wait for experience. In England, 230 orders have been made, which is double the expected number. Very few orders have been breached, although the orders have been made. If the orders have been made with very few breaches, we can say that the prevention aspect seems to have worked. Perhaps that is a leap too far, but it is all that we have, and we can only try.

We have a couple of years of English experience. The Forced Marriage (Civil Protection) Act 2007 has been in force there for two years and has its second anniversary on Thursday, so it is new and is not well known, although it is becoming better known. We can learn from the English experience: we have learned from it in the bill. We do not know how the bill will work, but it will work better than nothing. If it works as well as the English act, we will be doing not badly, given that the numbers in Scotland will be very small.

How would a protection order work outwith Scotland? I do not think that it would. It would not be enforceable outwith Scotland. However, if there has been a forced marriage protection order and 15-year-old Ayesha is taken to Lahore and married anyway, that will assist Ayesha in her application for nullity, when the matter comes before the court in Scotland. It will also be a reason for her family not to take her to Pakistan to be married, if they want to come back here to carry on with their business, because they know that they will be in criminal breach of an order. The power will be therapeutic, rather than anything else. The paucity, rather than the number, of breaches will show whether it is working.

Have I covered all of your questions, or do you have another one?

11:15

Malcolm Chisholm: I asked about the role of local authorities.

John Fotheringham: We want social workers to have the power to apply for orders. For “local authority”, one can also read “teacher”. One indicator that there may be a danger of forced marriage is a child not attending school, having a sudden drop in academic performance or being removed from school without explanation, so teachers may be among the first people to understand what is going on. A child who does not yet have a particular connection with a social worker, because there has been no apparent reason for them to have one, will have a relationship of some sort with a teacher, who may see that something is going on. Through that teacher, the local authority ought to have the power to make an application.

Louise Johnson: As John Fotheringham said, it is not clear to which parts of a local authority the term “a relevant third party” is intended to refer. We thought that it might refer to social work, education and health, but what about children’s reporters? Will the police be regarded as a third party, under the child protection agenda? Will they be able to apply for orders when they are supporting someone who has reported domestic abuse, for example?

Regardless of which part of a local authority applies for an order, it is crucial that the responsibility is not just bolted on to those who do that. As John Fotheringham said, it is crucial that there are named people. The provision should apply not just within the Crown Office but to whichever part of the “relevant third party” is dealing with a case. There must be a dedicated and trained team with cultural, religious and community awareness and understanding of the tensions that can surround people who wish to apply for forced marriage protection orders.

One issue is the safety of the protected person, both before an application has been made and after it has been granted. We wondered who would be responsible for policing—if I may use that word—forced marriage protection orders. If the protected person is still living with their family or is in close contact with them, they may be at risk of physical harm, emotional coercion, blackmail and so on while the application is being made. Provision must be made for people who are relevant third parties to take some responsibility for the individual’s safety and support while that is happening. If there is not, their focus will be on applying for the order. How do we ensure that they take steps to cover the person’s safety?

Christina McKelvie: I have a specific question about an issue on which we have some joined-up thinking in the Parliament. I am a member of the Education, Lifelong Learning and Culture Committee, which is the lead committee for the Children’s Hearings (Scotland) Bill. Stage 3 of the bill will take place on Thursday. At stage 2, there was considerable debate about including in the bill
a specific provision on forced marriage; whether the deal will be sealed at stage 3 is another matter. That provision, which was proposed by the Law Society, had to be quite loose, because it must reflect the provisions of the Forced Marriage Protection (Scotland) Bill; it will probably be tidied up by a Scottish statutory instrument at a later date.

There is specific provision for reporters, panel members, panel chairs, social workers and education authorities to take into account in the children’s hearings system whether a child is at risk. If a child becomes known to the system just before their 16th birthday, which is sometimes around the time when forced marriages take place, they will be supported by the system until their 18th birthday. That provides a bit of overlap and added protection. There has been some joined-up thinking across a couple of pieces of legislation to protect children.

Louise Johnson: Thank you for that; it is very helpful, and it is a positive move.

The Convener: I think that you are talking about amendment 177, Christina.

Christina McKelvie: The Law Society has lodged about 340 amendments to the Children’s Hearings (Scotland) Bill.

John Fotheringham: Yes. We have lodged a fair old number. We were disappointed that the provision was not in the bill, but we were told the day before about the amendment to the Children’s Hearings (Scotland) Bill, so that is just fine.

The Convener: We will make the connection during our wind-up speeches at stage 3 of the Children’s Hearings (Scotland) Bill.

Assistant Chief Constable Livingstone: I want to make a point that is relevant to some of the observations that have been made about the different pieces of legislation. It is about integration, how it would happen in practice and who will make an application.

If there is concern about a child, there is immediately a referral discussion and a case conference. All the agencies will gather. Again, that might happen before the concept of forced marriage has been mentioned. It is only when you look around the issue that you will see that there is a host of measures, and one agency might take the lead for one, another might take the lead for another, or it might be done jointly. The children’s reporter might be involved, or the voluntary sector. There is a complexity of different integrated services, and within any situation, we might want to consider collectively and jointly a third-party application for a forced marriage protection order. I just wanted to set the context because that is just another element that needs to be integrated.

There can be many issues around an individual, a group of individuals, a family or wider network, and the decision to seek a forced marriage protection order would be made on a collective basis. Louise Johnson made the point about someone taking the lead; that would be done on a shared basis.

One of the questions would be about who has the responsibility and accountability for protecting the victim, and the police might take an element of that by removing an individual or taking other measures to give them physical security.

I just wanted to make the point about how integrated the process would be. It would not just be a stand-alone meeting about a forced marriage protection order. The FMPO would be a mechanism that we could use and it would be integrated into a decision about how to support a family.

The Convener: That is helpful.

Tanveer Parnez: I just wanted to flag up the point that we are all in danger of stereotyping 16-year-olds. Forced marriages are most likely to occur in parts of England or Wales. However, in Scotland, we need to be aware that there have not been many cases of people in that age group being forced into marriages. In schools, teachers have the perception that if a 16-year-old girl is taken away from home to go on holiday with her parents, she is being forced into a marriage. Those perceptions are myths and we need to move away from them.

Also the bill seems to focus solely on the south Asian communities, which detracts from the fact that forced marriages also occur in other communities and makes that experience invisible. We need to take that into account as well.

Marlyn Glen: That was interesting because we have not actually talked about other communities, and there are myths. As John Fotheringham said, there might be a low incidence, but there is a high impact, which is important.

My question is really just to get some clarity. Louise Johnson asked about who will police what happens. I am under the impression that that is what an interim order will do. Is that right?

Louise Johnson: I suppose that it depends on whether an interim order is applied for in the first place. If the situation is urgent, presumably an interim order will be applied for. If the situation is not seen as urgent, or if there is no danger to life and limb and an application for an order is being made, how long will it take, and what will be done to support the person while the application is going through?

The children’s hearings provisions will allow younger people to be supported. When the
situation involves an older woman, who is going to ensure that the order’s terms are adhered to?

Who will support the person if they are experiencing coercion, threats or whatever? Who does the person tell and who will ensure that something is being done? The order will probably operate a bit like an interdict does, but how do we ensure that the person does not suffer while the application for the order is being made and once it is in place?

The Convener: To some extent, that is the point that Iain Livingstone was making. It is integral to the case.

Assistant Chief Constable Livingstone: If there was a suggestion or allegation that an order was being breached, the value of section 9 is that breach of the order would be a criminal offence, so it would be the police’s duty to investigate the situation and establish whether there had been a breach. If an order had been breached, there would clearly be a power of arrest.

On the mechanisms that would make the provisions on maintaining, varying or recalling an order work—the provision of information, police awareness, the need for updates on to police computers 24/7—it is vital that the data are accurate, so that people who should be arrested are arrested. It is equally important that people are not arrested when they should not be arrested, because an order is not in place. That is the value of having statutory guidance, because the logistical, mechanical process is critical to ensuring that the system works properly.

Marilyn Glen: That is helpful.

I have been considering protection orders for victims of forced marriages who have a learning disability, in particular. If someone needed a protection order because they had a learning disability, why would the order come to an end? Why would not a permanent protection order be made? I am concerned about that. I have not considered Louise Johnson’s point about people being forced into marriage to be carers—I do not think that the committee has thought about that. However, I am interested in the duration of orders. How would we know that a protection order needed to be in place for a certain length of time?

Louise Johnson: That is one of the issues that we will raise. What would the minimum and maximum durations be? Under the bill an order could just continue. When would it be determined that the order needed to be varied or ceased altogether? Who would take that decision?

In relation to the making of orders, we are concerned that the need to take a person’s wishes and feelings into account does not seem to be covered in the sections on variation, recall and extension of orders. We were going to mention the issue in our submission. Where does the question of a person’s wishes and feelings fit into a decision to vary or cease an order? That is not covered in the bill.

The Convener: Do Claire Platts and Huma Awan want to comment?

Claire Platts: On applications that are made by third parties, the focus appears to be on minors, but we are concerned about the support mechanisms that would be in place for people who are in their late teens or early 20s in the event that it was deemed necessary for a third party to apply for an order. If an application has been made and the person has been shunned by their family and there is no emotional or financial support in place for them, it strikes me that there might be repercussions for the individual.

Huma Awan: As Claire Platts and Louise Johnson said, we seem to be focusing on youngsters. Tanveer Parnez mentioned that, too. However, as we know from our immigration work, changes in the law in relation to marriages that take place abroad mean that a person must be 21 before they can apply for a marriage visa. Therefore, if there is an immigration angle to the forced marriage, the individual will be in their 20s. What protection will such people be given?

The Convener: The issue is how we ensure that there is awareness, so that people can check for that.

Huma Awan: Yes.

The Convener: Are there any other comments on the bill’s provisions?

11:30

John Fotheringham: There is one matter that is a policy question on which the society does not have a specific view. Section 2(1) states:

“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.”

It does not mention validity.

The committee will have to decide whether an order should render invalid any marriage celebrated in Scotland during the currency of the order. That would certainly make the position much stronger for a real victim. On the other hand, people can change their minds. If orders do not have a specific time limit on them, they continue until they are recalled, as Louise Johnson rightly said. It is quite possible that a young woman might say that she is being forced into a marriage that
she does not want, and an order will be granted, just to sit on the court file. Five years later, things might have moved on and the couple might marry, forgetting that there was an order rendering their marriage invalid, with all the implications for succession and financial provision on divorce. The policy decision that the committee will have to make is whether it wants the order to affect the validity of a marriage or just to give the possibility of a criminal sanction if someone goes ahead with a forced marriage despite an order being in place.

**The Convener:** Thank you for that. Are there any other general or specific views?

**Assistant Chief Constable Livingstone:** I will try to be brief. I talked about integration. A case might arise involving a woman in her 20s, 30s or 40s who has children and who has been forced into a marriage. We need to keep in our minds a multiple layer of support mechanisms, interventions and remedies.

There are duties of care. If the police are dealing with a victim but have not clarified whether there has been a forced marriage, violence, marital rape or whatever the issue is, there is an immediate duty of care. We would seek to protect and rehouse that individual and his or her dependants. Those duties stand. Very often, that is when we come into contact with the third sector to provide alternative housing. I apologise for reiterating what I have already said, but it is really important to see all this as integrated with lots of other protective measures that are available.

**The Convener:** The communities that we seem to be touching on have an element of permanence. Would the bill have an impact on more transient communities, given that people from some of the A2 accession countries are now coming into Scotland? I am talking about people from Bulgaria, Romania and Roma communities.

**Louise Johnson:** If I remember correctly, the forced marriage network that the Scottish Government has set up includes a representative who has contact with the Gypsy Traveller community. The bill will cover forced marriages where they occur within those communities. How do we engage with them? You are correct to ask how we make women who have come in from other European or candidate countries aware that the legislation exists as part of the legal system of Scotland.

**The Convener:** That is very interesting, given that our next agenda item is to consider our report on immigration and trafficking. Information packs feature in that. This might be an aspect that should feature in it, too.

Are there any other general or main points on the bill? If there are not, I intend to go around the table and ask people to sum up. It would be a good and helpful way to conclude if you just mentioned what you think is the main point from today's session. I will start with you, Louise—to put you on the hot spot.

**Louise Johnson:** Our specific concern, which is quite important, relates to the categories of people who can vary, recall and extend orders under section 7, “Variation and recall of orders”, and section 8, “Extension of orders”. I do not think that “a relevant third party” at section 3(1)(b), “any other person only with the leave of the court” under section 3(2) or the Lord Advocate under section 4(3) have the power to do that. They might be covered under section 7(1)(c) as “any other person affected by the order”, but I am not sure. Those people have specific powers to apply for orders, but it should be stated on the face of the bill whether they also have the power to vary, recall and extend orders.

We are generally pleased with the bill and commend the Scottish Government on all its work with the forced marriage network, and everyone who contributed to getting the bill to this stage. We are pleased that the Scottish Government has introduced the bill.

The main focus should be on awareness raising and training. We can have as many orders as we like, but if people do not know that they exist and what they are for, there is no point. One of the main focuses has to be on saying, “It is not criminal; it will become criminal only if the people who are supposed to be looking after you and who should have your best interests at heart actually act against you. Nothing will happen until then.”

It is important to ensure that people are supported through their applications and that the people who make applications are fully trained and named so that we do not have a situation where people say, “Who’s going to do this?” and the answer is, “I don’t know,” followed by a vague phone call about enforcement. We do not want there to be confusion and nobody knowing how to deal with the situation. We are dealing with people who are already confused and perplexed about their rights, so we do not want to make the situation any more difficult. The legislation has to
be accessible and clear so that it can be used well.

Hugh O’Donnell: I simply repeat what I have said on numerous occasions in committee when dealing with such issues: yet again, we are faced with a severe lack of accurate data. I understand the reasons for that in this case, but we need to find a way of getting a handle on what we are dealing with if we are to make meaningful progress and comment on it. That aside, I thank the witnesses for their contributions.

Claire Platt: The bill is to be welcomed. Anything that acts as a deterrent to the behaviour that is exhibited in relation to forced marriages is to be welcomed. Publicity and awareness raising are key to the bill meeting its aims. It must be targeted at the requisite individuals to ensure that they are aware that it exists and they have a clear understanding of the remedies that are available to them.

Malcolm Chisholm: I thank all the witnesses. This has been an extremely useful session and I now know a lot more about the issues than I did an hour and a half ago.

Assistant Chief Constable Livingstone: The police service strongly supports the bill. We think that it is in line with a lot of legislative change that the Parliament has introduced, whether it is the Domestic Abuse (Scotland) Bill, reform of sexual offences law in Scotland, the child protection reform programme or work on adult support and protection. All that is aligned to ensure that specific victims have specific remedies and that all agencies can support the victims.

We have made a number of observations on the bill, but its premise, value and the fact that we will have a specific act on forced marriage in Scotland will help to shine a light and get the clear understanding that we all seek. There is strong support from the police.

Stuart McMillan: I echo my committee colleagues’ comments on this morning’s session and thank everyone who has come along. It has been an interesting session. A couple of key points came out of it for me. The first is about the lack of data, but we all understand why that is the case. The second is that, if and when the bill is passed, it is imperative that a full range of information is provided to as many relevant people as possible to ensure that the legislation does what it says on the tin.

Tanveer Parnez: BEMIS welcomes the bill. One of the best things in it is the exit option. However, we would like to see more of an interagency approach to the issue. Also, the public authorities should approach forced marriage by initiating long-term dialogue with communities and people who have been forced into marriage and having appropriate provisions in place for them.

John Fotheringham: As I mentioned, sections 3, 7 and 8 are the only major flaws in the bill. It will be reasonably easy to mend them, and I hope that that will happen. Apart from that, I echo what Louise Johnson said and commend the Parliament for this great step forward. It is a bold step, particularly as we are not following England. We are saying that to breach a forced marriage protection order is a crime. We are not going to tolerate forced marriage in this country, and nobody will be able to hide behind issues of cultural sensitivity to say that they are not committing a crime. It is a wrong, and we are saying that it is a wrong.

Jamie Hepburn: I do not have much to add. I echo my fellow committee members’ thanks to the witnesses. Their evidence has been useful. I do not think that much of it has been too surprising, but it has been useful and it will inform our further, detailed consideration of the bill.

Huma Awan: I welcome the bill. It sends a clear message to the perpetrators that forced marriage is not acceptable in Scotland, and the fact that breach of a forced marriage protection order will be a criminal offence sends a strong message that we are supporting the victims and thinking about them. As with any legislation, awareness raising is important if the bill is to work, and there needs to be support for organisations that work with victims in that regard.

My only concern is that we need to get the religious marriage celebrants involved as well, particularly when it comes to nullifying marriages. Where would the victim stand if their marriage was nullified in a court in Scotland? Would they be free to marry under Islamic religious rules, or Jewish ones, et cetera? Some consideration needs to be given to that.

The Convener: That is helpful.

Christina McKelvie: I thank the panel members for their interesting contributions this morning. I echo what everybody else has said, but a few specific things jumped out for me. The first is the value of and need for human rights education—Tanveer Parnez will be happy about that, because it is a real cause for her—and how it can be incorporated into what we do. The second is the need for integration of services, organisations and how we think about the issues.

One of the main things is that the bill needs to use clear and unambiguous language so that people know exactly what it says and what it means. We have all learned a lesson about that this morning. I took great note of what the Law Society of Scotland said. Clear and unambiguous
language is a main factor for me in taking the bill forward.

**Marilyn Glen:** I add my thanks to all the witnesses and ask for their continued support through the remaining stages of the bill.

**The Convener:** That concludes our evidence session. On behalf of the committee, I thank you for what has been an extremely worthwhile evidence session. It has certainly implanted in our minds the need for awareness and training out there. We know that it has been a successful session when we come up with not exactly more questions than answers, but certainly a lot of questions. We know that it has been a worthwhile session when we have a body of evidence and information to use as we progress with the bill. I thank you all for your attendance today, which is much appreciated.
1. Amina – the Muslim Women’s Resource Centre (Amina MWRC) is a Scotland wide organisation established in 1997. Amina MWRC’s purpose is to promote the welfare of Muslim women, and to overcome barriers to Muslim women participating in all aspects of society.

2. We welcome the opportunity to contribute to the work of the Equal Opportunities Committee in relation to the consideration of this Bill.

3. Amina MWRC achieves its aims in three ways:

   • (a) by working with policy makers and mainstream organisations to help overcome barriers to Muslim women’s civic participation and access to services.
   • (b) by undertaking development work to enable Muslim women to develop skills and confidence to more fully engage in society, and promote community integration.
   • (c) by providing models of good practice through a range of services delivered in a way that meets the specific needs of (primarily) Muslim women.

4. As part of this work Amina MWRC provides a range of helping services including: information and advice, advocacy, counselling, befriending, community development and a Scotland wide telephone helpline as well as specialist services in relation to violence against women.

5. Amina MWRC has extensive experience of dealing with forced marriage issues via our casework and primarily via our helpline. Calls come from Sikh and Hindu young women as well as Muslim women on this subject. The majority of callers are under pressure from family to marry against their own wishes and are looking for help and advice as well as a listening ear from someone who understands their religious/cultural background. We have also dealt with cases of young women who have been forced into a marriage and are looking for advice on a way out. A few cases have involved young women being taken “on holiday” and then presented with a fait accompli of their marriage having been arranged. In a few cases there has been violence or threat of violence. The majority are looking at options to avoid a marriage and concerned about the upset this is causing their family.

6. We have previously carried out a number of consultation meetings with Muslim women, to inform our views and to feed into responses about this issue. We used the 2005 and 2009 legislative consultations as an opportunity to raise the issue within the community and to obtain a greater understanding of community perceptions of forced marriage. This helped identify indicators as to the best ways to tackle the issue.
7. Amina MWRC welcomes the government’s introduction of Forced Marriage legislation, in tackling this problem. Amina MWRC appreciates the explicit recognition that forced marriage is condemned by every world religion, which counteracts the myth of religious sanction that can be used to justify such acts. We welcome the distinction made between forced marriage and arranged marriage; a practice aspired to by many of the younger generation in this country.

8. Amina MWRC believes this civil legislation strikes the correct balance between identifying via the legal system the seriousness of breaching human rights in this way, and avoiding criminalising families provided they comply with protection orders. It provides protection for vulnerable individuals with a clear mechanism to deal with the issue through the court system. This civil legislation overcomes many of the concerns raised about the previous proposals for criminal legislation: many individuals would not consider pressing criminal charges against their parents even if they were potentially being forced to marry. It would be anathema to do so. By providing a civil remedy, the legislation creates accessible protection.

9. This legislation will bring Scotland largely into alignment with the equivalent legislation for the rest of the UK, which will ensure parity for those resident in Scotland and reduce confusion as to action that can be taken in relation to forced marriage.

Part 1 Forced marriage protection orders

10. The introduction of forced marriage protection orders is seen as a very positive step towards preventing the occurrence of forced marriage. Amina MWRC considers the following to be key benefits of the proposed new legislation:

- (a) It protects victims and potential victims

- (b) The inclusion of coercion by threats and psychological means under “force” (Section 1 subsection 6) is very important as is the inclusion of conduct against another person such as the perpetrator threatening suicide (Section 1 subsection 5 and explanatory notes p.3). From our experience it is these emotional threats that are the most common weapons of perpetrators of forced marriage.

- (c) The inclusion in the terms of the order of conduct outwith, as well as within, Scotland (Part 1, Section 2, subsection 2) is seen as vital to the success of the legislation and therefore strongly supported.

- (d) The broad scope that can be covered by a protection order is welcomed (Part 1. Section 2 subsection 3). It does not simply order someone to stop doing something; it also has power to make someone do something e.g. take the protected person to a designated place of safety; provide documents such as passport, travel documents to the court.
• (e) It includes persons aiding or abetting as well the prime perpetrator within the scope of the legislation (Part 1, Section 2, subsection 4), again important as in forced marriage situations there are generally several people involved in applying pressure.

• (f) A third party can apply on the victim’s behalf (Part 1, Section 3) – essential as many victims by the very nature of the situation they are in will not be in a position to take action on their own behalf.

• (g) Interim orders ((Part 1, Section 5) are essential for use in emergency situations

Part 2 Declarators of Nullity of Marriage in Sheriff Court

11. The Bill clarifies the circumstances in which individuals, including victims of a forced marriage, can separately seek a declaration from the Sheriff Court annulling a purported marriage on the basis that it is void or voidable. These provisions ensure that the jurisdictional rules applying to declarators of nullity of marriage in the sheriff court are the same as those that apply in the Court of Session. This is helpful.

Additional comments

12. We consider that it is essential that any legislation is accompanied by the resources to ensure both its implementation and awareness raising around the issue. Research conducted by the University of Bristol¹, identified the following as helpful in addressing the issue of forced marriage: Education of key figures [community and religious leaders], enhanced relevant services, and more service provision for both domestic violence and forced marriage cases. Amina MWRC recognises a need for education of young people, parents and communities - through schools, religious institutions, public information campaigns to increase awareness about these issues in both Minority Ethnic and Scottish communities. We also recognise the need for data collection and research into the impact of the legislation to ensure it is effective. Amina MWRC therefore welcomes the inclusion of this in the Financial and Policy Memoranda accompanying the Bill, including estimated costs relating to the development of a monitoring and evaluation framework, data collection system, training, education and awareness-raising as well as the drafting and implementation of both statutory and practice guidance.

¹ www.bristol.ac.uk/vawrg 2008
13. Forced marriage is correctly identified as a form of domestic abuse. However the definition of domestic abuse in Scotland relates to spouse abuse rather than wider family abuse. It is important that relevant recognition of the wider context of extended family is recognised both in relation to forced marriage and other forms of domestic abuse.

14. Amina – the Muslim Women’s Resource Centre will be happy to discuss this matter further should the Equal Opportunities Committee so wish.

Smina Akhtar
Director
Amina – the Muslim Women’s Resource Centre
24 November 2010
1. Hemat Gryffe Women’s Aid provide specialised, culturally sensitive support services to women, children and young people experiencing domestic abuse primarily from Black and Minority Ethnic (BME) communities.

2. Our remit involves principally providing safe refuge accommodation primarily to women, children and young people. We also provided information and assistance on various matters as well as crisis support from our drop in centre as well as training to statutory and voluntary organisations and participate in workshops to raise awareness of forced marriage and the cultural barriers facing women children and young people who have experienced domestic abuse.

3. Hemat Gryffe work tirelessly to raise awareness of forced marriage and have lobbied for the introduction of the Forced Marriage Bill with Scottish Women’s Aid and Shakti Women’s Aid together with various other statutory and voluntary organisations.

4. Hemat Gryffe was established in 1981 and has seen a marked increase in forced marriage referrals from within the BME community and considers this a very serious cultural issue for young Scots from the minority ethnic community.

**Forced Marriage**

5. Forced marriage is a marriage without the consent of one or both of the parties to the union. Often individuals face duress which is present in the form of physical, emotional, sexual, psychological and financial abuse. This can involve emotional blackmail, physical assault involving kidnapping, rape and even the threat of murder.

6. Between April 2009 and January 2010 we supported 14 women experiencing forced marriage:

   - 3 women were forced into marriage within the UK;
   - 4 women were forced to marry outside the UK;
   - 7 women were threatened with an unwanted marriage;

7. Five of these women were provided with refuge accommodation by Hemat Gryffe Women’s Aid; 9 of these women were provide with outreach support which involved culturally sensitive counselling, information and support relative to their needs and circumstances. We provided information on marriage annulment procedures in Scots Law.

8. The majority of the women experienced domestic abuse. Many of the women were emotionally coerced into marriage or threatened with marriage if they did not comply with the family wishes. Upon fleeing the forced marriage situation many of the women were ostracised by the family and community. In a number of instances the women were locked up and social contact with friends or other family members was prohibited. Some of the women self harmed. A young woman of school age was threatened that she would be prevented from attending school for the purposes of...
marriage and also if she did not perform satisfactorily at school she would be taken from Scotland
to be married abroad.

9. A number of women told us that they had been deceived by trusted family members. This is
presented to them under the disguise of a holiday outwith Scotland to visit relatives when the real
purpose is in pursuit of a familial arrangement. These vulnerable women leave the comfort and
security of their Scottish homes unaware of the fate which awaits them. If they are alert to the
situation they are confronted with a catalogue of abuse in its many dishonest disguises. This can
manifest itself in parental pressure and abuse, extended family and abuse, societal pressure and
abuse, so called honour violence, emotional blackmail and ultimately the loss of life.

10. The majority of women fleeing forced marriage were running from their parents and extended
family members. Upon leaving the abusive situation some of the women lived with the fear of
being found by family members; some preferred to return to the family home as they worried
about the repercussions from their immediately family, extended family and wider community.
Some women were fearful for the safety of their mother or other family members if they did not go
through with the marriage.

11. One woman who did go through with the marriage suffered domestic abuse at the hands of
her husband and in-laws. She sought help from her parents and was told that they would prefer to
see her dead rather than divorced because of the shame she would bring to the family and
community.

Response from Hemat Gryffe, Shakti and Scottish Women’s Aid

12. Hemat Gryffe Women’s Aid welcome the introduction of the Forced Marriage bill and the
protection that will be afforded to many men and women who have been forced into marriage or
live with the fear of being forced into a marriage. We have provided further information in the joint
response submitted with Scottish Women’s Aid and Shakti Women’s Aid. This is indeed a unique,
anxious and difficult cultural situation affecting many young Scots who will be protected and able
to walk arm in arm with the indigenous community.

Hemat Gryffe Women’s Aid
26 November 2010
ACKNOWLEDGEMENT
Hemat Gryffe Women’s Aid are grateful to the Home Office, Forced Marriage Unit and the Scottish
Government who provided funding for this invaluable survey. We also extend our warm thanks to Kiswebs
who designed the on-line facility and the final analysis.

The survey was available to members of the minority ethnic communities throughout Scotland. Strathclyde
Police and in particular Officers from Helen Street Police Office were active in their support of this project
and assisted us in raising awareness of the existence of the survey through the distribution of posters
throughout the Southside of Glasgow via community policing.

We specifically thank, Chris Bush from the South Lanarkshire Council Doorway Forum, North Lanarkshire
Domestic Abuse Forum and Shakti Women’s Aid. These organisations ensured that details of the survey
were disseminated throughout their local authority areas, including: Schools, community centres, Social
Work Department, Health Centre’s.

We also acknowledge the contribution of our staff in making this survey possible by delivering in person,
posters and leaflets to community groups and other organisations based within the Southside area of
Glasgow, which has a high minority ethnic population. Special thanks are extended to the shop-owners in
Allison Street and Victoria Road and generally throughout the Pollokshields and Govanhill areas.

Finally, we would also like to extend grateful thanks to those individuals who participated in the survey.
**Methodology**

The survey was conducted for four months and ran simultaneously with the Scottish Government Consultation paper ‘Forced Marriage - A Civil Remedy’. It was advertised one month before going live and advertising continued throughout the period of the survey. The survey was advertised at Radio Awaz twice a day for a period of four months and weekly in the Eastern Eye Newspaper. Leaflets advertising the survey were distributed throughout Scotland. Leaflets were also distributed in schools, colleges, universities, health centre’s, police stations, community centre’s, religious centre’s, social services and as many public places as possible. Awareness raising sessions were also conducted by us in local schools.

The methodology of carrying out the survey was via a free-phone telephone number and online questionnaire. It was a very straightforward process. The questions we asked were simple and it took only a few minutes to complete the questionnaire.

The survey was completely confidential and allowed both male and females to participate. Respondents did not know that the survey was being monitored by Hemat Gryffe Women’s Aid. We wanted the community to feel that it was the Home Office and Scottish Government who were conducting the survey to allow any individual affected by forced marriage to respond without hesitation.

The response to using the on-line questionnaire proved to be better than that to the free-phone option. This gives us guidance as to how we might conduct any future surveys.

The outcome of the survey will be sent to the FMU and the Scottish Government. We have seen the successful application of the Forced Marriage (Civil Protection) Act 2007 in England, Wales and Northern Ireland and hope to see the same in Scotland. We believe that the results of this survey will assist Scottish Ministers in their decision whether to establish a civil protection order in Scotland to stop individuals being forced to marry against their will.
INTRODUCTION

The Home Office Forced Marriage Unit ("FMU") were making funding available to service providers who worked with individuals from the black and minority ethnic community in order to carry out work in connection with forced marriages. Hematic Gryffe Women’s Aid felt that to conduct a survey as to the prevalence of Forced Marriage in Scotland would be beneficial to not only service providers but services users. An application was submitted to the FMU for grant funding to enable us to carry out an anonymous survey which involved both telephone and online questionnaires in an attempt to capture the true extent of the problem of forced marriage in Scotland. The FMU accepted our proposal, despite it not falling into the specified criteria. The Scottish Government also provided grant assistance. The survey ran alongside the Scottish Government consultation in 2008/09.
Hemat Gryffe Women’s Aid

Hemat Gryffe Women’s Aid was established in 1981 to provide safe, temporary refuge accommodation primarily to women, children and young people from the minority ethnic communities who are experiencing domestic abuse. Over the last 3 decades the organisation has experienced many changes and developments however, the demand for refuge support for women, children and young people from the minority ethnic community remains. The scourge of domestic abuse exists and is recognised in many forms including physical, emotional, sexual, financial abuse including forced marriage, honour based violence and female genital mutilation. In recent years refuge accommodation is increasingly accessed by women and young girls fleeing forced marriage situations. Hemat Gryffe Women’s Aid aim to maintain a robust service to all women, children and young people and this is exemplified none more so with our additional services that we now provide in terms of outreach support and follow on support.

Hemat Gryffe Women’s Aid operate an open door policy and are committed to providing support to empower women, children and young people, both within the refuge environment and the wider community in order that they are able to live independent lives and at the same time ensuring that their ethnic background, language, culture and faith are valued, thereby maintaining equality and diversity. Our drop in centre at 24 Willowbank Street, Glasgow provides immediate crisis support and is the first point of contact.

Over the years we have supported many women from the minority ethnic community who are victims of forced marriage. In 2008/2009 we supported approximately 12 women and during 2009/2010 14 women. We recognise these women in having strength to fight against the constraints of the situation they have been forced to accept, seek help to free them from abuse and move forward to a life where they enjoy freedom of choice. It is to be acknowledged that in doing so the experiences of these women have indirectly contributed to the implementation of a new law and therefore greater protection for women, children and young people from minority ethnic communities
NASREEN’S STORY

I had a very happy and fulfilling life in UK. My parents were very supportive and encouraging always and wanted their children to better themselves. I am the youngest child and was given a very protective upbringing because I was a daughter. It did not bother me because I felt special.

I was taken to Pakistan for a holiday at the age of seventeen. My Mother and the rest of the family had other plans for me. As soon as we arrived in Pakistan I was told by my mother that I was to been engaged to my cousin. My Father was uncomfortable with this decision but decided to agree with my Mother and did nothing.

I did not understand why they had changed so suddenly. I tried to reason with my parents as I did not want to be engaged to someone I had never met and also I wanted to have my career first and then think of marriage to someone I knew well enough. I did not want to get married and my only way of escaping was to go into higher education and keep avoiding it as long as I could.

At the end of my degree, it was almost a coincidence that we had a family tragedy and I had to go to Pakistan with my father. My mother was already there with family. My mother used this occasion and convinced everybody that I was getting too old for mother’s liking and that as the whole family were present a wedding should take place at once. So after escaping for seven years I was trapped.

My parents refused to back down and did not allow me to come back to UK until I signed the NIKAH documents. This emotional battle had gone on for five weeks. I was exhausted and tired of being cursed by my Mother and her family. I was reminded day and night that I am the cause of family dishonour and disgrace.

Finally I agreed to sign the NIKAH documents but only if I was allowed to go back to UK peacefully. I thought that signing a document did not mean anything and once I was in UK as it would be the end of the matter. Unfortunately my parents registered the NIKAH with the Minister of Foreign Affairs because, to my horror, the NIKAH documents were valid papers for the purpose of a spouse visa.

Once I was in UK, I refused to apply for a spouse visa. I stayed away from the family and started my career. My parents had a troubled marriage themselves and were separated and got together on many occasions during this time. My father, eventually, did accept that it was wrong to force me to marry and came to
support me. After three years of emotional blackmail and threats finally my Mother had came round and accepted that whatever happened was wrong and she would try to help me to get the marriage annulled.

At this point I got in touch with Hemat Gryffe Women’s Aid, to get further information; they advised me that I could proceed to have the marriage annulled on the grounds of duress. Hemat Gryffe phoned the Forced Marriage Unit on my behalf. The Forced Marriage Unit confirmed an annulment was possible and had to be filed within two years of the marriage and referred me to an Immigration lawyer to start proceedings.

It was a very hard and painful episode because in my Affidavit I had to relate the whole episode and my whole story and tell that my parents had emotionally blackmailed me, abducted me abroad and forced me to marry against my own will. I was worried that in saying these parents would be incriminated and may go to jail. However after discussions with Hemat Gryffe Women’s Aid they advised me that this was not the case, now my parents are willing to cooperate in this matter so I went ahead with the annulment.

I have to pay the legal fee because I was working but I did not mind as I wanted it to be over. While the case was in progress, I lost my job and my lawyer had to apply for legal aid. In the meantime my so called spouse has moved from Pakistan to Dubai. I had no means of locating him or ascertaining whether he does indeed live there and I am currently in the process of trying to find him.
Forced Marriage and Arranged Marriage

Marriage in the traditional sense is based on the right of a woman or a man to choose a partner and the union is normally a love match. A marriage is essentially a contract between two parties who both consent. This practice does not apply to all cultures living within Western society. The tradition of arranged marriages has operated successfully within many communities and many countries.

There is a clear distinction between an arranged marriage and a forced marriage. In arranged marriages, it is customary for the families of the bride and groom to take a lead role in arranging the marriage but the choice of whether to accept the arrangement remains with the individuals. The Universal Declaration on Human Rights, at Article 16(2), provides, “Marriage shall be entered into where there is a free and full consent of both parties”. In a forced marriage situation there is no free and valid consent by one or both parties to the union.

The practice of forced marriage principally occurs within the minority ethnic community and is based on custom, misconceived religious beliefs or the cultural traditions of particular groups. It is a practice that occurs in return for a dowry or monetary payment. Individuals who are confronted with a forced marriage are normally subjected to extreme pressure from family members. This pressure can involve physical, emotional and financial abuse, social pressures and imprisonment, abduction and, in extreme cases, physical punishment for betraying the family’s “honour” which can include murder. The majority of cases of forced marriage involve women, although men are reported to have been forced into marriage (as evident in this survey).
**Children’s Outreach Worker Report**

Workshops were facilitated in two Secondary Schools in Glasgow; they were conducted with 5\textsuperscript{th} year students and their class teachers from Shawlands Academy and Hillhead High School, to raise awareness of forced marriages and to highlight the consultation being implemented by the Scottish Government. The workshops went well with great interest from the students and teachers.

Approximately 40 students were involved, 19 evaluation sheets were returned, and some comments from the young people are:

‘*If someone is forced by someone else, then the one who is forcing should be jailed*’

‘*Give them more help and set up a fund for them*’

‘*Put in a protection act*’

‘*Media advertisements*’

‘*The Government can create other protection against it*’

‘*Put in the law and tell people about it*’

‘*Who says we can’t have the protection act?*’

Of the 19 responses to questionnaires returned, they showed a clear indication that the view of most pupils was that:

- Forced marriage exists in Scotland (94% )
- Existing legislation in Scotland for the protection of children and young people from forced marriage was insufficient. (70%)
- That Government should introduce a Civil Protection Act (89%)
- That the Act should be applicable to anyone involved in forcing someone to marry (68%)

In relation to the responses received from these pupils, it is relevant to also point out that of the 118 respondents to the forced marriage telephone and on-line survey, 17% were recorded as being children under 16 and, overall, 42% were 20 years of age or under. This is an alarming response from children and young people in Scotland and is of great concern to Hemat Gryffe Women’s Aid.
FORCED MARRIAGE RESULTS
INDIVIDUALS WHO WERE FORCED INTO A MARRIAGE

RESPONSES RECEIVED

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Question 1: Are you going to be married against your will?
Columns: Gender

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Question 2: How old are you?
Columns: Gender

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Question 3: What is your ethnic origin?
Rows: Ethnic Origin
Column: Gender

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<td>1</td>
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### Question 4: Where is the marriage ceremony to take place?

**Columns: Gender**

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<td>27</td>
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### Question 5: Where you pressurised by your family to marry?

**Columns: Gender**

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<tr>
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<td><strong>30</strong></td>
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**Further categorised as follows:**

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### Question 6: Who pressurised you?

<table>
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<tr>
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<tbody>
<tr>
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<td>0</td>
<td>0</td>
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<tr>
<td>Aunt or Uncle</td>
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<td>2</td>
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<td>Other</td>
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### Question 7: Did you suffer any form of domestic violence?

<table>
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**Further categorised as follows:**

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<th>Total</th>
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<tr>
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<td>1</td>
<td>4</td>
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Question 8: Should there be a law in Scotland to stop forced marriage?

Columns: Gender

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FORCED MARRIAGE RESULTS
INDIVIDUALS WHO WERE
THREATENED WITH FORCED MARRIAGE

RESPONSES RECEIVED

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</tbody>
</table>

Question 1: Are you going to be married against your will?

<table>
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<tr>
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<tbody>
<tr>
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Question 2: How old are you?

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Question 3: What is your ethnic origin?

Rows: Ethnic Origin

Column: Gender

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**Question 5: Are you being pressurised by your family to marry?**

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**Question 6: Who is pressurising you?**

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<th>Sister</th>
<th>Grandparent</th>
<th>Cousin</th>
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**Question 7: What type of pressure is being put on you?**

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Question 8: Should there be a law in Scotland to stop forced marriage?

**Columns: Gender**

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<th>Total</th>
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<tbody>
<tr>
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# FORCED MARRIAGE RESULTS

INDIVIDUALS WHO KNEW SOMEONE, EITHER FRIENDS OR RELATIVES, BEING FORCED INTO MARRIAGE

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Question 1: Is someone you know being forced to marry against their will?

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Question 2: How old are they?

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<th></th>
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</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>Under 16</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17-20</td>
<td>6</td>
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<td>16</td>
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</tr>
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<td>21-30</td>
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<td>21</td>
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</tr>
<tr>
<td>Over 30</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>19</td>
<td>26</td>
<td>45</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Question 3: What is your ethnic origin?

<table>
<thead>
<tr>
<th></th>
<th>Ethnic Origin</th>
<th>Gender</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Total</td>
<td></td>
<td>Under 16</td>
<td>17-20</td>
<td>21-30</td>
<td>Over 30</td>
<td>Total</td>
</tr>
<tr>
<td>Asian or Asian British</td>
<td>4</td>
<td>8</td>
<td>12</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indian</td>
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<td>2</td>
<td>8</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pakistani</td>
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<td>10</td>
<td>0</td>
<td>19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bangladeshi</td>
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<td>2</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Other Asian</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese</td>
<td>1</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
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<td></td>
</tr>
<tr>
<td>Other</td>
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<td>0</td>
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<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Caribbean</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>African</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>White British</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
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<td>17-20</td>
<td>21-30</td>
<td>Over 30</td>
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<td>---------</td>
<td>-------</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>White Irish</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Other</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>19</td>
<td>26</td>
<td>45</td>
<td>5</td>
<td>16</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Question 4: Where is the marriage ceremony taking place?**

**Columns: Gender**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>UK</th>
<th>Outwith the UK</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>4</td>
<td>5</td>
<td>9</td>
<td>1</td>
<td>15</td>
<td>36</td>
</tr>
<tr>
<td>Female</td>
<td>5</td>
<td>21</td>
<td>36</td>
<td>4</td>
<td>21</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>26</td>
<td>45</td>
<td>5</td>
<td>17</td>
<td>45</td>
</tr>
</tbody>
</table>

**Further categorised as follows:**

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>UK</th>
<th>Outwith the UK</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 16</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>17-20</td>
<td>14</td>
<td>17</td>
<td>17</td>
<td>1</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>21-30</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Over 30</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>26</td>
<td>45</td>
<td>5</td>
<td>17</td>
<td>45</td>
</tr>
</tbody>
</table>

**Question 5: Is there family pressure?**

**Columns: Gender**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
<th>UK</th>
<th>Outwith the UK</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>19</td>
<td>0</td>
<td>19</td>
<td>1</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>Female</td>
<td>26</td>
<td>1</td>
<td>27</td>
<td>4</td>
<td>21</td>
<td>25</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>0</td>
<td>19</td>
<td>5</td>
<td>17</td>
<td>26</td>
</tr>
</tbody>
</table>

**Further categorised as follows:**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
<th>UK</th>
<th>Outwith the UK</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>19</td>
<td>0</td>
<td>19</td>
<td>1</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>Female</td>
<td>26</td>
<td>1</td>
<td>27</td>
<td>4</td>
<td>21</td>
<td>25</td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**Question 6: Who pressurised you?**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Parent</th>
<th>Brother</th>
<th>Sister</th>
<th>Grandparent</th>
<th>Cousin</th>
<th>Aunt or Uncle</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Female</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>16</td>
<td>27</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>1</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>30</td>
<td>47</td>
</tr>
</tbody>
</table>

**Question 7: Should there be a law in Scotland to stop forced marriage?**

**Columns: Gender**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>18</td>
<td>0</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Female</td>
<td>25</td>
<td>1</td>
<td>0</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>43</td>
<td>1</td>
<td>1</td>
<td>45</td>
</tr>
</tbody>
</table>
Demographic Findings

Age

118 people took part in survey. Age range is as follows.

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under sixteen</td>
<td>19</td>
</tr>
<tr>
<td>17 – 20</td>
<td>30</td>
</tr>
<tr>
<td>21 – 30</td>
<td>48</td>
</tr>
<tr>
<td>Over 30</td>
<td>21</td>
</tr>
<tr>
<td>TOTAL</td>
<td>118</td>
</tr>
</tbody>
</table>

AGE

- Under 16: 19
- 17 - 20: 30
- 21 - 30: 48
- Over 30: 21
**Gender**

Of the 118 respondents, the gender breakdown against age is as follows:

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under sixteen</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>17 – 20</td>
<td>8</td>
<td>22</td>
</tr>
<tr>
<td>21 – 30</td>
<td>19</td>
<td>29</td>
</tr>
<tr>
<td>Over 30</td>
<td>9</td>
<td>12</td>
</tr>
</tbody>
</table>

| TOTAL           | 39   | 79     |

---

**GENDER**

- **MALE**
- **FEMALE**
Ethnic Identity

Ethnic Identity is as follows.

<table>
<thead>
<tr>
<th>Ethnic Origin</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian/AsianBritish</td>
<td>27</td>
</tr>
<tr>
<td>Indian</td>
<td>14</td>
</tr>
<tr>
<td>Pakistani</td>
<td>53</td>
</tr>
<tr>
<td>Bangladeshi</td>
<td>10</td>
</tr>
<tr>
<td>Other Asian</td>
<td>2</td>
</tr>
<tr>
<td>Chinese</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
<tr>
<td>Black/BlackBritish</td>
<td>4</td>
</tr>
<tr>
<td>Caribbean</td>
<td>1</td>
</tr>
<tr>
<td>African</td>
<td>2</td>
</tr>
</tbody>
</table>

118

Ethnicity

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian/Asian British</td>
<td>27</td>
</tr>
<tr>
<td>Indian</td>
<td>14</td>
</tr>
<tr>
<td>Pakistani</td>
<td>53</td>
</tr>
<tr>
<td>Bangladeshi</td>
<td>10</td>
</tr>
<tr>
<td>Other Asian</td>
<td>2</td>
</tr>
<tr>
<td>Chinese</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
<tr>
<td>Black/Black British</td>
<td>4</td>
</tr>
<tr>
<td>Caribbean</td>
<td>1</td>
</tr>
<tr>
<td>African</td>
<td>2</td>
</tr>
</tbody>
</table>
**Ethnicity Data**

In 2001, 2% of the Scottish populations were from a (non-White) minority ethnic group.

The 2001 Census contains the most up-to-date official figures on the numbers of people of various ethnicities in Scotland. An analysis of ethnicity in the 2001 Census found, among other things, that:

- 2% of the Scottish Population were from non-white minority ethnic group.
- Over 70% of the minority ethnic population were Asian (Indian, Pakistani, Bangladeshi, Chinese or other South Asian).
- The largest minority ethnic group in Scotland is “other white British” at 7.38%.
- The Pakistani community is the largest visible minority ethnic in Scotland at 0.63% - just under 1/3 of the visible minority ethnic population.
- The “white Irish” population is 0.98%.
- Those who identified themselves as “any other white background” was 1.54%.

For all ethnic groups, Scotland is either the most common or the second most common country of birth. However, the percentages vary greatly between different ethnic groups: 47% of Pakistanis were born in Scotland compared to only 18% of Africans.¹

**Hemat Gryffe Women’s Aid** consider that although statistics collected during this survey showed that the largest response was from individuals who considered themselves to be of Pakistani Ethnicity were higher, that it should be taken into consideration that the Pakistani community is the highest visible community in Scotland.

Evaluation

Demographic findings highlight that

- 41% of respondents to the survey are 20 years of age or younger,
- 40% of respondents are between 20 – 30 years of age,
- 67% were female
- 45% of participants were of Pakistani origin.

Findings relative to gender show that 33% of respondents were male; this demonstrates that forced marriage not only affects the female population. However, as an organisation providing services to women, children and young people we only hold figures on our particular client group and therefore do not have statistics relating to male victims of forced marriage. Hemat Gryffe Women’s Aid has provided culturally sensitive support to 12 women specifically fleeing forced marriages during 2008-09.

However, when supporting women fleeing domestic abuse, it is our experience that it often comes to light that many were not given the freedom of choice when their marriage took place.
Conclusion

Although the survey was originally proposed as being primarily an anonymous telephone survey supported by the addition of an online facility, it transpired that the number of online responses were far greater than the telephone response; a valid reason for this may be that people are more comfortable giving this kind of sensitive information via a more anonymous computerised medium rather than verbally to another person.

The response to using the on-line questionnaire proved to be better than that to the free-phone option. This gives us guidance as to how we might conduct any future surveys.

It would appear that the majority of respondents who participated in this survey were either being subjected to, or were under threat of, forced marriage from family members and while individuals should feel safe in their family environment, they are, indeed, being exploited by the very people who are supposed to love and protect them from such abuse.

Given the findings of this survey, the views expressed by the participants and the young people we spoke to, and also taking into account the fact that Hemat Gryffe Women’s Aid has found that forced marriage, or the threat of a forced marriage, has been a recurring issue for many of the women and girls we support, we feel that the implementation of a specific Forced Marriages Protection Act, similar to the legislation applied across England, Wales and Northern Ireland, will have a positive impact for anyone who may be, or has been subjected to, a forced marriage.

Hemat Gryffe Women’s Aid will continue to provide services to women, children and young people from the BME community and to campaign against misguided practices within communities.
STOP FORCED MARRIAGES

WE NEED YOUR HELP...

A CONFIDENTIAL ANONYMOUS FREEPHONE TELEPHONE SURVEY HAS BEEN SET UP TO DETERMINE THE EXTENT OF FORCED MARRIAGES ACROSS SCOTLAND. DOES THIS AFFECT YOU OR SOMEONE YOU KNOW?

IF SO **YOU CAN MAKE A DIFFERENCE CALL NOW** on

0800 141 2759

IT WILL ONLY TAKE A FEW MINUTES. LINES ARE OPEN FROM

5th December 2008 until 5 March 2009 from 9am to 5pm

ALTERNATIVELY PLEASE SEE OUR ON: [www.forcedmarriages.org.uk](http://www.forcedmarriages.org.uk) AIRE at

www.forcedmarriages.org.uk

ALL INFORMATION IS COMPLETELY CONFIDENTIAL

FUNDED BY THE HOME OFFICE and THE SCOTTISH GOVERNMENT
Survey: Threat of Forced Marriage

The purpose of this survey is to ascertain the number of individuals living in Scotland who are being forced to marry against their will. You will be asked a series of questions relative to forced marriage. The survey is completely anonymous and confidential and will be run for a period of three months and is funded by the Scottish Government and the Home Office Forced Marriage Unit.

Are you going to be married against your will?  
Are you male/female?  
How old are you?  
What is your Ethnic Origin?  
Where is the marriage ceremony to take place?  
Are you being pressured by your family to marry?  

Who is pressuring you?  
☐ Parent  ☐ Brother  ☐ Sister  ☐ Grandparent  ☐ Cousin  ☐ Aunt or Uncle  ☐ Other

What type of pressure is being put on you?  
☐ Physical  ☐ Emotional  ☐ Financial  ☐ Other

Should there be a law in Scotland to stop forced marriage?  
- select -  

Submit your Answers
Survey: For Individuals Who WERE Forced To Marry

The purpose of this survey is to identify the number of individuals in Scotland who have been forced to marry against their will. You will be asked a series of questions relative to forced marriage. The survey is completely anonymous and confidential and will be run for a period of three months and is funded by the Scottish Government and the Home Office Forced Marriage Unit.

Are you male or female?  
How old are you?  
What is your Ethnic Origin?  
Are you a victim of a forced marriage?  
Where did the marriage ceremony take place?  
Were you pressurised to marry your wife/husband?  

Who pressurised you?  
- Parent  
- Brother  
- Sister  
- Grandparent  
- Cousin  
- Aunt or Uncle  
- Other  

Did you suffer from any form of domestic violence?  
Should there be a law in Scotland to stop forced marriage?  

Submit your Answers.
Survey: Someone You Know i.e. Friend/Relative is Being Forced to Marry

The purpose of this survey is to identify the number of individuals in Scotland who have been forced to marry against their will. You will be asked a series of questions relative to forced marriage. The survey is completely anonymous and confidential and will run for a period of three months and is funded by the Scottish Government and the Home Office Forced Marriage Unit.

Is someone you know being forced to marry against their will? [Select]
Are they male or female? [Select]
How old are they? [Select]
What is their Ethnic Origin? [Select]
What is their relationship to you? [Select]
Where is the marriage to take place? [Select]
Is there family pressure? [Select]

Where is the pressure coming from?
- [ ] Parent
- [ ] Brother
- [ ] Sister
- [ ] Grandparent
- [ ] Cousin
- [ ] Aunt or Uncle
- [ ] Other

Should there be a law in Scotland to stop forced marriage? [Select]

Submit your Answers
Evaluations used in Schools

Forced Marriage a Civil Remedy

1. Do you think Forced Marriages exist in Scotland?

2. Do you think that the Scottish Government needs to improve how it deals with cases of Forced Marriage?

3. The Forced Marriage Protection Act in England and Wales can be used against anyone involved with forcing someone into marriage, do you think this should be the case?

4. Do you think that Scotland needs to introduce a Civil Law which is specific to people affected by Forced Marriage?

5. Do you think that there would be a need for the Scottish Government to produce guidance for organisations to help deal with people affected by Forced Marriage?

6. Do you think that there is enough protection for children and young people under 16 who may be affected by Forced Marriage?

7. If the Scottish Government introduced a Forced Marriage Civil Law in Scotland, do you think it should apply to same sex civil partnerships?

8. What else do you think that the Scottish Government could do to help protect people affected by Forced Marriage?
1. **Note:** Although most of the information is the same as the joint response submitted Women’s Aid, Gryffe Women’s Aid and Shakti Women’s Aid – Shakti have added some additional points in bold green text specifically concerning to Shakti.

**Foreword**

2. Shakti (Hindi for ‘strength’) was set up in 1986 to provide a service for Black Minority Ethnic women and their children, who are experiencing domestic abuse. We provide information, support and temporary refuge accommodation to Black Minority Ethnic (BME) women and their children (if any) experiencing and or fleeing domestic abuse from their husbands/partners, ex-partners and or other family members within a household.

3. Shakti also supports women experiencing domestic abuse as a result of forced marriage or fleeing forced marriage before it happens.

4. Shakti provides a unique service designed for this client group. The organisation provides practical and emotional support, safe temporary accommodation, advocacy and information on housing, benefit, legal rights, immigration/nationality laws, racial harassment, health, education and employment for its target group. The organisation works in partnership with other agencies to provide services, which meet the needs of the BME women, children and young people.

5. Shakti Women’s Aid is affiliated to Scottish Women’s Aid, the national network for local Women’s Aid groups in Scotland. The affiliation helps to ensure a high and consistent standard of service provision as each affiliated groups commits itself to a nationally agreed Code of Practice.

**Introduction**

6. This response has been prepared by Shakti Women’s Aid in collaboration with our sister member Hemat Gryffe Women’s Aid and Scottish Women's Aid.
7. Forced marriage involves abuse, violence, abuse of trust, compelling a person to act against their will, kidnapping, imprisonment, denial of basic rights and freedoms and contact with friends, restriction on activities and money, removal of passports, perpetrated by those who should rightly be protecting and supporting.

8. It is accepted and acknowledged that forced marriage is a specific manifestation of domestic abuse so, while forced marriage has its own causes and solutions, it must rightly sit within the broader context of domestic abuse and, thus, the overall violence against women agenda.

9. A specific remedy will go far towards offering protection to those at risk and must be supported by:
   - (a) a change in attitudes and the development of an understanding on the part of those who would perpetrate forced marriage of the great wrong that is being done to women, children and young people
   - (b) ensuring that there is widespread awareness of the legislative protection and support services available to those at risk
   - (b) robust use of these legislative protections and remedies
   - (b) appropriate training for all relevant agencies who may be called upon to support those at risk of forced marriage

10. We commend the Scottish Government for their commitment to ending forced marriage by the introduction of this Bill and their extensive ongoing work with the Forced Marriage Network of which we are all members.

11. We support the provisions and intentions of the Bill, particularly the introduction of the Forced Marriage Protection Order (“the Order”) as a civil order with criminal penalties. The attraction and value of such an instrument is that being a civil order initially, those likely to engage in the prohibited behaviour will not be penalised until, and if, they breach the Order and the law by attempting to force their son or daughter into marriage, and only then do they face criminal proceedings

12. A specific, robust, legal remedy, combined with awareness-raising and appropriate training for all relevant agencies involved in supporting partners forced into marriage, will go far towards offering protection and help those women still at risk and we are please to have the opportunity to comment on the proposals within the Bill.

13. Note: Although most of the information is the same as the response sent to you by Scottish Women’s Aid, Shakti has added some additional points (bold) specifically concerning to Shakti.
Section 1 - Forced Marriage Protection Orders

This section is particularly helpful in covering actual and threatened behaviour.

14. Subsection 1(3) states that (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.”

15. We consider that the judiciary and courts must have guidance and support in relation to how they will undertake to ascertain a person’s wishes and feelings, which includes guidance on speaking to and taking the evidence of children. Presumably this may be done via a Bar or Court Reporter, Safeguarder or Curator who will undertake this on behalf of the court, in which case the recommendations 74-76 in Lord Gill’s Report of the Scottish Civil Courts Review proposing the introduction of an open fair and transparent system of recruitment, qualifications, experience, guidance, training, accreditation, quality assurance and standards of practice and conduct are very much relevant in such a person’s role in advising the court.¹.

16. There must be clarity on what will be considered as constituting “appropriate” in terms of ascertaining the protected person’s wishes and feelings and it should be remembered that young children are often competent and credible in terms of expressing their concerns and wishes, particularly where they are given appropriate support and questioned by a trained person. In this regard, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, which are already supporting the protected person or to whom they have come for help or information.

17. Further the courts must take steps to ensure that the protected person has access to support, if they do not already have this, when engaging in this process with the courts and this may extend to ensuring the physical safety of the protected person where their giving information to the court may endanger them, by, for instance, precipitating action or violence from third parties or family members.

18. Subsection 1(6) defines “force” and whilst it includes threats, it does mention actual physical violence, which must be included. Third parties and family members have also resorted to blackmail, threatened blackmail, and emotional coercion such as threatening to harm themselves if the protected person did not go through with the marriage or disclosed the matter to the police, etc. Therefore, it would be useful for the Explanatory Notes covering this section to include these situations as examples of “psychological means”.

Section 2- Contents of Orders

19. Presumably the Order will specifically name persons who are considered to pose a risk of conduct or potential conduct or actings covered by the Act.

20. Subsection 2(f) should read “to refrain from taking the protected person to another part of Scotland or outside Scotland.” The term “abroad” would not prevent a protected person being moved to Wales, England, Northern Ireland, or Eire and this subsection must also prevent the removal of the protected person to another location within Scotland.

21. Subsection 4(a) should include emotional black mail

Section 3- Applications for Orders

22. The safety of the protected person must be of paramount consideration to the court during the time between the application being made and then subsequently granted by the court.

23. This is of particular relevance where the protected person is still living with their family or remains in contact with close and extended family and other persons who could pose a risk. They may be at risk of physical harm, emotional coercion, blackmail and or threats, so the Bill must make provision for support or intervention from the police or another agency which could monitor their safety.

24. In terms of applications, the person or organisation making the application as a “relevant third party” or “any other person” must be required to address this and be responsible for assisting the protected person in ensuring their safety or ensuring that another agency or organisation takes responsibility for this.

25. The Bill does not make clear where the responsibility will lie for “policing” Orders once they are made, in terms of follow-on support for the protected person and monitoring their safety and the compliance of those named in the Order.

26. Section 3(5) states that application for Orders will be made under Summary procedure. We would query whether Summary Procedure is competent to deal with what is essentially a very important matter. The protected person may be a vulnerable witness and Summary procedure does not cater for the use of special measures. Also, it may be that other orders such as interdicts are being sought at the same time, which would involve a different process under Ordinary Cause.
Relevant Third Parties

27. Section 3(7) (a) indicates that local authorities will be one of the bodies recognised as “relevant third parties.” This should make clear which part of a local authority this will include - Social Work, Education, Health, Children’s Reporter? Is it intended that Scottish police forces be given powers to apply for Orders and will “local authorities” be sufficient to cover them?

28. Regardless of which part of a local authority this applies to, it is absolutely crucial that those directly involved in applying for Orders do not simply have this responsibility “bolted on” to their other duties and that care and attention will be taken to ensure that this work is regarded as a specialised support area. This will involve the setting up of dedicated teams with a named person responsible for making the application and taking responsibility for monitoring the safety of the protected person; this person and the team will require specialist training from expert community organisations, such as Shakti Women’s Aid and Hemat Gryffe Women’s Aid, on the dynamics of forced marriage, religious and cultural issues impacting on this and the position of forced marriage in relation to violence against women, and on the importance of taking a person-centred approach when applying for Orders or supporting a protected person.

29. Forced marriage is part of the continuum of violent and abusive behaviour perpetrated against women and Shakti Women’s Aid and Hemat Gryffe Women’s Aid report that some women fleeing domestic abuse also disclose that either they or their partner was forced into marriage.

30. It would therefore be appropriate to consider that specialist and expert voluntary sector organisations, such as Shakti Women’s Aid and Hemat Gryffe Women’s Aid, who have extensive, professional experience in supporting women who are at risk of forced marriage or have been forced into marriage, should be included within the category of “relevant third party.”

31. As the Policy Memorandum states at paragraph 19, third party involvement, whether by a “relevant third party” or otherwise, must be carefully regulated, but must also be monitored.

32. Subsection 2 (an application may be made by any other person only with the leave of the court – The court should be cautious in deciding who this other person is and what is the relationship of this person to the protected person. It is vital that there are clear guidelines on who the other person could be in the guidelines section.

Section 4- Power to make orders without application

33. This section does not make clear that the conditions stated in section 1(2) and 1(3), viz (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.
34. (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” will also apply in this situation in both civil and criminal actions where the court has unilaterally made a Order and on application by the Lord Advocate and we think that there is merit in emphasising this for the avoidance of doubt.

Section 5- Interim Orders

35. The section should clarify whether an interim order can be made in the absence of the protected person as it is unclear whether the reference to “a person who is, or would be, a party to the proceedings” covers them.

36. In terms of the court “having regard to all the circumstances”, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, already supporting the protected person or to whom they have come for help or information and it would be helpful to include this in the Explanatory Notes and guidance produced for the court.

Section 6- Duration of Orders

37. Although this section does not make reference to maximum and minimum periods for which an Order can be granted, it would be useful for the Explanatory Notes to expand on this and give some parameters.

38. With regards to Section 6 and 7 careful consideration should be given when lifting the orders i.e. there should be a monitoring procedure in place to monitor the welfare of the protected person or persons for a period of at least two years. The frequency of the monitoring should depend on the circumstances and the possible risks to the protected person. The people who could take responsibility to do this could be court appointed named individuals/organisations such as the Police, Social Services, Women’s Aid and any other agencies supporting the protected person.

39. Shakti dealt with FM cases where the young persons were mislead by their families into believing that they have changed and they would not be forced into marrying and families would support their wishes. In one particular case, after a year or so the young person was taken abroad and forced into marrying. Therefore on the surface it may look like the person is safe but as a matter of fact it is not always true.
Section 7- Variation and recall of Orders

40. While section 1 states that the court will have regard to the protected person’s views, etc, when making an Order, it does not state that this process of investigation and consultation will also be undertaken when the court is considering varying or recalling an Order.

41. Therefore section 7 must also contain the wording below, subject to the points we have raised on section 1 in relation to the conduct of this consultation process:

“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.”

42. 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”

43. For clarity, the situations or conditions where it would be competent or necessary for the court to consider varying or recalling an Order should either be clearly stated on the face of the Bill or set out in the Explanatory Notes. Again, or

44. Again in terms of the court “having regard to all the circumstances”, the court should look to take statements from persons or organisations, for instance, Women’s Aid groups, already supporting the protected person or to whom they have come for help or information and it would be helpful to include this in the Explanatory Notes and guidance produced for the court.

Section 8- Extension of Orders

45. The categories of person eligible for applying to the court for an extension of the Order do not include “relevant third parties” or “any other person with leave of the court” under section 3(1)(b) and 3(2) or the Lord Advocate in terms of section 4(3). Since these persons or organisations could have applied for an Order, they must also be capable of applying for an extension. The wording in section 8 to the effect that “any other person affected by the Order” is eligible to apply does not make clear that they are included.

46. Re-iterating our comments on section 7, while section 1 states that the court will have regard to the protected person’s views, etc, when making an Order, it does not state that this process of investigation and consultation will also be undertaken when the court is considering extending an order. Therefore section 8 must also contain the wording below, subject to the points we have raised on section 1 in relation to the conduct of this consultation process:

“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.”
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.”

Section 9- Offence of breaching order

47. This section requires clarity on the procedure that will be followed in reporting and acting upon a breach.

- (a) Does the protected person have to take the matter back to their solicitor to have the breach brought before the court, or will the breach have to be reported to the police?
- (b) Can breach be reported by a relevant third party or other person?
- (c) Can the police arrest on suspicion of breach or only on actual evidence of breach. We were thinking of the application of section 4(1) of the Protection From Abuse (Scotland) Act 2001 and the police power of arrest, viz “Where a power of arrest attached to an interdict has effect a constable may arrest the interdicted person without warrant if the constable—
  (i) has reasonable cause for suspecting that person of being in breach of the interdict; and
  (ii) considers that there would, if that person were not arrested, be a risk of abuse or further abuse by that person in breach of the interdict.”
- (d) It is possible that the Order may be breached outwith Scotland, for instance, where a protected person has apparently gone on holiday with their family and finds that they will be put through a marriage ceremony against their will. If that protected person is then forced to remain abroad with their “spouse”, how will an Order be enforced abroad?
- (e) What if the person who is the cause for the forced marriage lives outside Scotland. Example: We came across cases where the Forced Marriage act is initiated by the extended family members such as the grand parents lived abroad.
- (f) What if orders are breached abroad? Can the police in Scotland work with the police in the country where the breach has happened?

48. In terms of the ability of the police to arrest a person in breach of an Order, similar to the provisions enacted at section 49(2) of the Criminal Justice (Scotland) Act 2003, albeit this relates to Non Harassment Orders, there should be a comparable provision within this Bill for the police to have a statutory power of arrest without warrant, for breach of a Forced Marriage Protection Order.
49. This would require the insertion of wording along the lines of:-

“9(4) A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (1).

9(5) Subsection (4) is without prejudice to any power of arrest conferred by law apart from that subsection.”

Section 11 - Guidance

50. We are pleased to this that the issue of guidance has been included on the face of the Bill. We would stress, however, that this section should read that the Scottish Ministers “shall” and not “may” give guidance, as it is absolutely crucial to both the implementation and success of the Orders and in support of the work will is underway, and will be taken, against forced marriage, that this is produced.

51. We note that the Policy Memorandum specifically discusses the issues of awareness raising and guidance, noting that that the Scottish Government will work with the members of the Forced Marriage Network and other service providers in relation to awareness raising. This work on awareness-raising must encompass not just minority ethnic communities themselves and those potentially at risk but also the range of statutory and other organisations working with, and supporting, members of these communities; the health and education sectors have a particularly important role here.

52. In relation to the necessity of having guidance and training, we overwhelmingly support the statement at paragraph 34 of the Policy Memorandum, viz “34. People on the front line of service delivery need to have the necessary knowledge and training to deal competently and sensitively with a case of forced marriage. As well as understanding the legal framework within which they operate and the needs of victims, people delivering services need access to information on forced marriage and the cultural framework in which it occurs.”

53. Paragraphs 35 and 36 are very helpful in setting out the need for individual service providers to receive appropriate training, the need for multi-agency training and in underlining that the Forced Marriage Network members will be involved in the development of this training. We would also add that members such as Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid already deliver training on the experiences of black and minority ethnic women in relation to domestic abuse and forced marriage and we would very keen to use our experience and expertise to support the Scottish Government’s commitment to deliver training and awareness raising on the guidance and forced marriage generally, once these materials are developed.

54. It is particularly important that the guidance addresses the issue of supporting those at risk of forced marriage where no Order has been made as it may not always be possible or practical for this to happen. In addition, it must cover the role and responsibilities of relevant third parties and the “other” category of persons who may make an application for an Order with the consent of the court and how compliance with and Order will be monitored.
55. Also, the term "a person exercising public functions" used in this section should be included in the definition listed at section 13

Section 12- Other protection or assistance against forced marriage

56. Section 12(2), which outlines the civil remedies that can be applied for despite the existence of an Order, should also include a common law interdict with a power of arrest under the Protection from Abuse (Scotland) Act 2001 and also matrimonial and domestic interdicts under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under the 2001 Act.

Section 14- Action of declarator of nullity in sheriff court: jurisdiction

57. We fully support this section. The Scottish Government are to be commended for introducing this provision which will dramatically lower the cost of applications for declarator by giving the Sheriff Courts parallel jurisdiction with the Court of Session in such matters.

58. As a point of clarity, will this cover situations,

- (a) Where a non-UK citizen was forced into marriage with another non-UK citizen abroad, they are now resident in Scotland, and the party forced into marriage wishes to have the married annulled?

- (b) Where a non-UK citizen who has indefinite leave to remain in the UK, was forced into marriage with another non-UK citizen abroad (spouse visa), they are now resident in Scotland, and the party forced into marriage wishes to have the married annulled?

- (c) Where an EU citizen forced into marriage with another EU citizen abroad (they are now resident in Scotland) and the party forced into marriage wishes to have the married annulled?

Shakti Women’s Aid
26 November 2010
Scottish Parliament

Equal Opportunities Committee

Tuesday 14 December 2010

[The Convener opened the meeting at 10:02]

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the 24th meeting in 2010 of the Equal Opportunities Committee. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system even if they are switched to silent.

The only item on today’s agenda is to take oral evidence from three panels of witnesses on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill at stage 1.

It is my pleasure to welcome our first witness, Suzelle Dickson, who is joint head of the United Kingdom forced marriage unit. She joins us by videolink from London. I ask members to be mindful that because evidence is being taken by videolink, there will be a slight delay between members finishing their questions and Suzelle Dickson hearing the questions and responding.

I invite members to introduce themselves. I will start.

Good morning, Suzelle. I am convener of the Equal Opportunities Committee.

Marlyn Glen (North East Scotland) (Lab): I am deputy convener of the committee.

Hugh O’Donnell (Central Scotland) (LD): Good morning. I am a member of the committee.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Good morning. I am a member of the committee.

Stuart McMillan (West of Scotland) (SNP): Good morning. I am a member of the committee.

Jamie Hepburn (Central Scotland) (SNP): I am a member of the committee.

Christina McKelvie (Central Scotland) (SNP): Good morning. I am a member of the committee.

The Convener: I will start the questions. What is the role and remit of the forced marriage unit and what is the level of joint working with key organisations in Scotland?

Suzelle Dickson (United Kingdom Forced Marriage Unit): Good morning. The forced marriage unit was set up in January 2005 as a joint unit between the Home Office and the Foreign and Commonwealth Office in recognition of the extent to which victims may face difficulties both in the UK and overseas.

The remit of the unit is threefold in that we are responsible for developing Government policy on forced marriage. We work closely with other Government departments and other statutory agencies. For example, we work closely with the police, the Ministry of Justice, the Department for Education, the Department for Communities and Local Government, the Department of Health and the Crown Prosecution Service. As part of that policy remit, we have developed an action plan of our activities to address forced marriage across the year. We have also launched what we call a domestic programme fund that enables us to offer funding to small projects that are working to tackle forced marriage.

The second part of our remit involves outreach. We do a lot of outreach and awareness raising and deliver a lot of training to various organisations in the UK and internationally.

Casework makes up the bulk of the unit’s work. We run a helpline that operates from Monday to Friday, nine to five. We speak to victims and practitioners and anyone else who needs advice about forced marriage, whether in the UK or overseas. If the person is overseas, we liaise with the British High Commission and embassies in the relevant area.

Casework falls into three areas. The first area involves what we call our consular cases, which involve a British national who has been taken overseas and either forced into marriage or has been placed at risk of being forced into marriage and is seeking assistance to return to the UK. In those cases, we work closely with the British High Commission and the embassy to facilitate the return of that person. That would involve a visit to where the person is staying and a discussion with that individual to determine their feelings and find out what they want to do. If they say that they want to return to the UK, the embassy staff can facilitate that.

The next part of our casework involves the domestic side: people who are at risk of being forced into marriage in the UK. We would look for refuge space for them, if they wanted to leave the family home, or we would ask the police to assist if the person was being held against their will in their address in the UK.

The last part of our casework involves people whom we call reluctant sponsors. It focuses purely on our immigration side and concerns people who
have been forced to marry someone overseas and, on their return to the UK, are being forced by their families to sponsor their spouse’s visa to allow them to come to the UK. We provide a support function and work closely with immigration officials to support that person, in the hope of stopping the visa and preventing the person from coming to the UK.

The Convener: Thank you for that comprehensive response. Can you outline the level of joint working with any key organisations in Scotland?

Suzelle Dickson: We work closely with the devolved nations. I know that before I was in the unit there was close working around the question whether to make forced marriage a specific criminal offence. We work with colleagues in Government in Scotland on policy work, such as the development of and consultation on the Forced Marriage (Civil Protection) Act 2007 and guidelines that will arise from the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill, if it is passed. In September, I attended an event that was run by the Association of Chief Police Officers in Scotland, which was a prelude to the introduction of the bill but also examined how the police had been tackling forced marriage and honour-based violence.

The Convener: Is there any joint working with third-sector organisations?

Suzelle Dickson: We have worked closely with Shakti Women’s Aid on certain cases. When we need advice on particular issues, we contact some Scottish third-sector organisations. We have also worked with Hemat Gryffe Women’s Aid—in 2008, we funded it for a project from our domestic programme fund.

The Convener: Has there been any contact with social work departments in local authorities in Scotland?

Suzelle Dickson: Possibly. If we had a case in an authority area, there would be contact, but I could not say that we have had a lot of involvement with social services in Scotland.

The Convener: Thank you. Marlyn Glen has a brief supplementary question.

Marlyn Glen: Will you be continuing your liaison with Scottish services after the Scottish bill is passed, as we hope it will be?

Suzelle Dickson: Yes—most definitely. We will ensure that we continue to work with our partners in the devolved nations. There are always experiences to share and things to learn from, so we will definitely continue to do that.
practice of forced marriage in middle eastern, African and European communities.

10:15

On the regional breakdown across the UK, 2 to 3 per cent of reports come from Scotland—I think that the figure at the moment is about 3 per cent. We would welcome people using the service, but I do not know whether there are other organisations in Scotland to which people may go to seek help, rather than coming to the forced marriage unit, or whether people think that the service does not apply to them. Our service is for anyone in the UK, so people in Scotland are very welcome to access it. We will work with partners to do whatever we can to promote it.

The Convener: Thank you very much. That is helpful.

Marilyn Glen: The committee has received evidence on the importance of distinguishing between a forced marriage and an arranged marriage. There is no definition of an arranged marriage in the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. What has been the experience of the interface between forced and arranged marriages? For example, since the Forced Marriage (Civil Protection) Act 2007 came into force, have there been cases of difficulty in distinguishing between the two in court?

Suzelle Dickson: I do not know about the extent of difficulties in the courts, but I know that there have been difficulties in the past for some practitioners in trying to understand the distinction between an arranged marriage and a forced marriage. The forced marriage unit has made clear the distinction between a forced marriage and an arranged marriage in all its guidelines and the guidance, and the Ministry of Justice has done the same in the leaflets that it has issued about the 2007 act.

In our minds, a forced marriage occurs where consent has not been gained from one party or both parties and duress is a factor in the pressure. People could have been threatened physically, financially, emotionally or psychologically. With an arranged marriage, the family will take a leading role in organising the marriage, but the choice of whether to accept it rests purely with both potential spouses, who are freely able to take the decision.

Our focus is very much victim centred. We always ask the victim how they felt and whether they were pressured into the marriage. If they say that they were—even if they say that their parents arranged it at the beginning and they were happy to go along with the process—we would take the victim’s word on that, if they felt that there had been any pressure in the arrangement and were not happy to go through with it. We would say that the marriage was forced.

We try to make very clear in all our communications the distinction that we are trying to make. Arranged marriages have happened for many years, and the Government is not trying to interfere in that practice. The problem is when people are threatened, abused and forced into marriage by being denied a choice. The Government wants to stop that practice.

Stuart McMillan: How effective has the 2007 act been in prevention and protection of victims of forced marriage? What agencies have been the most active players in the implementation of that act?

Suzelle Dickson: The forced marriage unit and the Ministry of Justice would say that the act has been successful in the sense that more orders were taken out in the first year than were expected. Some 86 orders were taken out between November 2008 and October 2009. That was nearly double the number that had been expected. We know that the police have been very active in taking out orders, but local authorities have been quite slow in taking the applications out and, basically, in understanding the extent of forced marriages. We know that some non-governmental organisations have been actively working with other agencies including the police to raise the issue of applications and get them taken out.

The statistics for the period between November 2008 and November 2010 show that 247 orders have been taken out, and that 30 per cent to 40 per cent of those were for children—people under the age of 18. We also know that 70 per cent of the orders had a power of arrest attached, so we are looking at how seriously the courts are taking that kind of situation. Around 50 per cent of those orders were served ex parte, or without notice, taking into account the extent of the emergency of the situation.

We know that we must do more awareness raising. Although the system seems to be working in some areas and the pace has been picked up quite quickly, that is not necessarily the case in other places. Some courts were very slow to become active on the issue. The forced marriage unit, alongside the Ministry of Justice, is looking at ways in which we can raise awareness. When the forced marriage unit does outreach and presentations on awareness raising, it ensures that it talks about the Forced Marriage (Civil Protection) Act 2007 and the orders, and what they can do to protect people.

In our experience of the orders that have been taken out, we know that people have been held overseas and used to facilitate a person’s return to
the UK. Orders might stipulate that a person’s travel documents and birth certificate need to be surrendered or, if we do not know a person’s whereabouts, might order the respondent to disclose that person’s whereabouts, or not to use or threaten any violence against the person. The 2007 act has been good at preventing people from being forced into marriage and stopping their being taken overseas. When people have been overseas, in many cases, the 2007 act has helped to facilitate their return to the UK.

Stuart McMillan: You have anticipated some of my questions, one of which was about how many forced marriage protection orders have been issued to date. Can you provide for the committee more written material on that, please?

Suzelle Dickson: I will speak to my colleagues in the Ministry of Justice, which does monthly monitoring of protection orders, so I am sure that we will be able to provide the committee with that information.

Stuart McMillan: Thank you. Is the forced marriage protection unit aware of the issuing of FMPOs in the context of forced civil partnerships?

Suzelle Dickson: That has come up, but the unit itself has not dealt with that situation. Under our remit, and because of the communities that we engage with, that is probably not likely to be an issue. We are dealing with the forced marriage of opposite-sex couples as opposed to civil partnerships, so we have not come up against that problem, per se.

Stuart McMillan: Thank you. Section 2 of the Forced Marriage (Scotland) Bill will make the terms of an FMPO apply to conduct outwith as well as within Scotland. You touched on that in an earlier answer. Could you provide more information about the forced marriage unit’s experience in England and Wales of the similar provision in the 2007 act?

Suzelle Dickson: We have had some cases in which the person has been overseas and an order has been taken out and served on family members in the UK, asking them to facilitate the person’s return to the UK. If the person is a British national, we can request that they be brought to the High Commission so that the staff there can speak to them. When families comply with the request to take the person to the High Commission, staff are able to speak to the person. If the person wishes to come back to the UK, staff will facilitate that. We are aware of cases in which families have not responded to an order. In those cases, lawyers and solicitors here have had to go back to court to request that additions be made to the order to make parents or other family members comply with it.

When the 2007 act was first implemented, there was some learning to be done by the unit, as British embassies can support only British nationals overseas. We must be mindful of that. If an organisation or solicitor in the UK takes out an order, but the person concerned is overseas and is not a British national, we must facilitate the arrangement by ensuring that we do not ask the person to present at the British High Commission, but instead seek alternatives. Overseas, we work closely with some non-governmental organisations, which can facilitate support for people who are not British nationals.

We have found that, in cases in which legal proceedings have been initiated overseas, those courts have looked favourably on orders from the UK when trying to determine the risk to a person. However, the orders have no jurisdiction overseas.

Stuart McMillan: How prevalent has the issue been since the 2007 act came into being in England and Wales?

Suzelle Dickson: Are you asking about the prevalence of forced marriage?

Stuart McMillan: How many cases have you dealt with outside the borders of England and Wales?

Suzelle Dickson: Do you mean by means of forced marriage protection orders?

Stuart McMillan: Yes.

Suzelle Dickson: I do not have exact statistics, but I can obtain the figures, look through the cases and come back to the committee on that. We have dealt with a fair number of cases, but I do not know the exact details. If we know that someone has been taken overseas, are contacted about it and think that it may be difficult to get access to the person, we advise the professionals to seek a protection order. We are quite active in getting agencies to seek such orders, if we think that it may be difficult to get access to a person.

Stuart McMillan: That will be helpful.

Marilyn Glen: I have a question about the follow-up that you provide to victims. How long do protection orders usually last? Are there issues with removing them? I am particularly interested in protection orders that are issued for people with learning disabilities. If an order is issued for someone because they have learning difficulties and cannot understand the concept of marriage, can the order last indefinitely?

Suzelle Dickson: The terms and length of orders vary depending on the circumstances in individual cases. There is always a review date. In some of the cases in which we have been involved, there may be a review date a week or two weeks after the order was placed or granted.
to look at the circumstances of the case and to determine what has happened. Some orders can remain in place indefinitely, whereas others may be for six months.

I cannot recall many cases of FMPOs being taken out for people with learning difficulties. We would expect social services and social care to be involved in such cases and to contribute to the assessment of risk to the person that the court requests. There would be on-going assessments within the relevant agency to determine whether the person was still at risk.

The Convener: The bill proposes measures on movement of the victim outwith as well as within Scotland. Is there similar provision in the UK legislation?

Suzelle Dickson: Yes. The 2007 act says that, depending on the remit of the order, the person should not be removed from England or Wales, taken outside the jurisdiction of the UK or to any other part of the UK. I hope that that translates into the provisions in the bill.

10:30

The Convener: Yes, that clarifies it. Thank you.

Malcolm Chisholm: A key feature of the bill is the power for the Scottish ministers to introduce statutory guidance. What best practice can the forced marriage unit share on the content and dissemination of statutory guidance for England and Wales?

Suzelle Dickson: Our act has the same remit, and we issued guidance on the day that it came into force. That guidance was directed at chief executives, directors and senior managers within all public agencies that are responsible for safeguarding children and adults.

We are currently reviewing the implementation of that guidance. Over the past couple of months, we have sent questionnaires to social services, the police, health professionals and housing professionals to ask them how the principles that are laid out in the guidance have been implemented. Do they have a lead person? Do they do awareness raising? Are their staff trained? Do they have risk assessments? Are they working within a multi-agency framework?

The guidance basically tells organisations that they need to have a framework in place so that they can respond to forced marriage. As a complement to that statutory guidance, we have developed practice guidelines that set out what step-by-step actions agencies should take.

Where we have done a lot of outreach, we have found areas that are still not aware of the statutory guidance. We hope that the review will highlight any challenges or gaps, so that we can consider how better to support agencies in the field and cascade the information much further.

Malcolm Chisholm: Thank you. I think that there are some differences between what is proposed in Scotland for breaches of protection orders and what happens in England and Wales. Section 9 of the bill makes provision for a breach to be a criminal offence. I believe that, under your act, breach of an order is regarded as a contempt of court and not a specific criminal offence. Have there been any breaches? If so, how and to whom does the victim make the breach known?

Suzelle Dickson: Yes, breaches have been recorded in the statistics that the Ministry of Justice provides us with. I think that, so far, five have been recorded, but we know that, before those breaches were recorded, a few more happened.

We depend on the victim informing someone about a breach. They might inform an organisation that they are working with or they might inform the police. They might inform us and we might inform the police. How things pan out depends on the circumstances of the case. If the subject of the order or an organisation is aware that a breach has happened, they should inform the police of that breach.

We know that one breach of an order related to surrendering passports. The respondent refused to surrender the passports, was brought back before the court and was sentenced to about a month in prison. We are trying to send a strong message that, if people breach an order, there will be penalties for them.

As you say, the bill proposes that a breach will be a criminal offence, whereas in England and Wales it is a contempt of court. We recently conducted a consultation in England and Wales on whether to make forced marriage a criminal offence. The feeling from the responses was that going down the criminal route would have the counterproductive effect of making victims not want to engage, because they would not want their families to be criminalised—they just want whatever is happening to them to stop and not to be forced into marriage. Without knowing much of the detail, it is safe to say that that was part of the reason why forced marriage was made a civil contempt of court and not a criminal offence.

Malcolm Chisholm: That is useful. It is one of the few seemingly significant differences that we will have to take further evidence on. Has the fact that it is a civil contempt of court rather than a criminal offence led to any specific problems with the punishment of perpetrators, or do you think that making it a criminal offence would not make much difference in practice? You have given an
example of someone being imprisoned for a contempt of court.

**Suzelle Dickson:** If someone breaches an order and commits criminal offences as part of that, separate criminal proceedings will be taken against them. There is still a remit for that to happen if someone commits a criminal offence in breaching the order.

**Malcolm Chisholm:** If you have only five examples, that is not much to go on. Would the month’s imprisonment that you mentioned be a typical punishment for a contempt of court in such a situation?

**Suzelle Dickson:** It is too early to say, as we do not have enough information about the breaches. The example that I gave was one of the first breaches that we heard about, which is why it was so significant and sticks in our minds. As you say, the five breaches give us only limited information. We do not know the extent of the problem, as information on it is not collected, but we could try to find out. We would rely on the courts or perhaps the practitioners who are involved to provide us with that information. We could try to find that information if that would be helpful to the committee.

**Malcolm Chisholm:** That would be helpful. Thanks very much indeed.

**Jamie Hepburn:** I have some questions on the intervention of third parties in these matters, but before I begin those questions I will ask a question that has come into my head. We have heard that when your unit is told by a person that they do not want to be married, that is good enough proof for you that there is an attempt at a forced marriage. The process is fairly straightforward if that happens before the marriage has taken place—if a person says that they do not want to get married, they do not want to get married—but what happens if the person is already married? You cannot just take their word for it. I presume that there must be some further evidence gathering.

**Suzelle Dickson:** On the immigration side of things, someone might contact us a year or so after the marriage to say that they were forced into marriage and says that they need protection or assistance, we still give them that assistance.

**Jamie Hepburn:** I understand that, but that is not really my question. How do you determine that there actually has been a forced marriage?

**Suzelle Dickson:** We do that by virtue of what people tell us has happened. It is a victim-centred approach. Sometimes, victims do not understand what has happened. They do not see it but, once they start to unravel the information, they tell us that that is what happened. We can pick that up and understand that the person has been pressured into marriage. I repeat that it is a victim-centred approach. If someone tells us that a forced marriage happened, we take their word on board.

**Jamie Hepburn:** How many times has an application for a forced marriage protection order been refused?

**Suzelle Dickson:** I am not sure of the statistics on that. I would have to speak to my colleagues in the Ministry of Justice. I do not think that it has happened many times, but I am happy to find out.

**Jamie Hepburn:** It would be useful information.

You will be aware that the bill makes provision for third parties to apply for a forced marriage protection order. We are told that third parties means local authorities and, in Scotland, the Lord Advocate. I understand that the Forced Marriage (Civil Protection) Act 2007 has similar provisions for third-party intervention. Is that correct?

**Suzelle Dickson:** Yes.

**Jamie Hepburn:** What has the forced marriage unit’s experience been of applications from third parties in England and how has that worked in practice?

**Suzelle Dickson:** The forced marriage unit might provide advice to someone who is making an application, but we do not necessarily work directly with local authorities. However, local authorities have guidance that the Ministry of Justice produced, which sets out what they should do and how they can proceed with an application. Before local authorities were made relevant third parties, they were not very aware of how to take forward applications. Since the guidance was produced, local authorities have had a lot more involvement, and they now take out more orders than the police do. It is encouraging that they are taking the issues on board. They can take into account care proceedings and other issues under children’s legislation. However, as I said, more awareness raising and other work can probably be done to facilitate and support local authorities in that role.
Jamie Hepburn: What is the rough proportion of applications from third parties compared with those from parties who are involved in the marriage?

Suzelle Dickson: I think that, for people who are under 18, there are a lot more third-party applications. Overall, there are probably a lot more third-party applications than victim applications. Local authorities, the police and other third parties take out more applications than victims do. The Ministry of Justice has the exact figures on that, so I can send them to the committee. Off the top of my head, I cannot remember all the details, but I know that there are more third-party applications than victim applications.

Jamie Hepburn: You have clarified that—there are more third-party applications than applications from victims.

Suzelle Dickson: I am pretty sure that that is the case.

Jamie Hepburn: To return to my previous question, it is self-evident that, when a victim comes forward, it is much easier to demonstrate that there has been an element of coercion or a forced marriage. How does the unit consider applications by third parties? Practically, how are they taken forward?

Suzelle Dickson: As I mentioned, the forced marriage unit does not deal with forced marriage protection order applications; it is for the court to do that. From what I understand of the process, the court takes evidence from the victim, considers the risk factors and takes any other issues into account. The threshold is more on the balance of probabilities—in other words, the probability of this happening if an order is not put in place. From what I understand, the process is quite straightforward.

Hugh O'Donnell: I understand that the Ministry of Justice has reviewed the first year of the implementation of the 2007 act. Can you give me some highlights of the lessons that have been learned and how the unit has maintained a level of awareness of the act and its context?

Suzelle Dickson: Obviously, it was still very early days when the one-year-on report was carried out and, given that it could look only at orders that were taken out from November to October, during which time only 11 of the 15 courts had actually served any, it also examined general awareness in the court areas and whether people were finding the process simple or whether difficulties were arising. Where orders had been taken out, the process was becoming simpler and more straightforward; people had been trained in how to deal with cases, and court staff, the judges and so on were encouraged by how easily the act could be applied.

As I mentioned before, the level of local authority involvement was not what we had expected, but the report’s findings and recommendations for next steps included more monitoring of the numbers and the demographics of the people on whom the orders were being taken out and considering how to improve interagency working and take forward work in the different courts. For example, it was suggested that there might be some form of network to share experiences and information.

With the Ministry of Justice, we are looking at what more can be done to raise awareness in some communities, given that in certain areas orders were not taken out because of the fear of repercussions. However, we also need to raise professional organisations’ awareness of their roles and responsibilities with regard to people who are at risk of being forced into marriage, and I hope to carry out more work with those organisations in the spring.

The ministry also looked at other things that it could do. We have, for example, updated and revised the guidance to the judicial studies board to give judges a bit more information about their role in the process. The ministry is also considering whether to conduct more in-depth research on the 2007 act later on but, of course, resources will have an impact on that decision.

Hugh O'Donnell: That was very helpful.

In the course of our investigation of the Scottish legislation, we received written evidence from the Equality and Human Rights Commission in which it requested that we look closely at the interaction between immigration status and the treatment of an applicant under an FMPO. What has been your experience of that? We are particularly interested in the potential for a conflict of status; for example, if someone becomes subject to an order, issues might arise with their immigration status. Consequently, the commission suggested that those cases should be taken forward based on the human rights agenda rather than immigration status. Do you have any experience from England and Wales of that type of interaction?

Suzelle Dickson: Do you mean when someone is on a limited visa and is not only at risk of being forced into marriage but is struggling with the fact that they might have to go back to their country of origin?

Hugh O'Donnell: It is more about the connection between being in a marriage and having status to live in the UK. If the marriage is deemed to be false, it can have an impact upon the eligibility of the individual to live in the UK.
Critically, though, it also has an impact on their access to public resources, such as support mechanisms and support organisations. I hope that that clarifies the question.

**Suzelle Dickson:** This is about the no recourse to public funds issue.

**Hugh O'Donnell:** Yes.

**Suzelle Dickson:** So we are talking about someone from overseas who has been forced into marriage to someone in the UK and that marriage has broken down. Forced marriage can fit within the current domestic violence rules. If a forced marriage breaks down due to domestic violence, a person could be eligible to apply under the domestic violence rules to get indefinite leave to remain in the UK. Obviously, they would have to provide evidence of what had happened within the marriage and why it had broken down.

The Home Office is funding a pilot to support women—and men, if they are affected—to leave the family home so that they are not subject to more abuse. They can apply for indefinite leave to remain and seek refuge at the same time.

Before the pilot, there was a difficult case in which someone was subject to the situation that you describe. As far as I know, the police held a collection to support the person because provision was not in place. The UK Border Agency is looking for a longer-term solution to support people who come here and whose marriage breaks down due to domestic violence. We hope that we can ensure that forced marriage is very much part of that.

**Hugh O'Donnell:** Thank you.

**Christina McKelvie:** At the beginning of your evidence you talked about communities in which you are seeing some of these issues. The committee has tried to look at what happens in the Roma community. We had some anecdotal evidence, but no one could give us any concrete evidence. You mentioned earlier that you had seen a slight rise in cases from eastern European countries. Will you give us a bit more information on that?

**Suzelle Dickson:** I am not sure about specific countries. I will have to look at our statistics and come back to you with a qualitative answer and a detailed breakdown. Is that okay?

**Christina McKelvie:** That would be helpful. It is difficult to get anything concrete on the issue. Thank you.

**The Convener:** That completes our lines of questioning. Thank you very much for appearing before us today, Suzelle. We are disappointed that we were unable to take your evidence in person due to the adverse weather, but we are extremely grateful for your evidence today, which will be invaluable in our deliberations on the bill.

**Suzelle Dickson:** Thank you.

**The Convener:** I welcome our second panel of witnesses and thank them for attending today’s meeting, particularly as this evidence session had to be cancelled last week, due to the adverse weather conditions.

It is my pleasure to welcome Girijamba Polubothu, manager of Shakti Women’s Aid; Smina Akhtar, director of Amina, the Muslim Women’s Resource and Development Centre; Rajani Pandher, chief support worker at Hemat Gryffe Women’s Aid; and Laura McCrum, development officer with Saheliya.

**Girijamba Polubothu (Shakti Women’s Aid):** I will give some statistics on the cases that we have dealt with, starting from 2006. In 2006 we had six cases of forced marriage.

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**Suzelle Dickson:** Thank you.

**The Convener:** I suspend the meeting to allow information technology staff to clear away the video equipment and to allow the members of the second panel to take their places.

10:54

**Meeting suspended.**

11:00

On resuming—

**The Convener:** I welcome our second panel of witnesses and thank them for attending today’s meeting, particularly as this evidence session had to be cancelled last week, due to the adverse weather conditions.

It is my pleasure to welcome Girijamba Polubothu, manager of Shakti Women’s Aid; Smina Akhtar, director of Amina, the Muslim Women’s Resource and Development Centre; Rajani Pandher, chief support worker at Hemat Gryffe Women’s Aid; and Laura McCrum, development officer with Saheliya.

What is the nature and extent of forced marriage in Scotland? I ask you to consider the prevalence of forced marriage cases that your organisations have supported. Do you think that the number of cases that you support will increase as a result of the implementation of the bill?

**Girijamba Polubothu (Shakti Women’s Aid):** I will give some statistics on the cases that we have dealt with, starting from 2006. In 2006 we had six cases of forced marriage.

Before I continue with the statistics, however, you should know that the forced marriages that I am talking about are among second and third-generation young women in Scotland and England. They are not young women from abroad in whose case the forced marriage happened to them elsewhere—a year ago, say—and the women have just come to the UK and then fled their marriage. There was one case, involving two second-generation cousins, where the marriage happened abroad and, just before the men were brought here, the women fled home.

In 2006-07, we dealt with six cases; in 2007-08 we had six cases; in 2008-09 there were four cases; in 2009-10 we had seven cases; and between April and September 2010 we have had seven cases, which is an increase compared with previous years. We think that that is because there has been more awareness raising about forced marriage in schools. We work in schools, as does...
Saheliya. That could be the reason. We also provide training for the voluntary and statutory sectors in which we mention forced marriage. There are more referrals from agencies in those sectors.

In my view we cannot give realistic statistics on the prevalence of forced marriage. When I say that Shakti deals with seven cases of forced marriage, for instance, some of the women concerned will be getting support from more than one organisation. When you ask for statistics, we might say that Shakti is supporting seven women; the police’s statistics might contain some repetition, as they might be including some of the same women.

The Convener: Even allowing for that, that is a considerable number of people.

Laura McCrum (Saheliya): Saheliya’s statistics are not too dissimilar from those of Shakti.

I will give the committee a tiny bit of background before continuing. We are a mental health organisation, and we support the needs of black and minority ethnic women in Scotland from a mental health point of view. Not all the clients who come through our door have an issue of forced marriage, but our counsellors are highly trained and they assess on intake what issues might apply.

Some women can articulate that their issue is forced marriage, but others cannot. There is therefore a massive grey area in the issues that are presented. Clients present with issues such as domestic abuse, bullying or enforced isolation. We can say that we saw six clients this year for forced marriage, but the indicators from different issues that other clients presented in their initial assessment with counsellors show that there could have been another 35 clients for forced marriage. I grant that that may be an unclarified statistic, but when so many things point to something being a duck, you want to say that it is a duck, even if the client cannot articulate her needs.

You also asked about the impact of the bill on the organisation. I can tell you off the bat that all our organisations are highly underresourced, but they have fantastic people working in them who do a lot of work beyond the hours for which they are paid. From a more quantitative point of view, Saheliya is looking at having a designated caseworker or liaison officer to deal specifically with forced marriage as an implication of the bill going through. We feel that the bill will support and empower a lot of women. Girjamba Polubothu mentioned the schools project. The issue of forced marriage comes up among young girls in our schools group; every single one of them comments on it as a concern. Many of them also state that they would welcome clearer understanding of the difference between an arranged marriage and a forced marriage. Highlighting the issue of forced marriage has helped more women to come forward, and we will see more of that.

Smina Akhtar (Amina Muslim Women’s Resource Centre): Last year we supported six women who reported new forced marriages. We provide both a generic and a relationship counselling service. We have not collected statistics on this, but when some clients get into counselling they start referring to how they got married and there are cases that could easily be defined as forced marriage. An issue that must be addressed is what the definition of force is. The bill and the explanatory notes define forced marriage, but I feel strongly that communities do not understand what persuasion is in this regard, or when gentle persuasion becomes force. Some women in the community are perpetrators of forced marriages but do not know that they are doing it. We need to work on that.

Rajani Pandher (Hemat Gryffe Women’s Aid): We had 14 forced marriage cases from April to January 2009-10. We have seen an increase in such cases over the past couple of years. Two of the most recent cases involved girls who were just 16 years old. One was forced into marriage and the other one was threatened with forced marriage. Four of the cases involved women who were aged between 17 and 21, and eight cases involved women aged between 22 and 30. As with the other organisations, women come to us because of domestic abuse, but when we speak to them and question them we come to know that they are also experiencing or have experienced forced marriage. Many of them tend to go back to their families because they feel that there is not enough support available for them. If the bill is implemented, it will greatly help young girls.

We have also done a survey in schools with children between the age of 15 and 17. Of them, 94 per cent said that forced marriage exists and about 74 per cent said that they would not have enough resources available and would not know where to go if they were faced with that situation. We have also done a survey that found that many children who are 16 and 17 say that they are coerced through family pressure and have to go through this experience, and they do not know where to go.

The Convener: Thank you for those comments—they cover the question of prevalence well. Marilyn Glen has a supplementary question.

Marilyn Glen: I am aware that you do most of your work in Edinburgh and Glasgow, where the populations are larger, but do you get referrals from across Scotland? Rajani Pandher said that young girls do not know where to go. It is one
thing if they are already in Glasgow, but if they are outwith it must be even more difficult.

Rajani Pandher: Of the 14 cases that we had between 2009 and 2010, three were from outwith Glasgow and Edinburgh. One was from Dundee and another was from Falkirk. We get referrals from outwith Glasgow and Edinburgh, and we have worked extensively to raise awareness about forced marriage. We provide training to different voluntary organisations. I hope that that answers your question.

Girijamba Polubothu: We get referrals from within Scotland, but we also get referrals from outwith Scotland—from down south. The reason for that is that young women are at very high risk, and the referrals are made by the police, with the highest confidentiality and so on. Similarly, we have referred young women down south for their safety.

Smina Akhtar: Many of our cases originate from our helpline. We have a national helpline, which is a freephone number, and calls can come from anywhere in Scotland or the rest of the UK. We also have an office in Dundee, and our domestic abuse staff operate throughout the country—we have a staff member for the south of Scotland and two for the north. Cases are not just Glasgow based.

The Convener: You mentioned the age of some of the victims and the fact that some are children, aged 18 and under. I wonder whether there is an older age group, which is leading me to ask whether there is a hidden generation who are now in forced marriage and—Smina Akhtar and Girijamba Polubothu both touched on this briefly—whether it is more common that the people who speak up about it are second and third generation. Could you say something about the aspects related to age, ethnicity and gender—whether it affects males and females? On the idea of the hidden community, Laura McCrum mentioned that there can be grey areas. Are there other communities in which the issue is hidden and people do not come forward? If you could comment on those aspects, it would be very helpful.

Laura McCrum: One case study that we submitted included disability—a young disabled man. If we are to cover all the diversity strands, that must be included.

I speak for myself, but I assume that we are all keen to support the bill and see it go through because we deal with cases on a daily basis and see how horrific they can be. You asked about age. Interestingly, our stats threw up the fact that when we are talking about British nationals and second or third generations we are dealing with a younger population, but when we are talking about non-British nationals it is a much older population. I hope that that helps.

11:15

Girijamba Polubothu: The reasons behind forced marriage are very complex. Men are forced into marrying as well. In cases that we have had dealt with where British Asian men were forced into marrying women from abroad, the women did not know that their husbands were forced into their marriages. The man always had a girlfriend in this country. It is the family that wants somebody from their own culture and background. The man goes along with that and gets married, the woman comes here, and there is domestic abuse.

When I give examples, I talk about the forced marriage that is happening now and the woman who is fleeing from it, but if you look at all the situations, there are more scenarios where forced marriages are happening. When a man is forced into marrying, it is still the woman who faces domestic abuse and who suffers. The man is allowed to continue with his affair. All that the family want is someone from their own culture who can do the housework. It is domestic slavery.

The Convener: So it is about keeping up appearances.

Girijamba Polubothu: That is one scenario, but there are many other reasons. Disability is another issue. We have cases in which the family get a woman from abroad who is forced into marriage—the force is from abroad, on the woman’s side. The man’s family is looking for a carer, more or less, but the marriage does not work—there is domestic abuse and the woman flees. There are different scenarios.

Laura McCrum: When we were going through the bill from Saheliya’s point of view, what stood out was that forced marriage is not a religious, community or cultural issue. We want to consider it across the board and we want the bill to hit home, because the issue affects all backgrounds and cultures.

We have some fantastic clients and families who use our services. There are young women who participate in an arranged marriage, but they are given choice and a lot of input into that. It comes back to educating people, which is high on the agenda. We are keen to see protection in place for all communities and to move away from viewing forced marriage as a religious or race issue.

Smina Akhtar: The newer cases tend to involve younger women, but we get people who call in because, once they experience problems in the marriage, they start to unravel their experience and realise that they were forced to marry. We
need to address that, which the legislation does to some extent.

Rajani Pandher: I agree with what the other witnesses have said so far about many women from the older generation having had forced marriages. When those women come to us because of domestic abuse we question them, which is how we come to know.

We conducted a survey, and I can give you a breakdown of the ages of the respondents. We had 118 people taking part in the survey. There were 21 people aged over 30; 19 who were under 16; 30 who were between the ages of 17 and 20; and 48 who were between the ages of 21 and 30. That information might give you some idea of the age range.

I can give you some figures on ethnicity if you want.

The Convener: Yes, please.

Rajani Pandher: I cannot give you percentages, but I can give you a breakdown of numbers. We had seven from the Indian community; 23 from the Pakistani community; two who were Chinese; one in the category of "Other"; one from the Caribbean community and one African. Those are stats only for individuals who were forced into marriage. We also have stats on people who were threatened with a forced marriage and on people who knew about others who had been forced into a marriage. I could go on and on.

The Convener: It would be interesting to see the statistics on those who were threatened with forced marriage, as that could become a forced marriage later on.

Rajani Pandher: Of those who were threatened with forced marriage, three were Indian; eight were Asian British; 10 were Pakistanis; four were Bangladeshi; two were classed as other Asians; none were Chinese; one was black or black British; one was Caribbean; and one was white British.

The Convener: That is helpful. What was the gender balance?

Rajani Pandher: The survey was conducted by telephone as well as the internet. Of 118 respondents, 39 were male and 79 were female.

Hugh O'Donnell: Where do male victims go? Assuming that we do not have a scenario such as the one that Giri described, which involved a relationship continuing while the marriage was put in place, where can male victims go and what support network is available to them?

Girijamba Polubothu: Although they do not work specifically in the area of forced marriage, agencies such as men in mind are useful.

Laura McCrum: Also, from a sexual-orientation point of view, Gay Men's Health is a relevant organisation. We work with other organisations, providing them with training and referring people to them, if need be, to support men in such circumstances. We are a women's organisation, so we could not support the young disabled chap who was forced into a marriage, whom I mentioned earlier, but we were able to work with other organisations in that case.

Hugh O'Donnell: Should there be an equivalent male organisation that mirrors the work that you do for female clients?

Laura McCrum: I think that men in mind does that, to a certain extent. It is a black and minority ethnic mental health organisation that works a lot with men throughout Scotland in relation to issues from racism to forced marriage. It not only works with victims but engages in preventive work with young men and boys and with imams in the mosques.

The Convener: Could you each give an example of a case of forced marriage that you have come across?

Rajani Pandher: Yesterday, I met a girl who is now 21 but was 16 when she was forced into a marriage. She was taken to Pakistan with no idea of what was happening—she thought that she was just going on holiday with her parents. She was married to her cousin, her mother's sister's son. She came back to the UK and they applied for a visa for him, not knowing that she was underage. Obviously, the visa was refused.

She left school after her standard grades and started working. When she turned 18, her parents again applied for a visa for the young man, who was once again refused. The third time, the application succeeded and he was brought into the country. At that time, she was 18, so she was more aware of her rights and she realised what had happened. She was forced into the marriage—she was too young to realise what was being done when she was just 16. Her mother wanted her cousin to come into the UK. As members know, in the Muslim community, first cousins can marry each other.

The young woman was distraught when she came to me yesterday. He is in the UK at the moment. Her parents are forcing her to apply for his indefinite leave to remain, so that he can stay permanently in the UK. She said that, initially, he did not stay with her and the marriage was not consummated. However, pressure was put on her and her parents forced them to live together, and he has sexually abused her, too. She has fled her home and is staying with a friend's mother, who is from the same community and who is supporting her. She is looking into the help that she can
receive. She says that she is distraught. Her extended family is still pressurising her to get a visa for her husband and to continue the marriage, but she says that she was forced into it—there is no question about that.

**The Convener:** Thank you—that illustrates the situation clearly. Can other witnesses talk about different circumstances?

**Laura McCrum:** I have mentioned already the case that I will describe, but I feel that I will never forget it—it has stuck with me. The example is not recent, unfortunately. The client whom we supported was the young woman in the situation, which also involved a British national who was a young disabled man with severe learning difficulties. His family decided that he was to be married, to produce an heir for them, so a young woman was brought over to marry him. I say “young woman”, but “girl” would be a better choice of word, because she was 15.

The girl had been told nothing of his learning difficulties or his disability. Furthermore, she had little understanding of even the mechanics of sex, let alone of marriage or what any of that meant. Added to that were the possible implications of language barriers.

The people involved were from the Sikh community. By the time that we worked with the girl, her mental health was in such a state that she needed continuing support for many years.

It was heartbreaking and traumatic to hear the young man’s side of the story. His family wanted an heir, so they forced the man and woman to have sex to try to produce an heir. For him, that was incredibly frustrating and distressing, because he did not understand the situation.

The bigger issues that we dealt with for our client were isolation and the fact that she was basically kept as a slave to cook, clean and be the man’s full-time carer, as well as partner and wife. She was allowed no access to other people or to language support. Such support was available, but it was denied her. That case stays with me.

**The Convener:** That is a good example. We already have quite a range of examples.

**Girijamba Polubothu:** I will talk about forced marriage that happened on the phone. Is what we say in public?

**The Convener:** Everything is in public and on the record. If you are in any doubt about whether what you say could lead to a person being identified—

**Girijamba Polubothu:** The case that I would have talked about is quite recent, so people would still be aware of it.

Forced marriages are happening on the phone. The young woman is on the phone here and the man is on the other end of the phone, somewhere abroad. It happens because parents are in a rush, in case the child changes her mind or flees. Parents want the marriage to happen, so they make arrangements. All that the young woman is forced to say is yes in Arabic, and that is it—they are married.

11:30

**The Convener:** The legal status of that would be recognised under religious law, but perhaps not—

**Girijamba Polubothu:** We asked quite a few people whether the marriage would hold and we got different answers from each person. We were told that, if the marriage is conducted by a registered imam on both ends, it is recognised. I am not sure about that, but that is what we were told.

**Smina Akhtar:** Having just gone through a visa process personally, I am 99 per cent sure that the UK Border Agency does not accept phone marriages for visa purposes.

I have dealt with a complex case in which we could not do anything to support the woman. She was forced into a marriage by her parents and taken to Pakistan. She did not know that she was going to be forced into a marriage. Her passport was taken away from her and she was told that she would get it back and be able to return to the UK only if she agreed to marry the person. So, she finally agreed to do it. It is now almost two years down the road and she does not want to apply for her husband’s indefinite leave to remain but is being forced to do so because he is threatening her brother in Pakistan with violence. She has absolutely no choice but to apply for his indefinite leave to remain, after having been forced into a marriage with him. It is a pretty complex case.

**The Convener:** That is helpful in giving us a flavour of the extent of the problem and the various circumstances.

**Malcolm Chisholm:** Let us move on to the bill and the benefits that you think it will bring. There are some existing civil and criminal remedies, but I do not know whether you have seen any of those being used to protect the women whom you are talking about. What benefits do you think the bill will bring that do not exist currently?

**Smina Akhtar:** The fact that legislation is being proposed to make forced marriage an unlawful act will, in itself, benefit the community, especially people who are being forced into marriage. It lets them know that what is happening to them is completely wrong. However, the proposed
Malcolm Chisholm: One body that has given a different view is the Muslim Council of Scotland. Its view is connected with the previous point; it argues in its written submission that existing laws are sufficient to prosecute perpetrators. It also argues that there is a risk that the bill will be seen to target ethnic minority communities and states that the bill will not be effective because victims will not come forward. What are your comments on those views?

Laura McCrum: I disagree with those comments. When we are looking at any of these issues, we need to look at the power balance. When the issue has come up, the police and other organisations have often been accused of being racist when they speak to an imam in a mosque, but who are they speaking to? They are speaking to the community leaders, who tend to be men in those situations. There is a block between the two. I see the bill as a way to offer more direct support to women and ensure that they feel more confident and more empowered to come forward and stand up for their rights in such situations.

I agree that work needs to be done in communities at the same time. I can give you an example from our girls group. A young girl told our caseworker recently that she is really struggling with the idea because her faith tells her to obey her parents and she loves her faith and enjoys worshipping. She does not want to go against the commandment to obey her parents, but her parents are forcing her to get married. She is stuck in that situation, which highlights the importance of education.

I disagree with the Muslim Council of Scotland’s comments. I think it is coming from a different standpoint and not from the area in which we work.

Girijampa Polubothu: Shakti feels the same. We all accept that forced marriage is against human rights and the wrong thing to do. If we all accept that, we should do something about it. As a BME woman, I expect that from the Government. If it did nothing, it would be pulling out of its duty, and I would see that as discriminatory. The bill is necessary. Yes, there will be people who might not use it, but it is not for those who do not want to use it. The bill will ensure that women have a choice. If they do not want to use it, that is fine, but if they wanted to use it but it was not there for them, that would not be right.

Smina Akhtar: The Muslim Council of Scotland represents a certain section within the religious community. I think we have to recognise that. I am a practising Muslim woman and I know that there are a lot of progressive and forward-thinking imams and religious leaders in Scotland who support the bill and have spoken out publicly to support it. We, as a Muslim organisation, definitely support it.

Laura McCrum: Malcolm Chisholm mentioned the view that the bill might be seen to target Islam or Muslim communities. The statistics that we have on forced marriage, which I am happy to submit as further evidence, show that there is an even spread among religious and non-religious people and across the communities. It might be seen to occur only in one particular community, but that is not the case.

I am particularly proud that Scotland is taking a lead with the bill. It is saying not just to Scotland but to the rest of the UK and the world, “This is our standpoint on forced marriage: we’re not going to condone it.”

Malcolm Chisholm: Concern has also been expressed, including when the issue was considered a few years ago, about criminalising family members. Does the bill strike the right balance between identifying and helping victims of forced marriage and overcoming the concerns that some people have about criminalising family members? Breach of the order would be a criminal offence.

Smina Akhtar: I was thinking about that this morning. Sanctions need to be put in place, because otherwise what is the point? What are we trying to achieve?

If the sanctions are in line with those under similar legislation—for example on domestic abuse—that is fine. The figure is up to £10,000 for breach of an order. I support the sanctions under the bill if they reflect sanctions under similar legislation, although I do not know what those are.

Rajani Pandher: We all support that position. If breaching an order is a criminal offence, people will be aware of that and will not proceed. Some
young people may not come forward because of the provision, but it is their choice not to do so. We should at least give those people who want to come forward a chance to do so.

Girijamba Polubothu: We want to send a strong message to the community and to the perpetrators that this practice will not be tolerated. If I tell my children that I will stop giving them chocolates if they are naughty but give them chocolates even when they are, they will think, “That is just something that mum always says.” It is the same in this case.

Smina Akhtar: Once an order has been issued, the perpetrator will be told that breaching it is a criminal offence, which will deter them. If they are told that not much will happen if they breach the order, what is the deterrent? One organisation—I cannot remember whether it was Shakti or Hemat Gryffe—said that victims should be monitored for a couple of years. We fully support that approach. There must be some way of monitoring victims, because once the situation cools down perpetrators may tell victims that they will force them to get married or else.

Laura McCrum: The flip-side of that for Saheliya is that when our clients come through the door they are often much further down the line in their need for support or are at crisis point because they have been to many other places that they thought could assist them but have been unable to get support or help. From a mental health point of view, if we are able to work with women and other people at a much earlier stage, we will prevent many more crises.

Hugh O’Donnell: I am interested in Laura McCrum’s comments about the composition of the Muslim Council of Scotland. Is it a democratically elected organisation? Does it include any females, or does it consist of self-appointed representatives?

Smina Akhtar: I may be wrong, but I do not think that there are any women on the council. I know that it had a meeting in Glasgow at which it discussed the sanctions and decided to oppose the bill. I was away and was unable to attend that meeting, which was not attended by anyone from my organisation. I am pretty sure that there are no women on the council, but I cannot be 100 per cent certain.

Most mosques do not have women on their committees. I know that there has been a struggle in Glasgow central mosque to get women on to the committee. There is very little representation of women.

Stuart McMillan: Would the orders that could be made under the bill provide sufficient preventive and protective measures in forced marriage cases?

Laura McCrum: Yes, if they are applicable to the case. We have provided you with examples of a variety of cases at different stages, so it is slightly hard to answer the question, but primarily I would say yes.

Rajani Pandher: The criminal aspect will be really helpful.

Girijamba Polubothu: We have given different scenarios. I am not absolutely sure how the orders will be applicable to each of them. In cases of straightforward forced marriage they will be sufficient, but we are not sure about the complicated examples that we have given. I am not a lawyer, so I do not know.

Stuart McMillan: I was going to ask about the criminal element, but that has been addressed.

11:45  Christina McKelvie: Good morning. I have the luxury of sitting on the Education, Lifelong Learning and Culture Committee—some people might not view that as a luxury, but I do—which has just agreed to some changes to the children’s hearings system. One of the new provisions relating to grounds for referral is forced marriage. What do you think about that? Do you support it? Do you think that the interaction between the Children’s Hearings (Scotland) Bill and the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill should be a bit more explicit? I opposed that amendment because I felt that we needed to get the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill sorted first, to ensure that we had the proper definitions and a proper understanding of the issues so that when we applied those terms to the child protection legislation they would mean something. The issue can be addressed at a later date, but what are your thoughts on how the two types of legislation should interface?

Laura McCrum: What you have just said is something that I have been thinking about, not being up to date with that bill and what you were proposing or opposing at that point. It will be interesting to see the outcome. I wonder why, if you considered forced marriage among young girls, you should not also consider female genital mutilation and other things that have an impact from a child protection point of view. My view is that you cannot look at just one element. You are right to say that the definitions need to be fixed and the message clear before they are absorbed into the child protection legislation.

Girijamba Polubothu: A few years ago, we had referrals from social workers of children aged 15, and we sometimes get referrals from schools involving children aged 13 or 14 whose parents are suspected of planning to take them abroad for
the purpose of marriage. In such cases, as a voluntary organisation, we cannot do anything because they are only children—they are not 16 or older. All we can do is support the social worker or the school by carrying out awareness raising, advising them on what they should do, informing them of the risk factors so that they can carry out a risk assessment and that kind of thing. So yes, this should be part of the child protection legislation.

Rajani Pandher: I agree. There must be a lot of awareness raising in schools and among young children, but please do not generalise; not every child who goes abroad will be faced with this issue. However, I agree that it should be included in the child protection legislation.

Girijamba Polubothu: There are ways to do assessments, to get it right. I will give an example. A few years ago, I dealt with a forced marriage case in which the adult daughter fled a forced marriage. As a result of that, the family took all three girls abroad and somehow blackmailed the young woman who had fled the forced marriage into getting married abroad. The parents then got the other two girls, who were under 13—one was aged eight; I cannot remember the other one’s age—engaged to two of their cousins, to be married later. I do not know at what stage they got married, but they were at primary school here in Edinburgh when they got engaged.

Christina McKelvie: It is interesting dynamic. We heard earlier from Suzelle Dickson that her unit has dealt with a number of cases in which the victims have been aged 16, which is the legal minimum age for getting married in Scotland. One of the new provisions in the Children’s Hearings (Scotland) Bill is that if a child becomes known to the children’s hearings system just before their 16th birthday they will be taken care of by the hearings system. Before, if they had not been in the system, they would go into the adult system. There was a bit of a gap.

It is interesting to hear what you say, as 16 seems to be a pivotal age. You say that you get people who are referred from England. Are those young people? Have they had any interaction with the hearings system? If so, how has it supported them?

Rajani Pandher: No, we have not had any.

Girijamba Polubothu: They have all been aged between 16 and 25.

Laura McCrum: One of our counsellors, who is here with us today, works with young girls in that situation. She has just commented that, for her job, having as much legislation as possible would be a good thing, particularly because some threats relating to forced marriages equate to child abuse or bullying. From her point of view, legislation would help.

Girijamba Polubothu: Is it okay if I give another case scenario from a few years ago? I received a call from a woman who was 16 and had a child of a year and a half. I did not know about that before. She said that her parents were forcing her to bring her husband to this country and that she did not want that, so she wanted to leave. When she said that she was 16 and had a child of a year and a half, I asked her when she got married. She said that she got married at 14. I said, “Oh, but you’re not allowed to marry at 14.” I assumed that she was married here. She said that something happened and her parents decided to take her abroad and get her married. I think that they did so because she had a boyfriend. She got married, got pregnant, was brought here and had a child. She was forced to marry. This shows that it is happening to children of 11 and 14 in Scotland.

Rajani Pandher: I had a case in which the child was taken back to the country of origin. The person was forced into marriage at 13 and was not brought back to the UK until she was 18. She had two children. That is when she came to us.

Christina McKelvie: Underage marriage seems to be a particular issue. Obviously, the legislation here means that that is technically child abuse. That is how it would be viewed.

Girijamba Polubothu: The other countries have legislation as well. People are not supposed to get married at that young age, but nobody reports cases to the police or anybody, so nothing happens. Child marriages are happening now in India, Pakistan and Bangladesh.

Rajani Pandher: People cannot get a visa until they are 21, so there is that restriction, but it still happens.

Christina McKelvie: That leads me nicely to my next question, which is about third party referrals on behalf of victims. Obviously, there is the overlap of the children’s hearings system, the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995 for young people who are victims. They are all meshed together and we need to ensure that they are working properly. Would forced marriage protection order applications via third parties protect people in any of the cases that you have mentioned? How would they be used? Do you see them working in practice in a positive way?

Girijamba Polubothu: They could have protected the 16-year-old with the child and the young girl who was forced to marry on the phone. That is how I see things. If the school was involved and was aware of what was happening, it could have taken action. The same applies to the three sisters who were taken abroad.
Rajani Pandher: We are working hard on raising awareness in schools so that children know that such things can happen. If such a thing happens to one child and her friend knows about it, she can go to her councillor or someone in the school such as a teacher, who can then go to a social worker and inform them that they are worried that there could be a threat of forced marriage. There must be inter-agency working over here.

Laura McCrum: When I saw my daughter’s curriculum on bullying and the work that is being done on that, I thought it was excellent. There was a thing about whether the person would support a friend or do other things, but I thought that that missed a trick and could have gone much further to include other topics, especially in schools with higher BME populations of young boys and girls. Why not include that in that education-type process?

Christina McKelvie: You are absolutely right. What is very interesting about the legislation is the effect that it might have on young people in that age range. A few weeks ago, the Education, Lifelong Learning and Culture Committee took evidence from Tam Baillie, who was touting a version of human rights education that would tie in with what you have just said. However, I will not go any further down this road—I could certainly talk about this issue for a long time and try to get a lot more information out of you. Thank you for your input; the committee will certainly take particular cognisance of what you have to say.

Marilyn Glen: Section 2 would make the terms of the FMPO apply to conduct outwith as well as within Scotland. We have already heard about some of your experiences of the interaction between immigration law and support for forced marriage victims. How will all that work in practice if the bill is passed? Do you think that the situation will improve?

Girijamba Polubothu: I do not understand the question.

Marilyn Glen: What difference will it make if we set out in the bill that orders should apply to conduct outwith as well as within Scotland?

Rajani Pandher: Outwith Scotland would mean England and Wales as well as abroad.

Marilyn Glen: That is right.

Rajani Pandher: The question is how such legislation would be enforced abroad. I do not know, for example, how interagency work would take place between Governments. However, such a move would be very effective if we are talking about England and Wales, because those forcing others into marriage might take them from Scotland to, say, Birmingham.

Girijamba Polubothu: In our submission, we asked how this legislation would work abroad. However, we feel that there should be some provision, given that most forced marriages have an international element to them.

Rajani Pandher: Then again, if the protection order is taken out before the person goes abroad, whoever is forcing the child to go abroad will be in breach of it and immediate action could be taken to stop them. The party who has taken out the order must be constantly vigilant in monitoring the situation.

Smina Akhtar: Are you proposing to have relationships or contacts with the police, Government agencies and so on?

Marilyn Glen: I am sure that we already have those things.

Smina Akhtar: I am still not sure how the provisions would be implemented effectively.

Girijamba Polubothu: The bill’s provisions will be difficult to implement abroad. It might be possible in countries such as Pakistan, India and Bangladesh where the UK has arrangements through the forced marriage unit, but I do not know about other countries.

Marilyn Glen: So you are all concerned about how the provisions would work. I should point out that when, in the previous session, the committee considered the FGM bill, we managed to insert a provision making aiding and abetting illegal. Such a provision would mean that people who seemed to have an arm’s-length involvement in a situation would also be in breach of an order.

Girijamba Polubothu: In some cases, the pressure comes not directly from parents but from grandparents abroad, who force the parents to force the children into these situations.

Marilyn Glen: We will certainly put your concerns to the minister.

12:00

Hugh O’Donnell: I come to quite an interesting interface, and perhaps one of the most challenging ones: part 2 provides that the sheriff may make a decision on nullifying a forced marriage. That seems a bit of an oxymoron because the two do not work together, but it could bring the decision of the legal jurisdiction into conflict with the religious jurisdiction. Do you have any views on how civil legal decisions will impact on faith-based marriages, even if they are forced?

The question is not just about Islam, because most of the main monotheist religions have separate and clear ceremonies and rules. For example, Roman Catholicism does not recognise divorce in the same way as civil society. Do you
have any experience of that tension and friction and of how it works? What impact would the bill have on a religious marriage?

Rajani Pandher: It would affect the Muslim community more than the Hindu, Sikh or any other community. With Hindus, Sikhs and other ethnic minorities, there must be a civil registration of marriage—even though we have a ceremony—and annulment can take place. People who get married within Islam have a nikah. I ask Smina Akhtar to expand on that.

Smina Akhtar: A couple who want to divorce can get a civil divorce regardless of whether there is abuse or forced marriage—that is totally irrelevant—but before they can remarry they must go through the Islamic Sharia Council in the UK to get a Sharia divorce. That can take anything up to two years, although it can happen really quickly as well.

It would be the same with forced marriage. The option of nullifying a marriage exists in Islam. In theory, it should happen immediately if it is shown that what has happened constitutes a forced marriage. In days gone by the imam could nullify the marriage, but these days people have to go through the Sharia Council, which, as I said, can take a long time.

Nikahs on their own, without registration, are quite uncommon unless there are specific issues. If one of the people in the couple is underage, a nikah will happen and there will be no civil registration—the same will apply in a case of polygamy—but even in countries such as Pakistan people are encouraged to register their marriage. People cannot apply for a visa without registering the marriage with the local authority in the area where they get married, whether they are here or abroad.

Hugh O'Donnell: I recognise what you are saying, which helps to clarify the position with regard to annulments. I was aware of some of what you have said. What is the potential for strife where there is a civil nullification but a refusal to nullify the religious ceremony? Does anyone have any experience of that? Can we keep the two either completely separate or completely conjoined?

Smina Akhtar: I do not think that we can keep them completely separate because neither the woman nor the man can legally remarry until the ceremony has been nullified by the Sharia Council. I think that the Sharia Council can refuse to nullify. Whatever happens, it will take a long time.

Hugh O'Donnell: So it is a bit of a red herring in terms of being a barrier to the bill?

Smina Akhtar: Yes.

Jamie Hepburn: Does any of the witnesses have experience, directly or anecdotally from other organisations, of forced civil partnerships? I take it from your shaking heads that the answer is no, which tallies with what we heard from Suzelle Dickson. That being so, do you think that the bill is correct not to provide for FMPOs for civil partnerships, but to make that power possible through an order laid before Parliament?

Laura McCrum: Yes.

Rajani Pandher: Yes.

Jamie Hepburn: That is helpful. Thank you.

Marlyn Glen: Section 11 provides for guidance to be made available to those “exercising public functions”. Do you have a view on the content of the guidance on forced marriage and how it should be disseminated? What key agencies should be “exercising public functions” in the context of forced marriage?

Rajani Pandher: We would like the women’s aid organisations to be involved because we have first-hand experience with forced marriages. We have trained other voluntary and statutory organisations, such as the police, to raise cultural awareness of the issue. Women’s aid organisations, social work departments and the police should be aware of the cultural issues around forced marriage and receive training on it. I trust that that answers your question.

Marlyn Glen: Yes, thank you.

Smina Akhtar: We are organising a community workshop in January for women in Pollokshields in Glasgow, which has a high Muslim BME population, to explore their thinking around forced marriage—for example how prevalent they think it is, how acceptable it is and what they think constitutes the forced aspect. I am interested in finding out what they think. I think that all the organisations represented here, and more, should be involved.

Marlyn Glen: It would be interesting to ask them how the guidance should be disseminated and what should be in it.

Smina Akhtar: Yes.

Laura McCrum: Schools and education should be used, too.

The Convener: That completes the lines of questioning. I thank you all for coming today. There is no doubt that you have provided a tremendously useful insight into the bill’s provisions, how they will work and the scale of the problem in Scotland today.

I suspend the meeting briefly to allow the third panel to take their places.
Meeting suspended.

On resuming—

The Convener: I welcome our third panel of witnesses: Alex Neil, the Minister for Housing and Communities; Lesley Irving, the Scottish Government’s team leader for gender equality and violence against women; Eileen Flanagan, policy manager for gender equality and violence against women; and John St Clair, a solicitor in the Scottish Government’s legal directorate. You are all very welcome.

We will start with questioning. I take it that you do not have anything to say at the outset, minister.

Alex Neil (Minister for Housing and Communities): I do, in fact—it might be helpful. However, you might prefer to go straight to questions.

The Convener: If you do not mind—it would be better to move straight to questions, given the time constraint that we are under.

Alex Neil: Fine—that is no problem.

The Convener: We understand that the Scottish Government’s consultation on the need for civil legislation ran from November 2008 to March 2009, although it did not consult on a draft bill. What key messages did the Scottish Government take from the consultation responses on the need for a civil remedy into the development of the bill? What has the Scottish Government learned from the implementation of the Forced Marriage (Civil Protection) Act 2007 in other parts of the UK? How has that informed the development of the bill?

Alex Neil: As you know, we consulted widely on the issue of forced marriage and, simultaneously, the UK Parliament was passing its bill. A number of messages came out of the consultation, but there were two main ones. First, there was a strong desire to introduce the sort of bill that we have now presented to Parliament to deal with the issue of forced marriages. There was universal support for that in principle. Secondly, there was the question whether to impose more criminal sanctions or to deal with the issue as more of a civil matter. There was more support for the latter course, rather than the former. That is also reflected in the bill.

As for the lessons that we have learned from down south, the legislation there has been in place for well over a year. At the end of the first year, a document was produced on the initial impact of the 2007 act. We have considered that report carefully and we have learned some lessons—not just from reading the report; we have been in constant touch, particularly at official level, with the team down south, so that we could learn any lessons that were thought to be helpful in drafting the bill for Scotland.

The area in which we have differed slightly on the basis of experience south of the border is in making it easier to annul a forced marriage, particularly by allowing cases to be put to a lower court rather than their always having to be taken to the Court of Session; the sheriff court is easier to access. As for the criminality element, there will be stronger criminal sanctions against people who breach their forced marriage protection orders. Our provisions in that respect are stronger than the equivalent provisions south of the border.

The Convener: I want to get down to the nitty-gritty of the bill. We have received several written submissions and had a very worthwhile evidence session this morning; it is not clear from that evidence the circumstances in which a victim will be able to apply for a forced marriage protection order in Scotland. In particular, for how long would someone have to be domiciled in Scotland for them to be able to apply?

Alex Neil: There is no specified period. Anybody who is in Scotland, and who is living in Scotland, can apply for a forced marriage protection order. The person’s stay here could be as short as just over a month—40 days—or they could have been living here for longer. There is no prescription on that. It would be up to the court to decide whether the person was domiciled in Scotland.

The Convener: In those terms, if a person was staying here on a visa and had found themselves in the circumstances that the bill deals with, how long would the protection apply? I suppose that that is going on to other questions.

Alex Neil: If somebody is a visitor to Scotland, they are not domiciled in Scotland. It would be up to the court to decide whether they were domiciled in Scotland. The situation is the same as it is for other, completely different, subjects of legislation. Sometimes a court has to decide whether a person is domiciled in Scotland—that is entirely at the discretion of the court.

The Convener: We will probably explore those questions further as we proceed.

Hugh O’Donnell: We refer fairly regularly to the long arm of the law, but the bill applies the concept of forced marriage protection orders outwith Scotland. How far outwith Scotland would they be applied? How do you perceive their being enforced in those circumstances?

Alex Neil: On the first question, if a forced marriage protection order has been issued against
someone, it will be in place worldwide as far as we are concerned, and there are certain circumstances in which we would pursue it worldwide. There are several ways in which we could pursue a person with a forced marriage protection order against them who has gone to another country. If the UK has an extradition treaty with the country, we could apply for the extradition of that person so that they would come back to Scotland and face the consequences here. If there was no extradition treaty, we could do as Mohammad Sarwar did in the case of murder suspects in Glasgow. He negotiated their extradition from Pakistan to return to Scotland to face trial. We could take action against people who returned to Scotland, or the country that a person had gone to might be prepared to enforce a forced marriage protection order that had been issued in Scotland. The option that we would follow would depend on the territory to which the person had gone, on knowing where they are, obviously, and on the country’s legal relationship with the United Kingdom for extradition.

Hugh O’Donnell: There is quite a range of permutations. Has it been possible to project what the likely financial costs and burdens might be in any of those circumstances, based on any historical cases that there might have been?

Alex Neil: That can be done. The English legislation can be considered. There have been around 86 cases in England so far, and I think that I am right in saying that not a high proportion of those cases have involved people who have gone abroad. Therefore, we do not expect such cases to be a huge problem and a huge cost.

Hugh O’Donnell: The interface or potential for conflict between the civil annulment of forced marriages and religious law has been brought to light in a number of written submissions and in verbal evidence that we have taken. Will you clarify that you are quite comfortable that all the possible pitfalls or bear pits that may exist in that context have been satisfactorily dealt with? If they have, how was that done? What engagement was there with the religious organisations, if any was necessary?

Alex Neil: Interfering in the governance of any particular religion or church has never been part of Scots law, and that will be no different as a result of the bill. We will not intervene legally in the governance of religious organisations. That said, we have had extensive discussions with religious leaders, all of whom supported the principles of the bill and all of whom assured us that, in its practicalities, their religion would respect legal decisions on nullifications.

Malcolm Chisholm: Section 9 would make it a criminal offence to breach an FMPO. In its written and oral evidence, the Association of Chief Police Officers in Scotland called for an explicit power of arrest to be attached to that section. Will the minister clarify why an explicit power of arrest has not been included in that section to make it consistent with the power of arrest for the breach of an interdict in the Protection from Abuse (Scotland) Act 2001?

Alex Neil: The simple reason is that we do not think that it is necessary because, in effect, the power of arrest already exists under existing legislation. Indeed, it is possible for the sheriff, in issuing the order, to provide for the power of arrest without warrant if there is a breach of the order. That also means that it is not necessary to build in the power of arrest. It is, however, something that I would not go to the barricades about. If the committee feels that we should explicitly build in the power of arrest, I would not resist that, but we genuinely think that it is not necessary.

Malcolm Chisholm: That is helpful, thank you.

Let us move on to third-party applications, with specific reference to local authorities. The committee received three written submissions from local authorities, which, although broadly supportive of local authorities being defined as relevant third parties, said that it is not clear what duties third parties have to monitor individuals. Scottish Women’s Aid also commented on the issue, stating:

“Regardless of which part of a local authority this applies to, it is absolutely crucial that those directly involved in applying for Orders do not simply have this responsibility ‘bolted on’ to their other duties and that care and attention will be taken to ensure that this work is regarded as a specialised support area.”

Given that local authorities will have a large part to play in supporting the victims of forced marriage and may be called on to act as a relevant third party, can the minister outline what consultation has been undertaken with them on their role?

Alex Neil: We have consulted widely and are still consulting local authorities and the Convention of Scottish Local Authorities on all aspects of the bill. Indeed, we are also talking to them about issues around training, the aftercare services that are to be provided once an order has been issued and so on, as well as having discussed with them, during the initial stages of consultation, the guidance that will result from the passing of the bill.

It is worth emphasising that local authorities are in exactly the same position as the victims of attempts at forced marriage and the Lord Advocate, in that they can apply for a forced marriage protection order without initially requiring the permission of the court to do so. Local authorities have a crucial role to play both in applying for a forced marriage protection order, if
they so decide, and in ensuring that the totality of support is available and provided to the victim.

Malcolm Chisholm: Taking account of the comments that local authorities have made about their duties and the comments that Scottish Women’s Aid has made about the need to regard the work as a specialised support area, how will applications by local authorities work in practice? Are there other bits that go with the application for an order and how will they work in practice?

Alex Neil: It is up to each local authority to decide how it organises its internal affairs. Nevertheless, we have had substantial discussions with Glasgow City Council, as we believe that Glasgow is where a high proportion of the cases will come from. In the discussions that we have had with Glasgow City Council and other local authorities, there has been a recognition that there is a need for specialist training, guidance and support in the area. The lead may well fall within a particular department, such as social work; however, there is recognition of the need for a specialist team with the necessary skills to deal with this unique bill and unique circumstance.

12:30

Christina McKelvie: Good morning, minister. I want to follow on from Malcolm Chisholm’s point and pick up some of the points that the earlier panel made about child protection. We have a forced marriage protection order and a child protection order. We heard some harrowing stories about young people being engaged at the age of eight or 12, being married at 14 and having babies before they are 16. There was a bit of concern about how the forced marriage protection order and child protection order would work together. Is there potential for conflict or confusion? What work will be done to remedy that?

Alex Neil: I do not think that there is any potential for that. Let us take the example of the existing legislation on how children are treated in Scotland. The law is very clear that a person cannot be married if they are under 16 years of age. That applies to forced marriages in the same way that it applies to every other circumstance in Scotland. Similarly, a child protection order, irrespective of whether there is an issue about forced marriage in the family, will be pursued and implemented accordingly.

If anything, the forced marriage protection order should be complementary to the child protection order. A child can often become a bit of a ping-pong ball between families who are trying to arrange a forced marriage. It is important to ensure that the child is protected, but it is also important to ensure that the mother or father of the child who is the victim of an attempt to arrange a forced marriage is protected. The orders will be complementary to one another, I would have thought, and they will certainly not conflict.

Christina McKelvie: I did not think that there would be conflict, but there might sometimes be a bit of confusion about whether we should apply an FMPO or a CPO. It is quite heartening to find that the CPO would supersede everything else as far as Scotland’s legislation for children goes.

Alex Neil: Absolutely.

Christina McKelvie: That is interesting.

One of the other things that the committee picked up on was the grounds for referral in the Children’s Hearings (Scotland) Bill and how they will interface with the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. There was a wee bit of concern about that and I wondered whether any work had been done on it. The grounds for referral will have to be modified by a Scottish statutory instrument, because there is no definition of a forced marriage in the Children’s Hearings (Scotland) Bill.

Alex Neil: Obviously, we have taken measures to clarify any consequences of the bill for any other legislation. The SSI to which you refer is already within our power in existing legislation.

The Convener: In some of the evidence that we have heard, concern has been expressed about the summary procedure being used for the application of the forced marriage protection order, especially given that, in many cases, the witnesses will be vulnerable. Do you have a comment on that aspect?

Alex Neil: Anyone who comes to court to give evidence will be subject to the normal support that is available. We are discussing with the judiciary the guidelines that it will use for the whole procedure, and we will be conscious of the need to ensure that the court is made as user-friendly as possible, if I can put it that way. We are talking about victims who need to be protected at every stage.

John St Clair is one of my advisers on such matters; I ask him whether he wants to add anything more specific.

John St Clair (Scottish Government Legal Directorate): Although it is called summary procedure, it is a wide range of procedures that can be adapted for any type of situation. There is a series of chapters in the rules of court that are tailored to a particular type of order. It might be that they will be appropriate to cases of this type, but we do not anticipate that at the moment.

The Convener: How do you envisage breaches of FMPOs being policed? Again, that takes us
back to how long the orders will be in place. On third parties that have the ability to apply for orders, it has been suggested that the police should be included. Do you have any comments on those points?

Alex Neil: The order can last forever, unless it is rescinded by a court. There is no deadline for expiry of the order. It is there and will remain there.

We have heard the debate about whether the police could go to court. As members know, in every case in Scotland, the police operate through the procurator fiscal and go to court through the procurator fiscal. Given that, under the bill, the Lord Advocate has the power to go straight to court without asking permission, as do the local authority and the person involved, it is better to maintain the status quo in the relationship between the police and the Crown Office and Procurator Fiscal Service.

If we went down the road of allowing the police to go straight to court rather than through the Procurator Fiscal Service, the police would have to be given their own legal advisory service. That would involve a lot of cost when such money would be better spent on other aspects of enforcement than on duplicating the work of the Lord Advocate and the Crown Office and Procurator Fiscal Service.

The Convener: On monitoring and policing, who will look after how protection orders play out? A year or two years down the line, the protected person might have a false sense of security and could be lured abroad. Who will monitor that?

Alex Neil: Several aspects are involved. We are in detailed discussion with local authorities and others to ensure, once an order is issued, that appropriate support mechanisms will be in place for the victim and that the police will maintain vigilance in relation to the person against whom the order was issued.

It is important that the victim has continuing multi-agency support. We have a network of agencies that are discussing how that support can best be delivered, to ensure that on-going multi-agency support is available for as long as it is needed. The police are involved in that multi-agency task force, as are local authorities and other organisations that are active in the field. The police will be responsible for enforcing orders and dealing with any breach of orders.

Marlyn Glen: I seek more clarification of section 3(7)(c). You have said that you would prefer to keep the status quo for the police. Section 3(7)(c) provides for the ministers to specify relevant third parties that will have the automatic right to apply for an order. The local authority and the Lord Advocate will have that right, but you would prefer the police not to have it. Who else might have the right? What about specialist support organisations such as Shakti Women’s Aid and Hemat Grynfe Women’s Aid?

Alex Neil: We are open to that suggestion and we will consult on it when we issue the guidance. Such agencies will not be named in the bill, but they could be nominated once the bill was passed—we would have the ability to do that. Ideally, we would want to agree criteria for any agency that is to be nominated to have the automatic right to apply. Another organisation that might be appropriate—although I am not saying that it would be—is Scottish Women’s Aid. We intend to consider other agencies that can be nominated, but we are not giving a commitment on specific agencies.

Marlyn Glen: You would not want to have a list, because there is always somebody else. We heard evidence that the men in mind service might be a relevant organisation. When Scottish Women’s Aid gave evidence a couple of weeks ago, it suggested amending the bill to refer to anyone who is allowed by the court, rather than just

“a person specified ... by order made by the Scottish Ministers”.

Alex Neil: We will listen to what the committee says about that. I am not automatically against the suggestion, which is worthy of consideration.

Hugh O’Donnell: It just occurred to me that, regardless of who is on the list of third parties, a change in resource allocation might well be required to provide additional resources. Has anyone thought about how that might work? Is it included in the financial projections for the current local government settlement? Can you give us some idea of how the arrangement will work, so that any money that is necessary does not disappear into a general black hole?

Alex Neil: As you know, we do not ring fence police budgets on the basis of different types of crime. It is entirely up to the chief constable to decide how he allocates his resources. Similarly, it will be up to each local authority to decide how to organise the resources that are required for the bill and to put together funding from all the moneys that are available to it.

Hugh O’Donnell: Will a small sack of money be distributed to local authorities for them to use once the bill has been enacted, or is the money included in the current settlement?

Alex Neil: It is included in the local authority settlement. There will be no additional or supplementary settlement.

Hugh O’Donnell: You have answered the question.
Alex Neil: We have nae extra money.

Stuart McMillan: Section 11 states that Scottish ministers “may” issue guidance about the effect of the bill, or on the issue of forced marriage more generally, to organisations that they consider appropriate. Given the importance that witnesses and respondents to the call for written evidence have placed on the issuing of guidance, can you give a commitment that guidance will be issued and indicate what status that guidance will have? Will it be statutory guidance?

Alex Neil: The bill says that we “may” issue guidance. I make absolutely clear that we will issue guidance. At stage 2, I will lodge an amendment to change “may” to “will” so that there is no dubiety about whether we will bring forward guidance, which will have statutory status. We will consult widely on the guidance, as we always do, before we come to Parliament with secondary legislation to implement it, where that is required, or to issue it, where we do not require further parliamentary approval.

Inevitably, because of the consultation and all the work that must go into preparing guidance, there is always a time gap between royal assent and the agreeing and issuing of guidance. I make categorically clear that we intend to commence the bill the minute that it receives royal assent and not to wait to implement it until we have the guidance. I do not want there to be a gap because we are waiting for guidance—we want to start to implement the bill right away.

In response to a previous question, it may be useful if I provide the committee with a clear legal definition of whether someone is domiciled in Scotland.

John St Clair: Or connected with Scotland.

Alex Neil: That is the phrase in the bill. We will provide the committee with more detail on that.

The Convener: That would be helpful.

Stuart McMillan: When does the Government expect to consult its partners and other bodies on the guidance, to ensure that there is no time lag between the point at which the bill receives royal assent and its implementation?

Alex Neil: It is inevitable that there will be a time lag, because of the processes that we must go through, but we want to minimise that. In effect, we are discussing at the moment with interested parties what the guidance should include and what issues it must cover. However, we are obliged to undertake formal consultation. The consultation period is normally around two months—sometimes three months. After that there must be a period of reflection and decision making. Then we must prepare secondary legislation, where that is required. If only straightforward guidance is required in some subject areas, we can issue that. All of that takes time. If the bill receives royal assent around March or April, I hope that we can have guidance in place well before the end of the calendar year 2011.

Stuart McMillan: That is helpful.

The bill’s policy memorandum states that the Scottish Government intends to undertake awareness-raising work on forced marriage and the bill. We heard from Suzelle Dickson that more awareness raising needs to be done down in England and Wales, and we heard from the previous panel that a lot of community work needs to be undertaken. What other details can you provide about awareness raising? What specific training will be provided to judicial staff?

12:45

Alex Neil: We are in discussion with the judiciary on provision of training to ensure that people are aware of all aspects of forced marriage, including the non-statutory aspects and the statutory aspects. It is not, however, just about training judicial staff; there is clearly a training requirement across a number of agencies, which is why we have an interagency, multi-agency task force looking at the issues.

We will implement on-going training and awareness programmes. I do not believe that subjects such as this require just a one-off awareness campaign. It is an on-going process and people need to be continually reminded about the issue and about the options that are available to people who are under duress to engage in forced marriages. We will put together an awareness programme, which will, clearly, need to be in a number of languages to be effective. All those matters are being discussed.

Stuart McMillan: From the evidence that we have received this morning, it sounds as if awareness down in England and Wales is quite patchy. We heard from the previous panel that the number of cases has increased, particularly over the past year, because some work has been undertaken in schools, in particular. That is a good example of raising awareness. There will potentially be further increases in the number of people who take cases forward when there is more awareness out there and more people fully understand what the bill will provide by way of safeguards when it is, I hope, enacted.

Alex Neil: You mentioned schools. It is very important to have one of our awareness programmes specifically directed at the school population, because we want people who are growing up in Scotland to be aware that forced marriage is illegal and to be aware of their rights so that they know, if they become a potential
victim, that there is recourse to law to stop it happening and there are support mechanisms out there for them, both before going to court and after having been to court. An awareness programme that is specifically directed at the school population is crucial.

Christina McKelvie: That leads on nicely to my next question, which is on data collection and key data. What has the Scottish Government done to determine what key data are needed? If you are doing big awareness-raising campaigns and some sort of human rights education in schools, it is important to find the trends and gather the information that emerges.

Alex Neil: We are working with the forced marriage network, the Scottish Court Service and ACPOS specifically on data collection. Because of the low number of cases, it is difficult to know exactly the scale of the problem. They have had the same problem south of the border.

It is an area in which we need to gather intelligence. We cannot just do a sample survey and get a lot of information; it would be very difficult to collect data in that way. We need to establish a mechanism to gather as much intelligence as possible on an on-going basis. We also need to tie in any information that we get from the awareness campaigns, which we hope will result in people who have been under pressure coming forward, no matter what their age, gender or geographical area.

We are talking to the police—ACPOS in particular—and to the Scottish Court Service and the forced marriage network to consider how best we can get a data collection system together, and how we can evaluate and monitor progress and the impact of the act, once it is up and running. We want to ensure that we get into every hidden corner to root out the problem from 21st century Scotland.

Christina McKelvie: Some of the hidden corners have been explained to us today. We heard that young people are becoming more aware, and that most cases are coming from the younger age group. However, some cases involve someone who presents at an organisation that deals with domestic abuse, a rape crisis centre or a mental health support service with forced marriage as the root cause of their problem. I do not know whether there is any on-going work on that, or whether anything can be added to our awareness campaigns on domestic abuse, rape crisis and mental health issues. Could something be bolted on to those campaigns, or addressed as an intrinsic part of them, with regard to forced marriage being a root cause?

Alex Neil: On violence against women, for example, there are a number of information sources. The police have access to data, and we can get information from local authorities, the Scottish social attitudes survey, rape crisis centres, Women’s Aid and so on.

We try to pull all that together as much as possible so that we can get a handle on the scale and the nature of the problem. Very often, the nature and incidence of violence against women can change, and we need to deal with the problem effectively. The more information we gather, the better and more focused our policies will be.

We anticipate a similar process with the forced marriage legislation, as we must continually consider how we apply the legislation, and everything that goes with it, more effectively.

Christina McKelvie: That is helpful. Thank you.

The Convener: Just for clarification, minister, what is your understanding of the definition of force in section 1?

Alex Neil: I will ask John St Clair to give you the legal definition.

John St Clair: The definition in the bill largely mirrors the case law: it is unreasonable pressure, which is quite a low threshold. It can be psychological or physical pressure, and it also depends on the age and vulnerability of the victim.

The Convener: As you may be aware, some of the witnesses suggested that the definition should specifically include physical violence and threat, and examples of the psychological means by which people can feel that they are forced and coerced.

John St Clair: It is very much a parliamentary counsel view, but the section is drafted in such a way as to assume that major force is included, and it sets out one or two other aspects, such as the psychological aspect. It is not necessary to list all the types of physical abuse that could constitute force: that is assumed, and it is in case law.

The Convener: Is that strong enough, given the evidence that we have heard in the previous session this morning? Some agencies specifically mentioned situations in which a person threatens suicide in order to make the protective order victim comply. Do you think that the definition is strong enough in those circumstances, given that it merely assumes that the psychological aspect is implied?

Alex Neil: I think that the definition’s threshold is so low that it covers all eventualities. To list all eventualities in the bill could be counterproductive, but I am happy to listen to what the committee has to say about that. I am keen to move forward on the bill as consensually as possible. If the committee thinks that there is a need for further clarification or an improved definition and it has
recommendations on that, we will take that very seriously.

**The Convener:** That would be welcome, minister, because we are talking about family situations in which extreme psychological and emotional blackmail pressure can be put on women. We are not talking about all eventualities, but being quite specific. Do you think that the person whose conduct is considered to pose a risk to the protected person should be named in the protection order?

**Alex Neil:** Again, I am open to suggestions on that; there is a case both for and against. There are obvious dangers in naming the person, but there may be circumstances in which the person should be named. Again, the committee has listened to the evidence, so I am happy to listen to what the committee has to say.

**The Convener:** Under sections 5 to 8 there is provision for interim orders. Could those be made in the victim’s absence?

**Alex Neil:** Yes. That is one of the reasons why the Lord Advocate and the local authority can go to court and get the orders even if the victim is not in the country—that is the provision’s purpose.

**The Convener:** It is helpful to have that clarification. Can you also clarify when it would be competent or necessary to vary, recall or extend an order?

**Alex Neil:** Do you mean through a time extension?

**The Convener:** Yes, and I also mean through varying the conditions or recalling the order completely.

**Alex Neil:** There should be no need to extend the time because, as I said earlier, once the order is made, it is made and that is it, unless it is rescinded.

**The Convener:** So, there will never be a case where it is said that the order is in place for two years or five years, for example. That would just never happen, because as soon as an order is put in place it is there for ever more.

**Alex Neil:** An order would be in place until it was rescinded.

**The Convener:** Would recalling an order be a possibility?

**Alex Neil:** I do not think so. There may, under certain circumstances, be an application to a court to say that the order is no longer necessary or whatever. It would obviously then be for the court to decide.

**The Convener:** It might not just be about time; there could be various conditions, depending on the protected person’s circumstances.

**Alex Neil:** Obviously, the court could be asked for a variation in the conditions or in the order itself. However, the initial order may have such wide conditions that that may not be necessary.

**The Convener:** Witnesses have expressed concern about how—if an order might be varied, recalled or extended—an investigation will take place to deem whether that is necessary. Will the protected person’s wishes be taken into account in an investigation?

**Alex Neil:** If it is necessary to go back to the court, the person who is the victim can do so, as can the Lord Advocate, the local authority or any organisations that we name. Obviously, they would need to do so with the reasoning and evidence to support whatever it is that they want the court to do.

**The Convener:** Would the protected person’s wishes and feelings be taken into account? A lot of witnesses have specifically asked for clarity on that.

**Alex Neil:** I cannot imagine any sheriff in the country not giving a great deal of weight to the victim’s views.

**The Convener:** So, the answer is yes.

**Alex Neil:** I imagine so. I cannot prescribe what every judge or sheriff will do in every circumstance. As you will know, many MSPs are critical from time to time of what sheriffs appear to take into consideration or not to take into consideration. However, according to our discussions with the judiciary, the victim’s views would certainly be extremely important. [Interruption.] My officials have just pointed out to me that section 1(3) states:

“In ascertaining the protected person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings”.

So the bill makes that clear.

13:00

**Marilyn Glen:** I am still confused about the extension of orders. From my reading of section 8, I understood that an order would be of a certain length and that, if one wanted to extend it, one would have to go to the court. I was concerned about that. However, you are saying now that once an order has been issued—

**Alex Neil:** The sheriff can put a time limit on the order, but we anticipate that most orders will not be time limited.
Marlyn Glen: I was concerned about a situation in which the person had learning difficulties. I could not see why the order would be time limited.

Alex Neil: Exactly. I would anticipate it being rare for an order to be time limited.

John St Clair: We think it more likely that the orders that are time limited will concern situations in which, for example, a vulnerable person has to be taken to a place of safety and kept safe for three weeks. It might be that another week is needed, in which case the order could be extended. The normal orders, preventing violence, are much more likely to be open-ended, even at the interim stage.

Marlyn Glen: I still think that there is a bit of confusion there. I will re-examine the issue, however.

Alex Neil: I would be happy to give the committee further clarification. I would also be happy to give further details about ensuring victims’ anonymity.

Marlyn Glen: That would be helpful. The witnesses to whom we spoke earlier talked about the importance of cross-border support to ensure victims’ safety. Could you give us some reassurance about the current degree of liaison between the Government and the UK forced marriage unit and how that will continue after the bill is passed?

Alex Neil: At policy level, we are continually talking to our colleagues in London and are sharing notes and trying to learn from each other’s experiences. We all want to ensure that best practice is followed by everyone—Government, the police, the Crown Office, the voluntary agencies, local authorities and so on.

At operational level, there is close cross-border working between the police in Scotland and the police south of the border. That is absolutely essential, as is close working with colleagues outwith the United Kingdom. Our police are tied in closely with police south of the border and with Interpol and other police organisations to ensure that they have access to assistance from their colleagues, and vice versa.

Marlyn Glen: What about support services?

Alex Neil: The same would need to apply. Obviously, if someone requires cross-border support, we would liaise with the appropriate agencies south of the border or in countries outwith the UK. All the statutory agencies have to co-operate with each other and assist each other across borders in relation not only to this issue but to a range of issues.

The Convener: That completes our questioning. Thank you, minister. We look forward to exploring some of the issues in more depth as the bill progresses.

Meeting closed at 13:04.
Saheliya supports and promotes the positive mental health and well-being of black, minority ethnic, asylum seeker, refugee and migrant women and girls (12+) in the Edinburgh area. We aim to develop our clients’ self-esteem and confidence and reduce barriers such as isolation and depression, by using a holistic range of services including counselling, practical support and advocacy, befriending, complementary therapies, outreach, group work and Young Saheliya. Our services are free and confidential.

The statistics in this report come from Saheliya’s counseling intake forms from the start of 2007 until the end of November 2010. This is a report detailing numbers of clients who have presented forced marriage as an issue at intake point together with a breakdown of age, religion and ethnicity characteristics of those clients.

In defining Forced Marriage there are clear distinctions between ‘arranged’ and ‘forced’ marriage. We recognise as an organisation that arranged marriage is a legal and acceptable practice in a number of minority communities so long as both parties enter the marriage contract offering their full consent freely. Forced Marriage however is not acceptable nor should be tolerated and coercion, pressurising, threat of physical and sexual violence, emotional and psychological abuse or blackmail is a violation of human rights.

When working with women who have disclosed that they are in a forced marriage or who we suspect might have been forced into marriage, we take into account the relationship dynamics between the people in or surrounding her marriage and also the possibility of her exit points.

Factors and indicators that we consider when assessing clients:

- Pressure from the woman’s own family to stay in the marriage: concepts of ‘honour’ and ‘tradition’; emotional/psychological abuse or blackmail, physical, or sexual abuse; threats of retribution towards the woman or another member of her family, going as far as death threats.
- Pressure from the woman’s ethnic/cultural/religious community to stay in the marriage; otherwise she is at risk of exclusion from her community or of honour based violence which again could go as far as her life being at risk.
Pressure from her husband: he may be using physical or sexual violence or threats; or he may be controlling all of the finances available to the couple. Alone or with members of his family, meaning the woman’s in-laws, they may confine the woman to the home, severely restricting, controlling or policing her movements or having her followed. Often, other members of the husband’s family can be very active in abusing a woman into staying in the marriage through physical/emotional threats or violence.

Extraneous factors: the woman could be underage; her passport or other legal documents may have been removed from her; she may not speak English or she may not be aware of where she could go to seek help; depending on the type of visa that allowed her to enter the UK she may not have recourse to public funds;

In a number of cases, a woman has consented to an arranged marriage that is a charade. Her husband could already be in a relationship with another woman with whom he may already have children, or that he has absolutely no interest in her because of his sexuality. Also there are several cases where physically or mentally disabled people are forced into marriage without either consent or understanding of what marriage is.

In a mental health context, clients often present symptoms of moderate to severe trauma, depression, anxiety, and other psychosomatic symptoms. What our service users have endured before accessing counselling can vary from verbal and emotional abuse to psychological and physical torture. Often this involves repeated beatings from her husband and/or both their families, humiliation, confinement, death threats, threats against the life or well being of another person close to her, often her mother, siblings or her children, and repeated rape until the woman falls pregnant - the physical and emotional abuse might continue well into the pregnancy and after the birth of children.

By considering the above factors we have included in our statistics not only women who readily named their marriages as ‘forced’, but also women who identify themselves as ‘married’ but also present other indicators of mental ill-health that are generally symptomatic of a forced marriage, for example, isolation, depression, anxiety, low self-esteem/confidence, self-harm, eating disorders, etc. These women form the ‘maybe’ or ‘potential’ forced marriage numbers in our statistics.

Graph 1: Number of clients summary 2007-2010 inclusive

Graph 1: numbers indicating client numbers in forced marriages, potential forced marriages or other marital situations over the span of 4 years (2007-2010)
Graph 1 indicates that our overall referrals for counseling have increased over the past 4 years, as have the referrals from women who are in potential forced marriages. There was a steady increase of women reporting forced marriage at entry point between 2007 and 2009, however there is a decline in 2010. This decline is not down to a reduction in Forced Marriage but rather a combination of fewer external referrals and an organisational move of premises.

A breakdown in the ages of clients who sought counseling who were or might have been in a forced marriage, shows a clear increase of forced marriage reporting increasing with age:

![Graph 2: Client age x marriage status](image)

This second graph strongly indicates that older women are more likely to report a forced marriage at intake point. Research carried out in Northern England suggests that age acts as a protective variable for women in forced marriages; older women are more likely to recognize, report and/or try to escape a forced marriage (Gangoli & Chantler 2009). Our numbers clearly indicate this trend.

Another issue is the construction and understanding of what a forced marriage is in existing literature. A marriage can be forced at entry point, exit point, or both. Women who are older may conceivably have been in the marriage longer and when wishing to leave, found that this was not an option for them. A different scenario could include women who may have been born, raised and married abroad, where they may have had no access to support services to help them escape their marriage; upon arrival in the UK they realised there is support available to them to help them deal with/escape a marriage and as such sought the help of Saheliya.
The third graph indicates that forced marriage or potential forced marriage is considerably more prevalent for women from Asian backgrounds; however, it also indicates that women from African and South American origins are also affected.

In particular, when these numbers were broken down to separate between women with and without a British nationality, there were a number of different trends evident:
Graph 5: The fourth graph indicates that for women with a British nationality, there was a considerably higher number of women under 35 who were definitely forced into a marriage and a very large number of women over 35 in potential forced marriages.

Taking into account the variation in marital status according to British women’s ethnic origin and age, the numbers strongly indicate that a lot of younger women from an Asian background are more ready to come forward and define their marriages as forced. This could indicate that forced marriage is a highly prominent issue for young women who may form the second or third generation of Asian communities residing in Scotland. The large number of women over 35 characterizing their marriages as ‘forced’ could point in the direction of women who were potentially forced into a marriage in different countries but who, only when they moved to Scotland and may have obtained a British nationality were able to come forward to seek help for marital difficulties that could indicate a forced marriage. Alternatively, the high number of British BME women in forced/potentially forced marriages could include the women who consented to an arranged marriage at an earlier age but who, when wishing to escape or dissolve the marriage, found that this was not possible due to cultural/religious reasons.

When juxtaposed to women without a British nationality, Graph 5 offers an interesting contradiction. Although it is indicated above that British BME women in forced/potentially forced marriages seem to be mostly under 30, Graph 5 indicates that the percentage of women reporting forced/potentially forced marriage is towards women over 26 and well into their 30s.

Graph 6: Non-British women’s marital status vs. ethnic origin. As opposed to British-identifying women, non-British women who readily identify their marriages as forced tend to be considerably older (by 5 years or more).
These numbers again provide evidence for the finding by Gangoli and Chantler (2009) that older BME women are more likely to report/try to escape a forced marriage. However, empirically speaking, this trend could indicate a number of possibilities, such as Women who arrived in the UK from abroad specifically to marry, and who remained married for a considerable amount of time before they could escape/seek help, women who decided to escape after being trapped in an incompatible marriage but who found that this was not possible, or women who have been prevented from seeking help due to no recourse to public funds/language difficulties/physically being unable to access services for a number of years, etc.

A particularly interesting trend in our statistics, indicated by graph 6, is that forced marriage is not an issue strictly associated with particular religious minorities. Although the majority of our clients in forced or potentially forced marriages came from Muslim communities, it is important to note that there were a significant number of women from the Sikh community who sought the help of Saheliya. Additionally, there were half as many women in potentially forced marriages from Christian communities as there were Sikh women, and almost as many non-religious or non-religiously-identifying women in potentially forced marriages as there were Sikh women.

In a further analysis of the numbers of women identifying with different religions as a function of age, Graph 8, together with Graph 4, indicates that forced marriage/potential forced marriage is an issue affecting women across the board, regardless of age, religion or ethnic origin:
The statistical analyses presented to you in this report and our case studies and organisational experience all clearly highlight to us the detrimental and devastating effects of Forced Marriage on our clients, their children and families. Saheliya supports the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill and recognise it as a tool as a tool that will come to the aid of women in forced marriages irrespective of their age, religion, culture, racial or ethnic backgrounds.

Aside from the numbers available to Saheliya from our own clients over the last 4 years, numbers from numerous women’s aid organisations in Scotland (ex. Amina, Shakti, Hermat Gryffe) and Karma Nirvana, a Forced-Marriage-Aid specific organisation in England with a national telephone helpline, indicate that the numbers of women seeking help with regards to forced marriage are increasing (Between April and Oct 2019 Karma Nirvana received 33 calls from Scotland). We recognise that forced marriage is largely more common than is expected in Scotland and, even in the absence of formal research; numbers indicate that this is an issue warranting the attention of the law.

The fact that this is not a practice closely tied with a particular ethnic, cultural or religious group indicates the need for relevant legislation to support the victims who find themselves trapped in these situations often risking their lives to seek help or to escape.

Our motivation and drive as an organization to take action in supporting the Forced Marriage Bill comes from our years of experience and expertise in working with vulnerable women from Black and Minority Ethnic backgrounds, supporting their mental health and promoting their confidence and their psychological and emotional well-being. Having witnessed the effects of forced marriage on our clients and service users, we have come to see forced marriage as an abuse of fundamental human rights: The rights of women to chose whom they love, their rights to their own bodies, and their rights to dignity, respect and safety.

Angela Voulgari
Saheliya
21 December 2010
23 December 2010

Dear David

FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

I am writing in response to Rebecca Lamb’s email correspondence of 14 December regarding the Minister for Housing and Communities oral evidence session to the Equal Opportunities Committee of the same date, on the above Bill.

Rebecca’s email asked that the Scottish Government provide further information on two points that were raised during the evidence session:

- The issue of the jurisdiction of Scottish Courts/Domicile of a protected person; and
- Extension of Forced Marriage Protection Orders (FMPOs)

The Government also indicated that it would clarify the issue of whether persons to be subject to an FMPO can be anonymised and in addition we have included some explanation of how orders would work abroad.

Jurisdiction of Scottish Courts/Domicile of protected person

The Bill follows the approach of the rest of the UK forced marriage legislation in not restricting the jurisdiction of the courts by prescribing particular criteria according to which in any case the court should accept or decline jurisdiction. The problem with the criteria approach is that it is impossible in advance to anticipate all the types of circumstance in which the courts might be inclined to accept jurisdiction.

The Bill therefore relies on the general approach at common law which the Scottish courts take in relation to jurisdiction in matters of private international law/conflict of laws.

The courts will almost certainly accept jurisdiction if the person to be protected is domiciled or ordinarily resident in Scotland, but this qualification is not necessary.
This is implied in section 3(6) which entitles an action to be brought in Edinburgh sheriff court even if the person to be protected is not ordinarily resident in Scotland.

In cases where the protected person is not ordinarily resident in Scotland the courts will look for some connection with Scotland or at least with the United Kingdom. Close members of family being resident in Scotland could well suffice. Where the connection is flimsier, the courts will look particularly closely at a) how effective any order is likely to be in preventing the mischief complained of; and b) the gravity of the mischief.

There are several ways in which orders can be effective. For example, orders in some foreign countries can be enforced directly through the local courts, if there is a treaty with the UK for the reciprocal enforcement of civil decrees. Secondly, because not obeying a forced marriage protection order creates a criminal offence in Scotland, an offender could be extradited if there is an extradition treaty with the UK. Finally even without those formal legal machineries, the existence of an order can assist a local High Commission or consular service in their diplomatic efforts to prompt local protective action in the foreign country.

As regards the gravity of the danger, this is also a consideration. Someone under aged being forced into a marriage would be treated as particularly grave being tantamount to rape. *B (A Child) (Forced Marriage: Wardship: Jurisdiction), Re*¹ is a good example of the above approach to jurisdiction by the English High Court, which we think the Scottish courts would also adopt. Details are given in the Annexe.

**Extension of Orders**

The committee inquires as to the circumstances that orders would be extended in section 8(1) of the Bill.

First we might explain that most interdicts or interim interdicts are not time limited and carry on in force unless recalled by a successful application to the court. Although they are not normally formally brought to an end, with the passage of time, they usually become ‘spent’ in the sense that the mischief complained of is no longer threatened and so the need for a court order prohibiting behaviour is obsolete. So for example if the person interdicted dies or the behaviour interdicted comes to an end by the person marrying someone else or leaving the country or the protected person coming of age.

Some orders are however time limited and section 8(1) makes clear that it only applies where a forced marriage protection order specifies a period for which it is to have effect. So for example the order may say that a person is to be kept in a place of safety for a week but events transpire that this needs to be extended by a further week, or it is necessary for evidence to be kept longer than originally specified. There can be many types of situation when a time limited order is given and it might need to be extended because of new circumstances.

**Whether Persons to be subject to an FMPO can be Anonymised**

The Minister for Housing and Communities was asked whether parties to a forced marriage protection order or persons otherwise made subject to it could be anonymised. The courts in England and Scotland currently can make an order to this effect called an ‘anonymity order’ on the application of any party; so we do not think anything further needs to be done in that direction.

These orders are not lightly granted because of the interest in open justice which is enshrined in ECHR. A recent case on the issue in England stressed the importance of that consideration (See Bernard Gray v UVW²: http://www.bailii.org/ew/cases/EWHC/QB/2010/2367.html).

I hope this reply is helpful

Lesley Irving
Forced Marriage etc.
(Protection and Jurisdiction)
(Scotland) Bill Team Manager

² [2010] EWHC 2367 (QB) [33].
A 15-year-old girl (C), a British and Pakistani national, had been made a ward of court, the court gave judgment as to its jurisdiction to make such an order. C's father had been a British citizen and had returned to Pakistan and married C's mother (M). C had been born in Pakistan and had lived there all her life. Her father died in 2003. C had an elder half brother (Y) who lived in Scotland. M had been orphaned as a child and had a protector (S). M and S had arranged for a marriage between C and S's son (X) to take place on April 10, 2008. X was considerably older than C, she did not know him and there was a suggestion that he was an alcoholic.

C did not wish to go through with the proposed marriage and in March 2008 she contacted the High Commission in Islamabad and Y asking for help to be taken out of the situation she found herself in and to go and live with Y in Scotland. The British Foreign and Commonwealth Office had assessed C as being Gillick competent and had advised the Forced Marriage Unit in London that it wanted to help C but required legal backing and court orders before it could do so. C was made a ward of court on April 3, 2008, and appropriate orders were made to enable her to come to the UK. C came to her half brother's home six days later.

Held: Application granted. C had no connection, other than her father's nationality, with this country and the question for the court was whether its inherent jurisdiction and the parens patriae principles could be extended to protect her. When dealing with the parens patriae jurisdiction, the courts of this jurisdiction should be extremely circumspect in assuming any jurisdiction in relation to children physically present in some other jurisdiction founded only on the basis of nationality. However, in the very dire circumstances of the instant case the court had come to the view that the tentacles of the court should stretch towards Pakistan to rescue C from the circumstances she found herself in. It was a very unusual thing to do but the circumstances had justified the ward of court order.

The marriage was going to be a forced marriage totally against the will of a 15-year-old child. C wished to be rescued and had sought help from the British jurisdiction. It was wholly and completely wrong to require a young person or anyone to enter into a marriage contrary to his or her wishes and even more so when they were under age. Arranged marriages were one thing; forced marriages were beyond the pale and indeed abusive. It would not have been right to ignore C's pleas.

There would potentially be cases in the future where the circumstances were not sufficiently dire and exceptional and when orders would not be appropriate. Each case would turn on its own facts. A similar order would only be made again if there were similarly exceptional circumstances, Al-H (Rashid) v F (Sara) [2001] EWCA Civ 186, [2001] 1 F.L.R. 951, [2001] C.L.Y. 2676 considered. The wardship order would be discharged as the Scottish courts were now seized with the matter. The judgment would be a useful tool for the Foreign and Commonwealth Office and the Forced Marriage Unit to have in the hope that it would provide some guidance for them for the future.
23 December 2010

Dear Margaret Mitchell MSP,

Meeting Of The Scottish Parliament Equal Opportunities Committee

Following the Equal Opportunities Committee meeting on 14 December, I agreed to write to the committee with further detailed evidence on the use of forced marriage protection orders under the Forced Marriage (Civil Protection) Act 2007, in response to questions raised by members during the evidence session.

Data on Forced Marriage Protection Orders (FMPOs) is sourced from One Performance Truth (OPT), Her Majesty’s Court Service Performance database, used to record applications, orders and breaches of FMPOs made under the Act. The system was enhanced in January 2010 so that further case detail on FMPOs could be captured. I have set out below responses to each of the questions raised.

The Committee asked for the following evidence:

1. Further statistical data on FMPOs including how many times the courts have refused to grant an Order.
I attach, for members reference, the latest monthly report on FMPOs with a breakdown of statistics on applications from November 2008 to November 2010. We are aware that there has only been one refusal to grant an order since the Act was implemented.

2. A breakdown on how many FMPOs are applied for by a third party

Monthly figures on applications by third parties can also be seen from the attached report. Up until December 2009 data on all third party applications made i.e. by the police, social services, voluntary sector and family etc. were captured under the ‘third party and other’ heading, a detailed breakdown of each party is not available. However, from January 2010 separate categories for each type of third party applicant were incorporated into the data collection system. A breakdown of these categories is available. In summary, there have been 103 third party applications and the chart below shows the number of third party application made from November 2008 to November 2010.

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<th>Type of 3rd party</th>
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<tr>
<td>Third party and other (from November 2008)</td>
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<td>3rd party police (from January 2010)</td>
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<td>3rd party family (from January 2010)</td>
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<td>3rd party voluntary sector (from January 2010)</td>
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<td><strong>Total</strong></td>
<td><strong>103</strong></td>
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3. How many FMPOs are issued to people outside of the UK.

26 applications for FMPOs have been recorded as being made from November 2008 to November 2010 in relation to a person to be protected (PTBP) outside of the UK. Country locations (where known) of the PTBP when an order was made include, Bangladesh, Dubai Pakistan, India, Iraq, Nigeria, Somalia and Yemen.

4&5. Further information on instances of contempt of court, and the outcomes of FMPO breaches in terms of jail sentences handed out.

Of the five breaches recorded on OPT, background information has been sourced relating to three cases. What is known about the other two is that lack of evidence and cooperation of the victim have meant that the allegations of the breaches (two, relating to the same order) could not be proceeded with. However, from the three cases where we do have background, we know the following:
Breach Outcome

1) The Respondent encouraged a family member to intimidate the victim - extension of previous order by nine months

2) The Respondent entered family home - bail conditional on restriction of behaviour of respondent in relation to some of the witnesses

3) The Respondent made contact with the victim - No further information as breach proceedings hearing adjourned until next year.

6. Information on forced marriage cases and whether they occur in particular communities including any instances of forced marriage in the Roma or Eastern European communities.

The majority of cases reported to the Forced Marriage Unit (FMU) to date involve south Asian families. This is partly a reflection of the fact that there is a large established South Asian population in the UK. However, it is clear that forced marriage is not solely a problem within South Asian communities, as there have been cases involving families from the Middle East, Europe and Africa.

Please find attached statistics from January 2005 to November 2010 outlining the number of reports of possible forced marriage and cases where the FMU provided direct support to victims.

In addition, the FMU has also been able to identify, where known, the geographic balance of reports and cases it received, or dealt with between January 2007 and November 2010 associated with Eastern European countries. They are as follows: Albania, Bulgaria, Kosovo, Poland, Romania, Russia, Slovenia and Ukraine. Unfortunately we are unable to identify specific communities affected by forced marriage within these countries.

I hope the information outlined above covers the issues raised by members. If the committee requires any further information then please contact me on the telephone number above.

Yours sincerely

Suzelle Dickson
Joint Head, Forced Marriage Unit
General FMU Statistics

Statistics for January – November 2010:

- 1501 instances where the FMU have given advice or support related to a possible forced marriage
- 437 cases of forced marriage, including both assistance and immigration cases dealt with by the FMU (225 assistance (78 in the UK), 212 reluctant sponsors)
- 87% have been female and 13% have been male - where the gender was known.
- Pakistan (49%), Bangladesh (10%) India (8%) Africa (5%) Turkey (2%) Afghanistan, Iran and Iraq (1%) other Middle Eastern countries (2%) other known countries (2%). An additional (15%) were solely linked to the UK or of unknown origin.
- Of the 225 assistance cases 20% involved minors (5% under 16)
- Within the UK the geographical distribution of cases where known was as follows: London (22%), West Mids (13%), North West (12.5%), Yorks and Humber (8%), South East (8%), East Mids (5%), E. Anglia (3%), North East (3%), Scotland (2.5%), South West (2%) and Wales (1%), Northern Ireland (0.1%) and unknown (16%).
- 46 cases involving those with learning disabilities, 15 with physical disabilities and 3 with both of these were brought to the FMU’s attention.

Statistics for January – December 2009:

- 1682 instances in which the FMU gave advice or support related to possible forced marriage.
- 377 cases of forced marriage, including both assistance and immigration cases, dealt with by the FMU (240 assistance (88 in the UK), 137 reluctant sponsors).
- 14% were male and 86% were female.
- The geographic balance of cases associated with other countries / regions was as follows: Pakistan (56%), Bangladesh (10%), India (8%), Turkey (2%), Africa (1%), Afghanistan (1%), and other (7%). 14% of cases were solely linked to the UK or were of unknown origin.
- Within the UK the geographical distribution of cases where known was as follows: London (29%), North West (17%), West Mids (14%), Yorks and Humber (10%), South East (9%), East Mids (7%), E. Anglia (4%), North East, Wales, South West (3% each), Scotland (1%).
- Of the 240 assistance cases, where age was known, 62.5% involved adults and 37.5% involved minors (16.5% under 16). The oldest victim was 62 and the youngest was 10.
- Between August 2009 (where we started collecting data) and the end of the year at least 15 cases involving learning difficulties and 6 involving physical difficulties were brought to the FMU’s attention.
Statistics for January to December 2008:

- 1618 instances in which the FMU gave advice or support related to possible forced marriage.
- 430 cases of forced marriage, including both assistance and immigration cases, dealt with by the FMU (222 assistance, 208 reluctant sponsors).
- 15% of victims were male and 85% female.
- The geographic balance of cases associated with other countries / regions was as follows: Pakistan (57%), Bangladesh (13%), India (7%), Middle Eastern (3%), Africa (2%), Turkey (1%), Afghanistan (1%), European (1%), and other (4%). 11% of cases were solely linked to the UK or were of unknown origin.
- Of the 222 assistance cases, where age was known, 61% involved adults and 39% involved minors (14% under 16).

Statistics for January- December 2007: 262 cases of forced marriage, including both assistance (168) and immigration cases (94), dealt with by the FMU in the UK and overseas.

Statistics for January – December 2006: 197 cases of forced marriage, including both assistance (99) and immigration cases (98), dealt with by the FMU in the UK and overseas.

Statistics for January -December 2005: 152 cases of forced marriage, including both assistance and immigration cases dealt with by the FMU in the UK and overseas.

**Assistance cases** – include support given to anyone in the UK or to a British National Overseas.

**Reluctant Sponsor cases** – include support that was given to a person relating to immigration issues
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EQUAL OPPORTUNITIES

FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL
SUPPLEMENTARY WRITTEN EVIDENCE FROM SHAKTI WOMEN’S AID

Gay Forced marriages

Note: The Statistics are based on the disclosures made by the women who Shakti supported.

In the past seven years five women disclosed that their husbands were gay and the women think they were forced into their marriages. In all these cases the women were unaware of their husbands’ sexuality before the marriage and or about them being forced into marriage.

Homosexual: In three of the five cases the men were homosexuals. In these cases women experienced domestic abuse from their husband’s immediate family members especially mother in laws for not producing any children. They were humiliated by the extended family members for the same reason. These women were also physically abused by their husbands.

Bisexual: In the other two cases the men were bisexual.

We had two women who fled domestic abuse due to their sexuality.

Shakti Women’s Aid
20 December 2010
OTHER WRITTEN EVIDENCE

Equality and Human Rights Commission
Fife Arabic Society
Glasgow Community and Safety Services
Muslim Council of Scotland
Scottish Borders Violence Against Women Partnership
Scottish Children's Reporter Administration
Scottish Council of Jewish Communities
Scottish Independent Advocacy Alliance
The Scottish Legal Aid Board
Scottish Women’s Convention
Soroptimist International Inverness and Nairn
Soroptimist International of Scotland North and Soroptimist International of Scotland South
South Lanarkshire Council
Professor E B Crawford, Professor of International Private Law & Professor J M Carruthers, Professor of Private Law, University of Glasgow
Letter from the Lord Advocate

A previously-published report of the event ‘Your Marriage, Your Rights’, held on 8 March 2010 in Edinburgh, was submitted by the Scottish Community Foundation. This report is available at: http://www.vawpreventionscotland.org.uk/sites/default/files/Forced%20Marriage%20event%20report%20_Final__0.pdf
1. The Equality and Human Rights Commission (the Commission) was established by statute in the Equality Act 2006 and came into being on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and make sure that everyone has a fair chance to participate in society. We promote equality across the seven protected grounds – age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

2. The Commission welcomes the opportunity to respond to the call for written evidence on the Forced Marriage (Protection and Jurisdiction) (Scotland) Bill. We support the overall aims of the bill as laudable which will offer redress to those who have been forced into marriage and will protect those at risk of being forced into marriage. Many of the comments in this paper are concerned less with the legislation itself and more focused on the implementation of the legislation including accompanying guidance. Effective implementation is crucial for ensuring that legislation achieves its stated aims once introduced.

Policy Context: Equality Considerations

3. The majority of victims of forced marriage are women and girls, and forced marriage is acknowledged as a form of violence against women and girls (VAWG). Forced marriage should therefore be addressed within the context of a gendered analysis of violence, recognising that women’s inequality in society and the dynamics of power and control between men and women is at the root of all forms of VAWG.

4. Although the majority of known victims of forced marriage are women, a significant minority of cases involve men and boys (14% of cases dealt with by the Forced Marriage Unit in 2009). Sexual orientation may also be a factor when individuals are forced into marriage (as discussed in the Forced Marriage Unit’s report highlighting an increase in contacts from people who are being forced into marriage because they are lesbian, gay, bisexual or transgender). The issue of ‘incapacity to consent to marriage or to understand the nature of marriage’ may be particularly relevant to those with learning difficulties. Physical disability can also contribute to individuals being forced into marriage, where a family is seeking to reduce the caring burden of a disabled adult. The reasons for people being forced into marriage are many and the potential impacts on all victims must be assessed by the proposed legislation and its eventual implementation.

5. Support for victims of forced marriage in Scotland is mainly available through organisations which deal with violence against women, such as Shakti Women’s Aid and Hemat Gryffe Women’s Aid. Although the percentage of male victims is smaller we believe it is important that there are appropriate and sensitive services which male victims can access.

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6. In February 2010 the Commission in Scotland launched an in-depth Inquiry into human trafficking in Scotland\(^2\) with a particular focus on commercial sexual exploitation. Trafficking is a separate offence from forced marriage, and should be treated as a criminal act. However, this legislation may benefit from an expanded definition of ‘force’ that gives recognition to the variety of exploitation techniques that are common to both issues.

7. Section 1(6)(b) sets out a definition of force that includes the coercion by threats or psychological means or to knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage. These are both positive inclusions and should be retained. But we believe the section should be broadened to include and explicitly mention:

- (a) the use of deception: where a person is given false information that prevents them from making a fully informed decision about the marriage.
- (b) the abuse of an individual’s vulnerability: this could include a particular characteristic of an individual that increases the vulnerability of their situation (such as a learning disability or language barrier); or it could be an aspect of their immediate environment that could include familial, cultural or economic pressures.

8. We feel it is vital that accompanying guidance, training and implementation work covers the possibility that victims of forced marriage may also be victims of trafficking. Guidance should also be clear that whilst forced marriage can be and is one of the purposes of human trafficking, where trafficking has occurred then this should be dealt with in domestic criminal law.

Cultural Definitions of Marriage

9. As is noted in the SPICe briefing accompanying this bill\(^3\) it is important to note both civil and religious forms of marriage, and that some cultures prioritise religious rather than civil ceremonies. Therefore the nullification of a civil ceremony may not end the marriage in the eyes of the person’s religion, which could prevent an individual from remarrying at some future date. We agree with the written evidence from the Scottish Council of Jewish Communities that it is important that guidance accompanying the


\(^3\) p14, SPICe Briefing: Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill, 22\(^{\text{nd}}\) November 2010, 10/79.
legislation addresses this and advises those who may find themselves in this situation to consult with their religious institutions or advisers about what is required in order to complete the process of nullifying the marriage in religious terms.

Protection Orders

10. The Commission welcomes provisions in the Bill which allow the court to make both preventative and positive orders. This is particularly important where the court can make a positive order, such as requiring a person to submit passports and birth certificates to the court, which could prevent someone from being forced into marriage in an overseas jurisdiction.

11. The Commission would like further clarification on the powers set out in Section 2(2)(a) which provides that a Forced Marriage Protection Order (FMPO) may relate to ‘conduct outwith (as well as, or instead of, conduct within) Scotland’. To what extent the court will be able to respond to actions that take place in other countries. For example, how would the court respond to a breach of an FMPO protecting a woman from forced marriage if that woman is forced into marriage in another country?

Application for orders

12. The Commission understands from organisations and individuals we work with that some victims of forced marriage may find it difficult to take action, particularly if they are being forced into marriage by close family members. As such, we believe it is appropriate to enable third party applications to the court for FMPO.

13. We believe it is essential that a third party must act in the best interests of the victim, and do so by obtaining as much information as possible regarding their wishes. We welcome that the Bill also takes this position and outlines circumstances the court must take into account.

14. Article 12 of the Human Rights Act states ‘Men and women of marriageable age shall have the right to marry and to found a family, according to national laws governing the exercise of this right.’ Third party applications should be carefully articulated and framed, with an understanding of cultural contexts, to make sure that any action does not disempower women or prevent them from marrying if it is with their consent. At section 3(4) the Bill states ‘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’. We recommend that accompanying guidance to this Bill makes clear that all possible steps to ascertain the wishes of a person should be taken, including taking positive steps where someone’s age or understanding could prove a barrier to their ability to express their wishes. Guidance and training will be necessary to make sure that those who have the power to make a third party application for an order are able to make accurate and sensitive assessments of where someone is being forced into marriage against their will. Third party interventions should be scrutinised by the courts properly to guard against inappropriate intervention.
Offence of breaching order

15. The Commission understands that the intention of this Bill is to make it a criminal offence to breach a FMPO. We understand that this would be different to the law in England and Wales, where a breach of a FMPO is a civil matter.

16. We know that this is a contentious issue, and has elicited a range of views. The Commission would like to stress the need to fully examine this issue, taking into account varied viewpoints. We agree with the analysis from various responses to the ‘Forced Marriage: A Civil Remedy? Consultation’⁴ that treating forced marriage as a criminal offence in the first instance could deter victims from reporting due to reluctance to criminalise those close to them, particularly close and extended family. However, we also feel it is important that forced marriage is treated seriously and appropriately. The best outcome will be one which is most effective for people experiencing forced marriage and is most responsive to their needs. Therefore the Commission agrees that making a breach of an FMPO a criminal offence is reasonable and would not have the same deterrent effect against reporting that would apply to making forced marriage itself a criminal offence.

17. It is equally important that people have the legal and financial support to pursue either civil or criminal routes. We believe that guidance on this Bill should set out clearly what help and advice is available to those who believe they are or who may become victims of forced marriage.

18. The Commission responded to the call for evidence on the Domestic Abuse (Scotland) Bill, and was broadly in support of its principles. We hope discussion of that Bill in terms of criminalising the breach of an order and access to legal aid may be helpful for framing the debate for this Bill.

Action of declaratory of nullity in sheriff court: jurisdiction

19. The Commission would also like the Committee to give further consideration to the issue of marital property law following an FMPO being made. It is not clear from reading the legislation or the accompanying policy documents what the Bill intends on this point.

20. Whilst the legislation reiterates the applicability of powers under Section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 which allows an individual to gain an ‘occupation’ order it does not go any further than this. As there are no time limits set within the legislation it seems possible that a marriage could last a number of years before an FMPO is applied for. If it is the case that a spouse applying for an FMPO foregoes their marital property rights as a result of submitting to this process, then again the Guidance should be clear on this point. The Committee may also wish to clarify whether there are any implications for the legitimacy of children that are born into the marriage. Whilst the legal implications may be limited, it may be necessary to consider further any religious or cultural ramifications for children.

⁴ http://www.scotland.gov.uk/Publications/2009/06/22112358/0
21. We also believe that the Committee should closely examine the interaction that immigration status will have with treatment of an applicant following an FMPO being made. The Committee may wish to explore this further with the United Kingdom Borders Agency. It is the Commission’s belief that individuals who have been forced into marriage should be treated sensitively and viewed in terms of victims of human rights abuse, rather than solely in terms of their immigration status. This is obviously part of a wider debate on access to public funds for immigrants or asylum seekers experiencing domestic abuse and again, guidance will need to be clear on this point.

Implementation

22. Legislation is an important and laudable step towards tackling the issue of forced marriage in modern-day Scotland. But it must be backed-up by effective implementation comprised of robust monitoring, training and guidance.

23. We note with concern that there have been no prosecutions for either female genital mutilation or trafficking in Scotland, and believe that legislation needs to be robustly implemented to make sure it is effective and achieves its stated aims.

Conclusion

24. The Commission supports the introduction of this Bill and believes it will be a positive step in offering protection to those who have been or may be forced into marriage. There are some issues which will need to be examined more closely in subsequent stages of consideration of this Bill and once again we reiterate that to be effective this legislation must be supported by guidance, training, implementation work and monitoring.

Rachel Boyd
Policy Officer
Equality and Human Rights Commission Scotland
1. Fife Arabic Society was founded in 2000 with the objectives of promoting understanding of Arabic culture, language and society in Fife, and to provide advocacy, support, and signposting of services for individuals and families. Our membership includes people from 16 Arabic countries, members of other Ethnic Minority groups, and Scottish people with an interest in Arabic culture, and students and their families from Arabic countries studying at Fife Colleges. We promote cultural integration through twice weekly language classes, women and children activities, and a programme of youth sports activities. We provide translation and interpreting services for people accessing Health, Education, and Legal services, and provide a variety of training programmes to help members of our community find and sustain employment.

2. Khansa’s Bint Khudam Al-Ansariyyah complained to the Prophet Mohammad that her hand was given in marriage by her father despite her opposition. The Prophet revoked their marriage.

Sahih Al-Bukhari ± 3915

3. More than 1400 years ago, Islam established that it is of no individual effort or quality that a person is born male or female. In all the legal instruments cited in the Qur’an, both men and women were distinctly mentioned.

4. The proposed law is an extension of the culture of fairness and equality that makes Scotland the country it is now. The law that renounces prejudices and precedence of interest over principles is welcome by us all humans, of any faith or background.

5. I would like to extend our full support to this thought-provoking step taken by the Scottish Government. Marriage is a sacred covenant which forms the cornerstone of a healthy and prosperous society. It must be based on mutual love and respect, and the rights of those choosing to enter therein must be protected by society.

6. I take this opportunity to thank you and offer any support that you may require in this regards.

Adnan Miyasar
On behalf of Fife Arab Society (FAS)
24 November 2010

The scripture above, in relation to paragraph 2, may be liberally translated as "May Allah (God) bestow high honour and reverence upon him (Prophet Mohammad)".
Introduction

1. GCSS is one of the Council’s ‘arms length’ bodies and has responsibility for taking forward work on violence against women on behalf of the Council.

2. Glasgow Community and Safety Services (GCSS) welcomes the opportunity to comment on the proposed Forced Marriage (Protection and Jurisdiction) Scotland Bill on behalf of Glasgow City Council. GCSS is a charitable organisation formed by Glasgow City Council and Strathclyde Police to prevent crime, tackle antisocial behaviour and promote community safety in the city. GCSS has specific responsibility for taking forward work on violence against women on behalf of the Council. In particular, the ASSIST project which provides information, advocacy and support for victims of domestic abuse is placed within GCSS. ASSIST staff have received referrals where forced marriage has been an issue and have supported them through the criminal court process.

3. We support the intention to introduce specific forced marriage legislation and consider it a significant step forward in protecting the rights of women, in particular, but of all individuals in Scotland to choose whom, when or if they marry. Overall, it is clear that the Bill has been informed by the previous consultation undertaken by the Scottish Government and we are generally pleased with the content. Credible legislative measures signal that forced marriage is now being acknowledged as a form of abuse which will no longer be tolerated in Scotland.

General Comments

4. There is a clear need for specific legislation aimed at preventing forced marriage and protecting those who fall victim to such abuse. The legal situation at present is hazy, as although there are a number of civil remedies and criminal offences which may be relevant in relation to forced marriage these are often not pursued. Many victims of forced marriage simply do not wish to pursue a criminal remedy due to their reluctance to criminalise members of their own family. Furthermore, at present, the existing civil remedies appear to be fraught with barriers such as time, cost and lack of information about options available. Specific legislation would go some way to address the particular complexities that are associated with this issue. Introducing a Forced Marriage Protection order will give victims the option of taking decisive action to protect themselves and it may serve as a deterrent to individuals who abuse family members in this way.

5. We are happy to see that the introduction of this Bill would bring Scotland into line with civil legislation that has recently been introduced in England, Wales and Northern Ireland. This ensures consistency of treatment and options available to victims of forced marriage across the UK.
6. We agree with the principle of providing annulment of forced marriage, however, this does not take into account that many faith communities have both a civil and religious union. Our concern would be that continuation of the religious union may require the victim to endure a lengthened period of giving evidence in order to gain permission to divorce. This extended period, and in some cultures, the lengthy evidentiary process from those seeking a divorce may be considered continued victimisation. It puts the onus on the victim (especially if it is a woman) to provide appropriate proof under religious doctrine which would be decided upon, primarily be a male forum. This may place them vulnerable to further abuse or pressure.

7. Forced marriages are community unions and many of the victims have been subject to this abuse by family members and/or peer pressure. These relationships do not end after legal action has been taken to remove the individual from the situation and as such there is risk of further emotional and physical abuse. In particular, retaliatory action from the victim or ex-spouses family can be in the form of honour killing. With the introduction of the Domestic Abuse (Scotland) Bill there has been the consideration of the possibility of legal aid provision for women who are at immediate risk of abuse to allow them to seek an interdict or non-harassment order, regardless of their financial position. We consider forced marriage to be an issue which requires similar immediacy of action.

**Specific Comments**

Section 1:

8. We are supportive of the clear definition of forced marriage included in the proposed Bill. However, we would suggest that the definition of “force” is widened so it clearly incorporates the physical aspect of coercion and abuse in addition to “threats or other psychological means”. It may also be worthwhile to clarify the distinction between arranged and forced marriage as confusion around this could lead to an inappropriate response.

9. To provide confidence in the process we would suggest that the judiciary and other legal staff who will be handling forced marriage cases are specifically trained on the issue.

Section 3:

10. Local authorities have been named as designated third parties to apply for protection orders on behalf of very vulnerable victims. As a nominated third party, before taking on this role, Glasgow City Council would consider it imperative that clear guidance is issued outlining the specific situations in which we should act. We would advocate a multi-agency approach, whereby although the local authority could act as the relevant third party, other agencies can work with us to support the individual. For example, Hemat Gryffe Women’s Aid in Glasgow has particular experience of this issue.
11. Regarding “any other person” making an application we are glad that the Bill has introduced stringent conditions, taking into account a number of circumstances including “the wishes and feelings of the protected person”. There needs to be clarification on how this will be tackled if the parties involved are not aware it a forced marriage situation e.g. if the protected person has learning difficulties.

12. Measures will also have to be in place in order to ensure the safety of those reporting forced marriage, including third party reporters, if they are at risk of reprisal from within the family or community. In many cases, third party reporters are siblings or close family member which would make them vulnerable to retaliatory action by either party.

Section 9:

13. We welcome this provision. Making it a criminal offence to breach a forced marriage order simply adds “teeth” to it and strengthens the law’s ability to effectively protect the victim. We would support extending the scope of this to include anyone breaching the order, due to the nature of forced marriage and the likely involvement of many family members.

Section 11:

14. We fully support the creation of clear guidance as this will serve to ensure consistency in approach.

Conclusion

15. Overall, we would like to reiterate our support for the introduction of a specific forced marriage legal remedy as this will send out a strong message that this practice is abusive and will not be tolerated. However, legislation cannot stand alone and must be supported by a multitude of non-legislative measures such as awareness raising, public education and training of the judiciary and fiscal service and other relevant organisations. It is important to note that in some cases the victim may lose their community/family and social support networks after making a complaint of forced marriage. A provision for the delivery of counselling and support for both parties and extended family should perhaps be considered.

Glasgow Community And Safety Services
30 November 2010
INTRODUCTION:

1. The Muslim Council of Scotland (MCS) is an inclusive umbrella body that represents the interests of Muslims in Scotland and is pledged to work for the common good of the society as a whole.

2. The MCS is made up of major national, regional and local organisations, specialist institutions and professional bodies. Its affiliates include mosques, educational and charitable bodies, cultural and relief agencies and women and youth groups and associations. At present it has over forty affiliates.

3. The MCS welcomes this opportunity to respond to the Scottish Parliaments consultation on the—“Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill”, hereafter referred to as the Bill.

4. The response is based upon wide consultation amongst our affiliates and beyond and reflects a strong consensus of views amongst the Muslim community in Scotland.

BACKGROUND:

1. In Islam a marriage without the consent of the parties is not a marriage. Amongst Muslims the marriage contract, is effected quite simply by the two essential elements of offer and acceptance. According to Islamic jurists the declarations, which must be made conceptually at the same meeting are pronounced by the parties themselves, or by an attorney acting on their behalf, or by their guardians, when they lack the capacity to contract themselves in marriage. The first speech from whichever side it comes is the offer, and the second speech constitutes the acceptance.

2. Jurists are unanimous in their view that in Sharia mutual hearing and understanding of the offer and acceptance are essential to establish a marriage contract. The expression of consent by the both parties must be witnessed by others.

3. We are of the view that a “forced marriage” has no religious, moral or legal validity.

4. The practice of, “arranged marriages” has sometimes been confused by the media and ill intentioned persons as “forced marriages”. An arranged marriage is one where the marriage is facilitated and certainly not forced upon parties.
5. It cannot be denied that there are instances where marriages amongst Muslims living in Scotland have not been based on free and informed consent of the parties. However such instances are not peculiar to or particular to Muslims or any ethnic or faith group.

6. The Bill under consultation attempts to address the problem of forced marriages in the Scotland and as we understand it does not raise any concerns on the practice of arranged marriages followed in some cultures, people involved being non-Muslim as well as Muslim.

GENERAL RESPONSE:

1. We are of the firm opinion that, as appears acknowledged in the Bill, there are already laws in place to prosecute the perpetrators of this offence. In the circumstances we see no justification for a new law in this regard.

2. In our view the solution to this evil act is to raise awareness in the communities of the existing laws that apply to situations of forced marriages rather than create a new law.

3. A new law on forced marriages will have the real risk of being seen to target ethnic minorities.

4. Any law in this regard which is promoted as a tool to help the victims and deter the offenders is most unlikely to be effective because of the nature of the problem and the cultural as well as familial sensitivities involved. A coercive tool in a family and cultural setting is rarely, if ever successful.

5. The family bond and loyalty will deter many from using the law. The tool when used will in effect tear the family unit and create division and distress.

6. We believe that the only way to eradicate this criminal cultural practice is through education and empowerment. The change has to be community led and appropriately resourced.

7. The MCS and its affiliates are committed to work on initiatives of raising awareness of the existing laws and in educating our community on free consent of parties in marriage being fundamental to the relationship in Islam.
SPECIFIC RESPONSES:

ARRANGED MARRIAGE –vs- FORCED MARRIAGE

There should be a clear statement that the Bill does not deal with arranged marriages, and a clear definition of what is meant by force. Part 1, item 1,(6,a); the word Force is very vague and widely defined in a way that can lead to abuse of the procedure.

CIVIL VERSUS CRIMINAL OFFENCE:

1. The Bill should provide civil remedies but should not create any new criminal offence of forced marriage, some reasons are given in the House of Commons Research Paper 07/56, 28 June 2007. It concludes that the approach of a bill using civil rather than criminal law provisions will encourage victims to seek protection because it would not involve reporting family members to the police.

2. On the England bill the Director of Liberty said;" Lord Lester's ingenious Bill provides civil injunctions to protect victims. This is far more likely to tempt women to come forward than the prospect of reporting their family members as criminals"

3. Southall Black Sisters, an organization that works on the needs of black women said: Our demand to strengthen civil remedies instead of introducing a new criminal law has been supported by the vast majority of black and minority women’s groups as well as civil rights and legal organisations.

INTRODUCTION OF MEDIATION SERVICES

We believe that in dealing with family matters such as marriage there should be conciliation and mediation steps taken before referral to courts. The mediation bodies could include religious leaders, elders etc. This approach is more family friendly and saves a great deal of anxiety, future troubles and court times. Such bodies already exist within the community and are producing successful results.

APPLICATION FOR ORDERS

1. Part1, item 3 (7, a): we object to giving this power to local authorities, based on recent cases of failures by Social services, due to their lack of resources.

2. There should be a time limit for putting such complaint after the marriage taking place, may be a few month otherwise it becomes an easy way of dissolving marriages which have failed because of other reasons.
ANNULMENT OF MARRIAGE

The transfer of power to annul a marriage to Sheriff Court, Part 3, will create an anomaly in the case of Religious Marriages. The marriage conducted by Religious body, e.g. Imam, should be reversed by the same or equal authority. This anomaly will lead to confusion and uncertainty. This anomaly will exist for any religious marriage in any faith communities.

WORDING OF THE BILL

In some parts the wording is not clearly defined which will raise more problems, examples are:

Part1, item 2 (1, b): Undefined and open to too wide interpretations.
Part1, item 2 (2, c): Undefined and open to too wide interpretations.

The Muslim Council of Scotland
24 November 2010
The Scottish Borders Violence against Women (VAW) Partnership is the strategic partnership responsible for ensuring an improved response to domestic abuse and other violence against women issues. Members of the partnership include: Scottish Borders Council, NHS Borders, Lothian and Borders Police, Crown Office, SCRA, Witness Services, Registered Social Landlords, Housing and Homelessness services and a range of third sector organisations delivering services directly to victims. The VAW Partnership is a key theme group of Scottish Borders Council’s Safer Communities Partnership and links directly to the Community Planning structure.

The Scottish Government’s Safer Lives: Changed Lives is the key driver for ensuring national priorities are delivered locally, and the VAW Partnership is responsible for ensuring commitment to improved outcomes for women and children, recognising violence against women as both a cause and consequence of gender inequality.

Launched in 2009, by the Scottish Government and COSLA, “Safer Lives: Changed Lives” promotes a shared approach to tackling violence against women in Scotland. We would consider that Scottish Borders Council through its agreement to move to a wider violence against women agenda in 2008 would adopt this approach through the work of its VAW Partnership.

In response to the Forced Marriage Bill, we would wish to make the following comments/suggestions:

1. The VAW Partnership welcomes this new proposed legislation and the support that the policy and guidance provides. Additionally the ability for Local Authorities to make an application for a Forced Marriage Protection Orders is welcomed; however, it is imperative that local authorities are supported to implement the required processes and protocols to lodge applications. This should take the form of guidance detailing roles and responsibilities required to make an application. It would be helpful to identify a “lead” professional or professional body in determining local protocols and guidance.

2. Statutory guidance should also detail responsibilities of other partner agencies who may be in contact with those seeking to disclose forced marriage, or seek guidance e.g. women’s support agencies, third sector organisations

3. Awareness raising work to address lack of understanding of a person’s right to choose their marriage partner (Section 32) should ensure maximum reach by utilising existing frameworks at local level e.g. Violence Against Women multi-agency partnerships. Local VAW Training Consortia leads should also be involved to deliver awareness raising sessions in partnership with the Forced Marriage Network.

4. Support for local solicitors and lawyers should be provided given the civil remedy aspect of the Bill.
5. Community resources such as information leaflets (Section 33) would be extremely welcome and again connections to local partnerships will maximise “reach”.

6. Section 34 Guidance and Training – providing such training is vital if frontline services are supported to respond effectively and confidently. Multi-agency guidance should detail clearly an protocol for responding to a disclosure or concern, but equally importantly, information on key indicators of concern.

7. Guidance should be clear about the interface with Child and Adult Protection legislation and local Child Protection and Adult Protection guidance should detail clearly the required response.

8. Frontline service training (Section 36) should include the third sector organisations in each local area who may already be working with those vulnerable to the threat of forced marriage.

The Scottish Borders Violence against Women partnership welcomes this new legislation and will endeavour to support any local implementation as and when required.

Thank you for the opportunity to respond to the draft policy.

Yours sincerely

Andrea Beavon
VAW and Domestic Abuse Coordinator
26 November 2010
1. Summary response

1.1 SCRA welcomes the opportunity to provide Stage 1 written evidence on the Forced Marriages Etc. (Protection and Jurisdiction) (Scotland) Bill. We obviously have a particular concern and interest in the impacts on children and young people, who may be forced into marriage themselves or may be adversely impacted by a parent or family member being so forced. We therefore welcome the additional protections offered by the Bill and in particular the creation of the Forced Marriage Protection Order.

1.2 We do have some concerns however, that the linkages and interfaces between proceedings under this Bill and those under the Children’s Hearings System are not as clear as they could be. It is to be hoped that the involvement of the local authority would provide some of these links but they may not be involved in all cases or at all stages of the various processes.

1.3 The need to ensure that the two systems are appropriately joined up is highlighted by the fact that the Children’s Hearings (Scotland) Bill, which is currently undergoing Parliamentary scrutiny at Stage 3, includes a new ground of referral for children at risk of being forced into marriage. Section 65(2)(p) of the Bill provides that a child can be referred where:

“the child -
(i) is being or is likely to be subjected to physical, emotional or other pressure to enter into a marriage or civil partnership
(ii) is or is likely to become a member of the same household as such a child”

1.4 It is important for the necessary linkages between these two pieces of legislation to be made so that children who are either being forced into marriage themselves, or who may be at risk due to a parent or sibling being so forced, can be fully protected and so that there is no confusion over which legislation should apply in which circumstances.

2. Detailed response

2.1 Section 1(4) of the Bill provides that a person is forced into marriage if they do not give their full and free consent. Notwithstanding the fact that children cannot consent to a marriage under Scots law if they are under the age of 16, SCRA believes that there may be some value to enshrining that principle on the face of the Bill.

2.2 Section 4(1)(a) provides that the court may make a forced marriage protection order on its own initiative where civil proceedings are before the court. We are unclear whether this can be construed to include Children’s Hearings proceedings, which are proceedings sui generis.

2.3 We consider that, should the Forced Marriage Bill be passed, there will be a need to add Forced Marriage Protection Orders to the list in Section 60(5) of the Children’s Hearings Bill. This will ensure that, where a Sheriff is considering such an order, any children involved can be referred into the Children’s Hearings System if one of the grounds for referral to the Reporter in s.65(2) of the Children’s Hearings Bill applies.
3. Conclusion

3.1 SCRA is wholly supportive of the policy intention and the provisions of the Bill, subject to the comments made above.

SCRA
25 November 2010
1. The Scottish Council of Jewish Communities supports the principle that marriage should be entered into “freely and without coercion”. Legislation is not merely about criminalising particular activities; it is also a means by which a society indicates its standards and ideals, and signposts its aspirations; and we therefore believe that there is a strong case for legislation relating to forced marriage. The Scottish Parliament has a duty to provide leadership to create a society in which individuals and communities feel safe to live their daily lives. On this basis alone we would support legislation against forced marriage, though we believe that there are also other strong arguments in favour of such a move.

2. We also welcome the recognition that forced marriage is not condoned by any religion. However, we believe it will be important for the guidance referred to in section 11 of the Bill and in the Financial Memorandum, to draw a clear distinction between forced and arranged marriages. Arranged marriages, in which the parties concerned are free to reject any proposed spouse, are traditional in many religions and cultures, including some traditions within Judaism, and we would deplore any negative consequences that might arise if legislation prohibiting forced marriage were to be misinterpreted as applying to arranged voluntary marriage.

Limitations of the Bill

3. The legislation will inevitably have limitations insofar as those who may attempt to force an individual into marriage may frequently be the very people to whom the victim has a close emotional connection, often parents or other close family members. We therefore agree that it is appropriate to permit a relevant third party to apply for a forced marriage protection order in cases in which the victim feels unable to act. However, this alone will not always provide a remedy since the court must, rightly, still consider “the wishes and feelings of the protected person”.

4. Legislation alone will not, therefore, provide a complete solution to the problem of forced marriage, and we therefore urge the Scottish Government to support initiatives in the community to raise awareness of, and to tackle this abuse. Adequate funding is vital to enable this to be done effectively, and to provide support for victims of forced marriage, and we emphasise the necessity of Government money being made available for this.

Part 2

5. Whilst we support the principle of enabling the Sheriff Court to hear actions for declarator of nullity of marriage in cases of forced marriage, we would point out that a civil court ruling cannot end or declare void religious marriages in some faith

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1 Policy Memorandum (para 3)
2 Bill 3(3)(c)
traditions, notably Judaism and Islam. As a result, an individual who had contracted a religious marriage, even under duress, might still be married according to religious law, and therefore unable to enter into a subsequent religious marriage. We therefore recommend that the statutory guidance should advise victims and their legal advisers to consult with relevant religious authorities in order to ensure that a victim is genuinely freed from all aspects of a forced marriage, and is in a position to marry by means of either a civil or religious ceremony in future.

Summary

6. The Scottish Council of Jewish Communities supports “provision for protecting people from being forced to enter into marriage without their full and free consent” and therefore welcomes the introduction of this Bill.

Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charity SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted widely among members of the Scottish Jewish community.

Leah Granat
Public Affairs Officer
Scottish Council of Jewish Communities
8 November 2010

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3 Forced marriage occurs extremely rarely (if at all) among Jewish families. Clause 15 of the Family Law (Scotland) Act 2006 introduced a provision to prevent, so far as possible, situations in which a religious marriage persists after the parallel civil marriage has been ended, although it is only of assistance in cases in which a party who is delaying the religious divorce nonetheless desires the civil marriage to be ended. The secondary legislation currently provides for it to be applied only in relation to Jewish religious marriages.

4 Policy Memorandum (para 2)
About the Scottish Independent Advocacy Alliance

1. The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation which promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

2. The right to independent advocacy for those with mental disorders or who are potentially vulnerable and in need of support is enshrined in Scottish legislation. However, independent advocacy can also have a key part to play in supporting other vulnerable groups such as black and minority ethnic groups and people with problem drug and/or alcohol use, amongst others.

3. Independent advocacy helps people by enabling them to express their own needs and to make their own informed decisions. Independent advocates support people to gain access to information and explore their options. They speak up on behalf of those who are unable to speak for themselves or choose not to. Independent advocacy is not about making decisions for someone, counselling or providing advice, it is about tackling injustice by enabling a person to have control over their life and to make their views heard.

4. Independent advocacy organisations do not provide any services other than advocacy. They are separate organisations in their own right, are financially independent, and all those employed in an independent advocacy organisation know that they are only limited in what they do by the principles of advocacy, resources and the law. This ensures they are able to assist vulnerable individuals whilst being as free as possible from any conflicts of interest.

Forced Marriage Etc. (Protection and Jurisdiction) (Scotland) Bill

5. The SIAA is committed to human rights and, in particular, to enabling those who may otherwise struggle to make their views known to express themselves. We therefore welcome this opportunity to comment on the Forced Marriage Etc. (Protection and Jurisdiction) (Scotland) Bill.

6. Overall we support the provisions laid out in the bill and welcome this opportunity to further protect those who have been forced to enter into marriage without their free and full consent and protect those who have already been forced into marriage without such consent. In particular we welcome the definition of ‘force’, which includes not only coercion but also taking advantage of a person’s incapacity to consent to marriage or to understand the nature of marriage.
7. We are pleased to note that Part 1 Section 1(2) requires the court to “have regard to all the circumstances including the need to secure the health, safety and wellbeing of the protected person”, and that Part 1 Section 1(3) requires the court to “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”. The SIAA would further recommend that, given the vulnerability of those forced into marriage and the sensitivity and personal nature of the issues to be raised, the Bill should also require the courts and/or local authority to signpost and make available additional support as appropriate to help protected persons to contribute as fully as possible in proceedings. This provision should also be included under Part 1 Section 3 of the Bill which allows for applications for forced marriage protection orders to be submitted by a third party.

8. The Mental Health (Care and Treatment) (Scotland) Act 2003 places a statutory duty on Local Authorities and NHS Boards to provide the right of access to independent advocacy to any person with a mental disorder (the Act defines mental disorder to cover mental illness, personality disorder and learning disability). Independent advocacy can also be of value to individuals who are vulnerable and need to be supported to take part in an official, and sometimes intimidating, process. For this reason the SIAA believes that independent advocacy, among other services, could have a key role of supporting those who are subject to a forced marriage protection order, particularly where the person has limited capacity.

Erin Elvin
Policy and Parliamentary Officer
Scottish Independent Advocacy Alliance
24 November 2010
INTRODUCTION

1. The Scottish Legal Aid Board (the Board) welcomes the opportunity to provide written evidence to the above Committee on the Forced Marriage (Protection and Jurisdiction) (Scotland) Bill.

(1.) Background to Civil Legal Assistance

2. Civil legal assistance helps people to get legal advice and representation. Representation means getting a solicitor to put a case in court. Civil legal assistance includes advice and assistance and civil legal aid.

3. Advice and assistance helps to pay for advice from a solicitor in any matter of Scots law, usually without going to court. Civil legal aid provides funding for a solicitor to put a case in court. It covers preparation work as well as any hearings in court and can provide funding for counsel, experts and other items of expenditure such as interpreters and translators where the need arises in a civil court case.

4. Advice and assistance is made available by the solicitor acting for a client and not by the Board. The solicitor acting decides if an individual is financially eligible having regard to the financial eligibility limits set for advice and assistance by the Scottish Parliament. The solicitor considers whether the issue involves a matter of Scots law. Where a solicitor grants advice and assistance they have a limited amount of initial funding available to them to investigate a client’s problem and to undertake work on their behalf. It is however open to a solicitor to ask the Board for additional funding beyond this initial limit which is currently £95 or £180 depending on the work involved and whether a civil legal aid application needs to be made. There is no limit to the amount of funding the Board may make available under advice and assistance to assist a client with their problems provided the Board is satisfied that it is reasonable to provide the additional funding requested.

5. The Board decides whether someone should be granted civil legal aid. The tests applicable to civil legal aid are:

- an individual must qualify financially both in terms of their disposable income and disposable capital;
- they must have a probable cause or simply put, a legal basis for their case; and
- it must be reasonable in all the circumstances of the case that they should receive civil legal aid.
6. In assessing the potential impact of the Bill on the Legal Aid Fund the costs incurred in England, Wales and Northern Ireland in the first year of the operation of the Forced Marriage (Civil Protection) Act 2007 have been considered. A total of 86 FMPO’s were granted between 25 November 2008 and 31 October 2009 in England. No applications for FMPO’s have been made in Wales or Northern Ireland.

7. Female victims make up 85% of all cases involving forced marriage and the main support organisations are Shakti Women’s Aid in Edinburgh and Hemat Gryffe Women’s Aid in Glasgow. Shakti’s Women’s Aid supported 7 forced marriage cases in 2009/10 with Hemat Gryffe Women’s Aid supporting 13 cases in the same period. Taking into account the fact that 15% cases involving male victims and using the number of cases considered by the Women’s Aid Organisations in Edinburgh and Glasgow it is estimated that there would be at least four cases each year that involved male victims.

8. The explanatory notes to the Bill set out an assessment of potential costs having regard to the differences in population demographics between Scotland and England. Scotland’s population as a proportion of England is approximately 10% so in reaching the estimated figure for the number of expected FMPO’s in Scotland a calculation has been made that:

- the percentage difference in overall population figures may result in 89 FMPO’s in Scotland being 10% of the 86 FMPO’s granted in England in 2008/2009; and
- taking into account the proportion of the total population that comprises the ethnic population there may be fewer cases in Scotland. The ethnic population in England accounts for 12% of the total population but only 3% in Scotland and having regard to the fact that 74% of all cases dealt with in 2009 by the UK Government’s Forced Marriage Unit involved individuals from Pakistan, Bangladeshi and Indian origin, the differences in ethnic population has suggested that the figure for cases in Scotland are closer to two to three cases per year.

9. In view of these figures the estimate of ten or fewer FMPO’s which has been used as a basis for calculating potential expenditure is likely to be at the higher end of the scale.

10. The Board considers that it is likely that the financial circumstances of the individuals seeking protection orders means that the majority will be financially eligible for civil legal aid. Depending on the information that may be made available regarding the need for the FMPO it is likely that a higher proportion will also be eligible for civil legal aid when examining the tests of whether there is probable cause and it is reasonable to make civil legal aid available. Using the calculations for the number of orders that may be sought in Scotland each year there would not be a significant impact to the Legal Aid Fund by the proposed Bill. The procedures are to be undertaken by way of summary application and, as such, the cost of £1,000 per case is considered reasonable giving a potential overall expenditure to the Fund of an additional £10,000.
11. Individuals would also be entitled to seek advice and assistance on the proposed remedy and the procedures involved in obtaining an FMPO. The maximum level of expenditure for such advice and applying for civil legal aid will be £500 per case unless there are unusually complex circumstances. This would give an additional cost to the Fund of £5,000 per year.

12. Orders are to be sought by way of summary application. In terms of the summary cause rules an applicant must proceed by submitting a summons to the court which, if warranted, requires to be served on the defender with a 21 day notice period (42 days if the defender resides outside Europe) of a calling date. Those named as opponents in the summary application would also be entitled to seek civil legal aid to defend any action raised against them.

13. Where the order is made by the court without an application being made, there may less certainty about the opponent being aware of the potential for the order to be granted, although it appears to be anticipated that the would be defender be a party to the civil proceedings in existence at the time. Therefore, if the court did grant an order ex proprio motu there is a potential for debate in connection with the need for an order during the civil proceedings in which it arises, and an interlocutor once granted could become subject to an appeal.

14. It is understood where the court determines there is a need for an order arising from information obtained in criminal proceedings, the Lord Advocate may be invited to make an application in accordance with section 3 of the Bill, and the summary application procedure would again apply, allowing the opponent the opportunity to defend proceedings and to seek civil legal aid for such a defence.

15. In view of this it is anticipated that similar or potentially greater costs in both advice and assistance and civil legal aid would be incurred by opponents in such cases. The reason for the potentially greater costs is that an order could be sought against a number of family members or other individuals if they were seen as being likely to try to influence a forced marriage.

16. Opponents in an application would also need to satisfy the statutory tests of:

- financial eligibility, probable cause and reasonableness.

17. Costs will be incurred to the Legal Aid Fund relating to the need for interpreters to be involved in the meetings between any victim and solicitor or for the translation of case documents. The requirements will vary on a case by case basis but given the small number of expected civil cases this should not cause any significant impact on the Legal Aid Fund.

18. In addition to the civil cases there is potential cost to the Board in relation to applications for criminal legal aid arising from the criminal offence to be created by the Bill. Again, using the estimate of a maximum of ten cases per year the costs would not be excessive in terms of criminal legal aid particularly as a breach of an FMPO would not always result in a criminal case being brought before the court. However, as for opponents in civil actions there may be a number of accused in any case as more than one family member or other person might be involved in any breach of an order. Criminal costs would be dependent on the procedure under which the prosecution was brought and how the defender pleads.
19. The provisions also provide clarity that declarators of nullity of marriage can be obtained in the sheriff court. This provision should assist the Legal Aid Fund. Seven applications for civil legal aid for declarators of nullity in the Court of Session were granted between 2000 and 2008. Costs incurred in Court of Session proceedings are greater than where cases are being heard in the sheriff court in the year 2009/2010 the average cost of a sheriff court action was £2,192 while Court of Session proceedings averaged £6,892.

20. The Board supports the aims of the Bill and any additional costs to the Legal Aid Fund would not be significant.

21. The Board would be happy to provide further evidence, written or oral, on the Bill and its legal aid aspects.

Scottish Legal Aid Board
15 November 2010
Introduction

1. The purpose of the Scottish Women’s Convention is to communicate and consult with women in Scotland to influence public policy. Through the Convention’s policy work, roundtable and celebratory events the SWC strives to have contact with women and relevant organisations. The SWC aims to provide an effective way of consulting with a diverse range of women in Scotland.

2. The Scottish Women’s Convention has a network of over 300,000 women throughout Scotland.

Background

3. This paper provides a response by the Scottish Women’s Convention to the Scottish Parliament Equal Opportunities Committee’s request for written evidence re the Forced Marriage (Protection and Jurisdiction) (Scotland) Bill, introduced to the Scottish Parliament on 29th September 2010.

SWC Submission

4. As the SWC are committed to condemning all violence against women and children we wholeheartedly support the proposals contained therein. This response will examine key areas of the Bill in turn.

5. The Scottish Women’s Convention welcomes the provisions of the Forced Marriage (Protection and Jurisdiction) (Scotland) Bill and believes that the proposed legislation is vital in protecting those who are being or have been forced into marriage without free and full consent.

Part 1, Section 1 of the Bill (Forced Marriage Protection Orders)

6. This creates a specific civil remedy in the form of a Forced Marriage Protection Order. The SWC have spoken to a number of women who have overwhelmingly felt that the absence of a specific civil law protecting women forced into marriage means they are not afforded access to justice in the way they should be.
7. Without the provisions contained in this section of the Bill, women who are being or have been forced into marriage will continue to face barriers when attempting to seek remedy in the courts. Women have indicated to the SWC that, as the law stands, those professionals who are not familiar with handling Forced Marriage cases often do not use existing civil remedies appropriately. Response times from the Legal Aid Board have also been highlighted as problematic, as the Board may not understand the urgency required in putting civil remedies in place.

**Section 2 of the Bill (Content of orders)**

8. This is potentially very important in ensuring that victims of Forced Marriage are afforded the necessary protection. We particularly welcome the provision for any Order to relate to “conduct outwith (as well as, or instead of, conduct within) Scotland”.

9. Women have told the SWC that because existing civil remedies are not enforceable outwith the UK, and because evidence from the Forced Marriage Unit suggests that approximately 90% of marriages involve a UK citizen being taken abroad, in a number of cases those who force women into marriage are not brought to account for their actions. The SWC therefore commends the proposal to change this.

10. Another hurdle in accessing existing civil remedies is the lack of victim-centred support both within the legal system and as part of wider support services for those forced into marriage. Access is often both emotionally and physically difficult for victims, as abusers are, in the main, family members.

11. Extended family and community members are frequently involved in coercing victims therefore existing civil laws are not sufficient in protecting people from being forced into marriage, particularly from those not named on the court orders.

12. Women have told the SWC that the act of forcing a marriage on a person is very rarely carried out by one perpetrator. It can frequently be encouraged, by various means, through a network of individuals aiding, abetting and conspiring with the principal abuser to ensure the marriage goes ahead.

13. Because of this, the importance of the Bill applying to persons who are directly or indirectly involved in forcing someone into marriage cannot be underestimated. This would mean that all people involved in organising the marriage will be held liable for doing so.
Section 3 of the Bill (Applications for Orders)

14. The SWC welcome the provision which allows “a relevant third party” to apply for an order on behalf of the protected person.

15. We have spoken to women who have indicated uncertainties or difficulties in making applications to the court for existing civil remedies for a number of reasons, including cultural, social and wider family pressures. Fear of community exclusion, stigmatisation and the threat of wider family reprisal can be a significant disincentive in seeking help.

16. These women have made it clear that access to the courts would be much simpler if a relevant third party was able to make the application on their behalf. The SWC believe the way in which this legislation is worded will ensure that this is done with the best interests of the women affected being protected. Similarly, the ability of the court itself to make an order without application being made is a positive step.

Section 9 of the Bill (Offence of breaching order).

17. Women who we have consulted with on the issue believe it is vital that anyone who breaches a Forced Marriage Protection Order should be subject to criminal proceedings. It is their view that this sends out a strong message to perpetrators and shows that Scotland is taking a stance against such people.

Conclusion

18. It is the view of the SWC that Forced Marriage is a violation of internationally recognised human rights and a form of violence against women.

19. The SWC therefore commends the provisions contained in the proposed legislation and believe this Bill has the potential to be an important tool in combating the issue of Forced Marriage.

20. If you require further information or copies of this report please contact Lorna Kettles, SWC Development Officer on 0141 248 8186 or email

Lorna Kettles
Scottish Women's Convention
16 November 2010
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.

We in Inverness Nairn Soroptimists International feel this Bill would make it a criminal offence to breach laws and would protect people from being forced into getting married against their will in Scotland.

Breaking the proposed laws could lead to a prison sentence or a fine, or both.

Courts would be able to issue forced marriage protection orders.

Those at risk, would be able to apply for an order and could stay in a place of safety or help those in danger of being taken abroad for marriage.

Courts will also be able to tailor sanctions and support to the person's particular circumstances and existing powers to annul a forced marriage will be reformed to make the process easier.

Soroptomist International feel forced marriages have no place in modern day Scotland. We do not wish to see individuals who do not comply, subjected to threats, assault, captivity or worse at the hands of their own family.

We hope this bill will help confine this abusive behaviour to the history books, providing flexible legal support to allow victims to take control and get their lives back on track.

We support this Bill.

Liz Gilchrist
Soroptomist International Inverness & Nairn
8 November 2010
1. “Our Vision: Soroptimist International is a vibrant, dynamic organisation for today’s professional and business women. We are committed to a world where women and girls together achieve their individual and collective potential, realise aspirations and have an equal voice in creating strong, peaceful communities worldwide.”

2. “Our Mission: Soroptimists inspire action and create opportunities to transform the lives of women and girls through a global network of members and international partnerships.”

3. Scottish Soroptimists are very pleased that this issue is being addressed by the Scottish Parliament as forced marriage represents a great breach of human rights mainly perpetrated by men against women and girls.

4. It is important to raise the profile of this issue within Scotland so that young women who may become subject to a forced marriage are aware of their rights in this respect, and the remedy that will soon be available legally to protect them from this. Information needs to be available within schools as girls can be very young when marriages are arranged on their behalf.

5. This Bill would make it a criminal offence to breach laws and would protect people from being forced into getting married against their will in Scotland. Breaking the proposed laws could lead to a prison sentence or a fine, or both. Courts would be able to issue forced marriage protection orders. Those at risk would be able to apply for an order and could stay in a place of safety or help those in danger of being taken abroad for marriage. One of the benefits of the Bill is that women will be able to obtain a Protection Order without involving the police and their family would only be subject to criminal proceedings if they breached the order. This perhaps gets over the problem of women not wanting to involve the police. Courts will be able to tailor sanctions and support to the person's particular circumstances and existing powers to annul a forced marriage will be reformed to make the process easier.

6. For women who are brought to this country under this circumstance, i.e. within a forced marriage, and with little or no knowledge of English it will be important to try to reach them with information in a language familiar to them, through women’s groups or community initiatives. The impact of this legislation may have resource implications for organisations working with women, and with minority ethnic women in particular, in terms of personnel, training and funding. Support with the cost of legal representation for those in need of protection will also need to be available.
7. Soroptimist International of Scotland North and Scotland South believe that forced marriages have no place in modern day Scotland. We do not wish to see individuals who do not comply subjected to threats, assault, captivity or worse at the hands of their own family.

8. We would recommend that a response to the Bill is obtained from the organisation Karma Nirvana which supports victims of Forced Marriages throughout the UK and so has a great deal of first hand experience of these issues. They were instrumental in guiding similar legislation through in England and Wales.

Maureen Collison
Programme Action Chair
Soroptimist International Scotland North

Naomi Lawrence
Programme Action Chair
Soroptimist International Scotland South

25th November 2010
1. South Lanarkshire Council responded to the initial consultation on the possibility of introducing legislation to protect people at risk of or experienced forced marriage. At this time SLC supported the introduction of such legislation and we welcomed the opportunity for a third party to apply on behalf of the person. Our response was drafted in the context of limited practical experience of dealing with forced marriage, and also recognising that there maybe limited knowledge and experience within the legal profession about the issue. These comments still stand in relation to the proposed Bill.

2. The proposed Bill prevents an individual from being taken aboard to be forced into a marriage. This is welcomed. However, it is not clear in the proposed Bill how children under 16 are protected from being forced into a marriage.

3. It is also not clear from the proposed legislation what duties (if any) third parties have to monitor those individuals who have been the subject of a Forced Marriage Protection Order (FMPO) to ensure they are protected. Clarification is also required regarding monitoring arrangements to ensure compliance from those who have been trying to force the individual into a marriage. In addition, we raise the question as to what might happen to a person who has a record of attempting to force a marriage on a number of occasions? For example, once a FMPO has expired, is there anything to stop those parties who had attempted to force a marriage to try again? This might prompt a second or other FMPO, but these should surely be seen as short term arrangements and not longer term solutions for an individual who may be vulnerable. What powers are available to ensure longer term support for vulnerable individuals to ensure that they are not forced into a marriage at any point?

4. Guidance from the Scottish Government on the introduction of FMPO will be required to ensure consistency. Awareness training will also need to take place in order for staff to have the knowledge and skills to support individuals who are being subjected into a forced marriage and to identify those individuals at risk.

5. The legislation refers to the fact that the FMPO may require a person to ‘take the protected person to a place of safety designated in the order’ (2 (3)(a)). Is this person the third party agency? What is expected to happen in terms of the person’s accommodation after the FMPO has ended. What are the statutory obligations that this Bill would impose on local authorities regarding the enforcement of the Act?

6. In conclusion, South Lanarkshire Council welcomes the introduction of legislation to protect people from being forced into marriage. However, we feel there are a number of issues which require further clarification and there should also be links to legislation covering the protection of adults and children to ensure these people are not left vulnerable.

Harry Stevenson
Executive Director (Social Work Resources)
South Lanarkshire Council
17 November
1. Having considered the terms of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill, and noting also the Explanatory Notes thereon, the Policy Memorandum, and the Delegated Powers Memorandum, we make the following comments.

2. We note that the purpose of the Bill is, principally, to make provision to enable the Court of Session and Sheriff Court to make a forced marriage protection order in order to protect persons from being forced into marriage without their free and full consent and to protect persons who have been forced into marriage without such consent; and, subsidiarily, to confer on sheriff courts jurisdiction in relation to actions for declarator of nullity of marriage. We recognise that the hybrid civil/criminal legislative provision, if enacted, will echo the Forced Marriage (Civil Protection) Act 2007, which applies in England and Wales.

3. With regard to the subsidiary purpose of the Bill, the fact that, if enacted, the Bill will render the remedy of annulment more accessible in Scotland by clothing the sheriff court with jurisdiction to grant decrees of nullity, seems to us to be reasonable and desirable. If application for a forced marriage protection order is ancillary to nullity proceedings, jurisdiction under the Domicile and Matrimonial Proceedings Act 1973, as amended, presumably would clothe the court with jurisdiction to make the protection order (per clause 4(1) of the Bill).

4. With regard to the principal purpose of the Bill, our primary aim in writing is to express our concern that the conflict of laws implications of the Bill should be made explicit, or at least that the potential conflict of laws implications of the legislation should be fully appreciated.

5. That branch of law known as the conflict of laws, or international private law, exists to make provision for cases which contain a foreign element. Specifically, it is the branch of private law which consists of the rules which enable courts to determine the following matters:

(a) the rules of jurisdiction to be followed;
(b) the system of law which is to be applied in order to determine the rights of the parties in cases involving foreign elements (‘choice of law’); and
(c) the extent to which recognition is to be given by those courts to decrees of foreign courts, and the manner of enforcement of such recognised decrees, if enforcement be necessary; and conversely, the extent to which recognition of its own decrees and, if need be, enforcement thereof is to be accorded elsewhere.
6. Thus, in cases involving relevant foreign elements, a legal system’s conflict rules determine which court has jurisdiction, which law is applicable and whether or not decrees can be recognised and/or enforced beyond the legal system from which they emanate.

7. Although not per se a piece of conflict of laws legislation, the Bill nonetheless has conflict of laws implications and, paradoxically, is bolder than many international private law provisions to date, in taking to itself power to regulate conduct outside Scotland.¹ This raises issues concerning the territorial operation of UK/Scottish statute law. Statutes are presumed to have a strictly limited territorial effect so that, in general, they apply only to persons and property in the territory in which the legislation was enacted. Increasingly, this presumption has become weakened as the UK/Scottish Parliament deems it appropriate to seek to regulate the conduct of British citizens abroad.

8. It is clear that the Forced Marriage Bill is intended to apply not only to conduct within Scotland, but also conduct outside Scotland. What is considerably less clear, however, is the constituency of persons for whom the Bill is intended to provide protection. In common with a number of modern Scottish legislative enactments, the Bill does not make clear the precise category of persons whose interests it is designed to protect. The Policy Memorandum which accompanies the Bill states that, “The Scottish Government believes that all people in Scotland who are eligible to marry … have a right to do so freely and without coercion”.² In common with the Family Law (Scotland) Act 2006, sections 25-30 whereof seek to regulate property rights arising from de facto cohabitation, the Forced Marriage Bill does not enunciate the scope of its operation, or seek to identify in conflict of laws terms those persons who may invoke its protection.

9. Whereas section 2 of the Family Law (Scotland) Act 2006 (void marriages) is principally territorial in its operation (i.e. it affects marriages solemnised in Scotland), section 38 of that Act (validity of marriages) reiterates in statutory form the common law rule, referring questions of capacity and consent to marry to the law of a person’s ante-nuptial domicile, a rule which, being personal in nature, transcends territorial boundaries (i.e. it affects a person’s capacity to marry and ability to consent to marry, wherever the marriage takes place³).

¹ Clause 13 (interpretation) defines marriage for this purpose as ‘any religious or civil ceremony of marriage (wherever carried out and whether or not legally binding under the law of Scotland or any other place)’ (emphasis added). Likewise, by clause 2(2)(a) the terms of a forced marriage protection order may relate to conduct outwith, as well as, or instead of, conduct within Scotland. Further, such an order may require a person, inter alia, to refrain from taking the protected person abroad, and to facilitate or otherwise enable the protected person or any other person to return to the UK within such period as the court may specify.
² Para 3. Emphasis added.
³ Subject to s 38(3), which applies only where the marriage in question is entered into in Scotland.
10. What level of connection reasonably is to be required between Scotland/Scots law and a person allegedly forced into marriage without his/her free and full consent before s/he is permitted to invoke the protection of Scots law? Clause 3(6) lays down that,

“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.

11. This provision provides a rule of jurisdiction, although the rule is not expressed in the usual terms. We suspect it is driven by the social purpose of the legislation, and therefore is not orthodox in conflict of laws drafting terms. Be that as it may, the rule prescribes ‘ordinary residence’ as the basis of shrieval jurisdiction, whether the application is made by the protected person or by a relevant third party. No equivalent express rule is set down for jurisdiction of the Court of Session quoad freestanding applications for the new proposed protection order; perhaps ‘ordinary residence’ in Scotland is tacitly envisaged? Residence is the connecting factor which is used as a mainstay in consistorial jurisdiction, domestic and EU, though ‘habitual residence’ is the norm. Presumably, ‘ordinary’ residence has been selected by the drafters in this instance as a conscious decision to permit application on a technical basis which is less demanding than ‘habitual’ residence. It can be predicted that such a test, if enacted, would result in the taking of jurisdiction by sheriffs on a relatively tenuous connection of the applicant with the sheriffdom, given the history of lack of unanimity in court decisions, in Scotland and England, upon the meaning of ‘residence’ as a criterion of jurisdiction.

12. Clause 3(6)(b), noted above, confirms the speculation that this proposed legislation is more concerned with protection of anyone ‘in Scotland’, on whatever basis, if s/he can persuade the court putatively seised that the circumstances justify the making of a protection order. This apparently means that the protection could be extended on a temporary presence basis, akin to emergency jurisdiction in respect of children. This may be justifiable, but if the person is not ordinarily resident in Scotland, the Scottish order, in practice, can be little more than a provisional, protective measure effective only so long as the protected person remains in Scotland, and probably effective only ‘in Scotland’.

13. It seems clear from the tenor of the Bill (see e.g. also clause 7: variation and recall of orders), that it is presumed that the orders are available in jurisdictional terms if the petitioner is physically present in Scotland. Clause 4 provides for the situation in which the court ex proprio motu may make a forced marriage protection order. This power is ancillary to civil proceedings which are already before the court.

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4 That is, a local authority, the Lord Advocate or person specified by order of the Scottish Ministers (cl.3(7)).
6 Or criminal proceedings: cl. 4(2) and (3).
14. It is noteworthy that clause 12 states that Part I of the Bill does not affect any other protection derived, e.g. from the law of marriage. This means that the provisions proposed, e.g. in clause 1 of the Bill, must be seen as subordinate to, though consonant with, the provisions contained in the Family Law (Scotland) Act 2006, section 2, which effectively provide the choice of law rules which a Scots court seised of annulment proceedings must operate.

15. The proposed Forced Marriage legislation clearly is tailored to assist in alleviating a social problem which arises acutely in certain religious communities. Rather than providing merely territorial protection (i.e. protection in respect of conduct in Scotland), the proposed provisions are more ambitious, intending also to apply extra-territorially, with the aim of curing, by means of Scots court order, a mischief visible within Scotland, but not necessarily entirely contained therein, and having cross-border characteristics.

16. We suggest that attention be paid to these matters of jurisdiction and applicability of the proposed rules. We should be willing to discuss such points further, if it would be of assistance to the Committee.

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University of Glasgow
24 November 2010
The Right Honourable Elish Angiolini QC

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16 December 2010

Dear Margaret,

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

Thank you for your letter of 24 November 2010. I am sorry my response has been delayed until today. On the specific issues highlighted, I can advise that Crown Office officials have been working closely with Scottish Government colleagues to ensure that the provision in the Bill creating a criminal offence for a breach of a forced marriage order will be effective in achieving the policy objective.

In relation to the impact on the Crown, section 17 of the Bill protects the Crown from criminal liability if it were to breach a forced marriage order, but allows a public body to seek a declaration from the Court of Session that the Crown has acted unlawfully. I do not anticipate practical difficulties in the application of these provisions to the Crown Office and Procurator Fiscal Service but if the Committee has any specific concerns I would be happy to address them.

I note the suggestion of judicial training. Clearly, I have no responsibility regarding judicial training. The Judicial Studies Committee is responsible for judicial training and to assist I have asked my officials to write to the Committee drawing their attention to the transcript of the evidence given at the first session and this recommendation.
Finally, in relation to a designated contact point, it may be helpful to note that guidance is issued to all prosecutors on any new legislation or criminal offences through the Policy Unit at Crown Office. Accordingly, the appropriate contact person for any queries in this area for prosecutors will be the Head of Policy. As advised guidance for the Judiciary is a matter for the Judicial Studies Committee.

ELISH ANGIOLINI

INVESTOR IN PEOPLE
The Scottish Government
Note: (DT) signifies a decision taken at Decision Time.

**Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill:** The Minister for Housing and Communities (Alex Neil) moved S3M-7820—That the Parliament agrees to the general principles of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill.

After debate, the motion was agreed to (DT).
Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill:
Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-7820, in the name of Alex Neil, on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. I call on Alex Neil to speak to and move the motion. Time is very tight this afternoon. You have seven minutes, minister.

14:35

The Minister for Housing and Communities (Alex Neil): I am pleased to open the stage 1 debate on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill, which henceforth I shall refer to as the bill.

Before turning to the Equal Opportunities Committee’s stage 1 report, I would like to spell out briefly the Government’s intentions in introducing the bill and the context in which it sits. The Scottish Government believes that all people in Scotland who are eligible to marry or to enter into a civil partnership have a right to do so freely and without coercion. The bill aims to help protect some of the most vulnerable people in our society through the legal process in a very proactive, flexible way. I was heartened by the committee’s comment in its report that, although the number of victims may be relatively low, the detrimental impact of forced marriage is extremely high and cannot be tolerated.

In addressing forced marriage, we cannot and should not separate it from the Government’s wider work to address other forms of violence against women. Yes, we know that men are affected by this terrible problem but, predominantly, it is women who are the victims, and the work to tackle it sits in that context. There are clear links with domestic abuse and rape.

I thank the Equal Opportunities Committee for its scrutiny of the bill. It has listened to evidence from our key stakeholders and has clearly taken on board their concerns in drafting its stage 1 report. I am pleased that there is so much common ground in the report and that the committee supports the general principles of the bill.

The Government will respond to the committee’s report, including its recommendations for amendments to the bill, in writing, but I will comment on some of the main points that were raised in the report, many of which related to the bill’s implementation rather than its content.

A recurring theme of the evidence sessions that is reflected in the stage 1 report is the need for a
clear and effective implementation strategy for the bill that includes guidance, training, awareness raising and education. We know that it is also essential that links are made with existing child and adult protection mechanisms for supporting people who are at risk. We continue to work with stakeholders to shape the implementation of the bill, on the proviso that it successfully makes its way through the parliamentary stages. The forced marriage network is vital to that work, and I thank its members who have been instrumental in driving forward the agenda as well as in shaping the bill.

As a first step in that process, the Government will consult widely on the draft statutory guidance that will accompany the legislation, to give public sector bodies an opportunity to shape and inform its contents to ensure that it is an essential tool in their development of informed and effective responses to victims of forced marriage whom their staff may have to support. In addition, the consultation will begin the awareness-raising process among practitioners who may never have come across the issue in their professional life.

We appreciate the concerns that the committee raised in its report about the importance of close monitoring of cases to ensure that a victim’s safety is maintained once an order has been obtained, so that it continues to remain valid and in force. Such issues will be explored over the next few months, including during the consultation on the guidance, to ensure that when the bill comes into force, those who deal with cases know what their responsibilities are to ensure that victims and people who are in fear of forced marriage are kept safe.

A big part of that process is ensuring that people know about the bill and the issues surrounding forced marriage. We share the committee’s view that significant work is required to raise awareness and understanding of forced marriage in Scotland. We are committed to undertake that work and have established a group of forced marriage network members to develop and take it forward as a matter of priority.

The Government will work with the Scottish Court Service, police and other public sector bodies, as well as third sector organisations that are providing direct support to victims of forced marriage, to improve the statistical information that is available about cases of forced marriage. That commitment is reflected in the bill’s equality impact assessment. We know that we need to find out more, especially about lesbian, gay, bisexual and transgender people, male victims and those with physical and learning disabilities who are affected by forced marriage.

We hear what stakeholders and the committee said during the evidence gathering about concerns that victims could be trapped in a religious marriage once the civil marriage has been ended. We are committed to continuing to engage with relevant religious authorities on the issue of the nullification of forced marriages and to raise awareness of the bill among all religious organisations and communities. The first of the forums will be with groups that represent the Muslim community in Scotland. We will also look at the links between forced marriage and trafficking.

I turn to some of the stage 1 report’s recommendations regarding the content of the bill. I was pleased to see the committee’s comment that the introduction of forced marriage protection orders would provide a simpler procedure, which is in contrast to the current complicated legal recourse of an order or an interdict. I was also pleased to see that committee members welcomed the introduction of FMPOs and felt that they would be an effective, preventive and protective measure in the fight against forced marriage.

One of the key elements of the bill enables the Lord Advocate, or local authorities acting as relevant third parties, to make an application for a forced marriage protection order on behalf of a victim. That recognises that, in many cases of forced marriage, victims feel unwilling or unable to take action against perpetrators who might be members of their family. Again, I take on board the committee’s and stakeholders’ concerns about the monitoring of cases following the issue of an FMPO.

It is vital that local authorities are supported to establish internal mechanisms that allow practitioners to know who will deal with cases and to ensure that those staff are trained and have access to guidance. We will work closely with the Convention of Scottish Local Authorities, as well as with individual local authorities, to ensure that their views are heard, that guidance is as effective as possible, and that local authorities are equipped to fulfil their role as relevant third parties.

The Government recognises that the bill is only the start of a journey towards eradicating forced marriage from Scotland forever.

I move,

That the Parliament agrees to the general principles of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill.

14:42

Margaret Mitchell (Central Scotland) (Con): The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill is important legislation. The Equal Opportunities Committee having been designated as the lead committee on the bill,
committee members were pleased to have the opportunity to consider it. My comments today are made as the committee’s convener.

During the committee’s scrutiny of the bill, a number of written submissions were received and members heard oral evidence from a range of witnesses, including representatives of Scottish women’s Aid organisations that deal directly with the victims. I thank all those who gave evidence and made a valuable contribution to the committee’s consideration of the bill. My thanks also go to committee members and to the EOC clerks for their work in compiling the stage 1 report.

Similar legislation has been in place in other parts of the United Kingdom since 2007. That means that Scotland is lagging behind and, having heard the harrowing evidence that was provided by those who work with the victims, the committee was in no doubt that the legislation is necessary to protect the victims of forced marriage and to help rid Scotland of an abhorrent practice that has no place in a civilised society.

As the minister mentioned, there is a lack of data available on forced marriages in Scotland. Although the evidence that the committee received suggests that the number of such marriages is quite low, it was nonetheless clear that the adverse impact on the victim or victims is huge, which confirms the need for the legislation.

The bill introduces forced marriage protection orders. Witnesses welcomed the provision for making an order that they regarded as more straightforward than the complicated civil remedies that are currently in place. Scotland will become the only part of the UK in which the breach of an order will be a criminal offence that can result in up to two years in prison. Members consider that that approach strikes the correct balance, providing a strong deterrent to the perpetrators of forced marriage while helping the victims, who are frequently subjected to emotional blackmail from relatives, to overcome their concerns about criminalising family members.

The committee calls on the Government to provide greater clarity on the reporting and notification procedure for acting on the breach of a protection order and on who will have the authority to report a breach. The committee supported the view put forward by the Association of Chief Police Officers in Scotland and others that, to be consistent with other legislation, the bill should place the power of arrest for the breach of an order in the bill itself, and it recommends that the Government considers lodging an amendment to that effect.

On the jurisdiction, members agree that protection orders should relate to conduct outwith Scotland, given that many forced marriages have an international dimension. The committee recognises, however, that the orders will have no jurisdiction abroad and for the orders to be successfully implemented there will need to be either an extradition treaty or good working relationships between the countries.

Members recommend that the Government considers tightening the provisions that relate to moving a protected person to another part of Scotland or outwith Scotland, and the committee invites the minister to respond to the recommendation. The committee also recommends that the Government considers an amendment to permit, in certain circumstances, the naming of the person who poses the risk to a protected person.

The bill reinforces a victim-centred approach that allows third parties to make protection order applications on behalf of victims. That is good, but members consider that greater clarity is required about the role that local authorities will play as third parties. The committee invites the Government to provide further information on the on-going responsibilities of third parties to monitor and implement aftercare services. Some specialist support agencies expressed a desire to be listed as relevant third parties, and the committee therefore welcomes the provision in the bill that allows the Scottish ministers to add to the list if required.

Scottish Women’s Aid, ACPOS and other witnesses called for the definition of “forced” in the bill to be more explicit to include the physical aspect of coercion and abuse. The committee agrees that including that aspect in the bill would reinforce the message that physical violence will not be tolerated. Furthermore, the definition of “forced marriage” as used by the Scottish Government states that “duress is involved” in forced marriage. Duress may often be involved, but it is not necessarily always involved. The committee therefore invites the Government to reconsider its use of that definition.

Concern was expressed that a decree of divorce or a declaratory of nullity granted by a Scottish civil court cannot end a marriage according to the provisions of certain religious practices. The committee believes that it is important that the Scottish Government continues to engage with the religious authorities on the issue of nullification of forced marriage and to raise awareness of the bill among all religious communities. The minister’s reassurance on that point this afternoon is welcome.

Guidance on implementing and using the legislation will be critical to ensuring that the legislation works effectively. Members therefore welcome the Government’s commitment to lodge
an amendment to confirm that it will, rather than may, issue guidance.

In conclusion, the committee welcomes the bill and recommends that its general principles be agreed to.

14:48

Mary Mulligan (Linlithgow) (Lab): I am pleased to take part in today’s debate on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. I have read the Equal Opportunities Committee report, and I congratulate it on addressing the important issues in the bill while keeping the report clear and concise so that even a Johnny-come-lately such as myself can understand it.

For most people, discussions on marriage are generally happy and positive, but for a small number of people who face the threat or reality of forced marriage the issue is full of fear. Although the bill may apply to only a small number of people, it is important that we proceed with it.

I will concentrate on three aspects of the bill, starting with the central plank that is the forced marriage protection order. Like the committee, I welcome the introduction of that measure. The order is easily understood by both the victim and the perpetrator, and I believe that it is a better way of addressing the problem than the civil remedies that we have at present. I especially welcome the fact that the measure will be both preventive and protective.

Section 1(6)(b) sets out a definition of “to force” that includes to

“coerce by threats or other psychological means” and to

“knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage”.

I agree that the definition is fine as far as it goes but, like Margaret Mitchell and the committee, I have some sympathy with witnesses such as Louise Johnson of Scottish Women’s Aid and Iain Livingstone of ACPOS who suggested that the physical aspect of force should be included. This is one of those debates that we frequently get into when discussing legislation: whether to imply that something is sufficient, as the minister suggests, or whether the bill needs to be more explicit. In this instance, I agree with the committee and those witnesses that the physical aspect of force should be included in the bill. I hope that the minister will look at that sympathetically.

Section 9 will make it a criminal offence to breach a forced marriage protection order and sets out the penalties that may be imposed. I recognise that that makes the Scottish bill different from the UK Forced Marriage Act 2007, but on this occasion I think that we are right. I add one note of discord in observing that we are only just catching up with the UK act; nevertheless, I welcome the fact that we are now there.

I understand the concerns that have been expressed about the criminalisation of a relative, for example. However, I remind members that we had that debate when we discussed the introduction of antisocial behaviour orders. Both of the orders are about changing behaviour. In this case, as long as the family member does not force the victim into a marriage—an act that we all find abhorrent—they will not be criminalised. I say that not to be glib, but to point out that the course of action is simple and clear. I support the committee’s plea for more clarity around the issue of how reporting and notification of a breach will be enacted, which is, I am sure, something to which it will return at stage 2.

I hope that I will avoid being chided by Sandra White for being negative today, as I am very supportive of the bill. I also hope that the minister will be able to respond positively to the committee’s report. In those terms, he will have the full support of the Labour group.

14:53

Bill Aitken (Glasgow) (Con): The committee’s report, for which I thank the convener, is fairly comprehensive. It is unable to evidence a substantial number of cases; however, although the cases that it finds may be few in number, they are undoubtedly large in impact. Clearly, the Government must act in respect of something that is completely disgraceful in modern times. The system that we have at present is more than unwieldy; frankly, it is a toothless tiger and totally ineffectual in dealing with the issue. We cannot leave ourselves open to having no legislation in place in Scotland when such legislation exists south of the border. That would put victims north of the border in a position of extreme disadvantage.

Over the past 30 to 40 years, this country—with the exception of the idiotic minority—has shown a praiseworthy degree of tolerance as many people from different parts of the world have settled here. Indeed, I often reflect on the fact that the degree of tolerance that is shown here to people from overseas is sometimes not reciprocated abroad.

We have a clear duty to do something here and I think that the FMPOs are the way forward, as they are simple and straightforward. There is, however, a major difficulty, which is reflected in the committee’s report, when the offence is technically committed furth of these shores. There
is quite clear evidence that many instances of forced marriages have an international dimension. There will have to be a degree of co-operation on the part of the Scottish and United Kingdom authorities to ensure that the appropriate extradition agreements are made.

I flag up a problem over the issue of definition. I tend to agree that the issue of force should be included in the bill. I guide the minister along the route that the Cabinet Secretary for Justice took in relation to the Justice Committee's report on the Criminal Justice and Licensing (Scotland) Bill, and suggest that, in terms of sexual assault, we deal with the definition, which involves not only the question of physical assault but the way in which coercion can be applied. In many instances, we are dealing with physical violence but, in other cases, the coercion is much more subtle, and involves family loyalties or sometimes even tribal loyalties. That must be considered. There must be a protection for someone who might feel, because of those loyalties, misguided though they might be, that they should go down the route of a forced marriage. I commend that approach to the minister.

On balance, I believe that the name of the perpetrator should be included in the order that is applied for, although I recognise the Government's inhibitions in that respect.

I welcome the fact that the bill contains a provision for third-party applications, because a victim could be in a position of some difficulty if they had to make the application themselves. That is particularly evident if we consider the youth and comparative immaturity of many of the victims.

On behalf of the Scottish Conservatives, I say that this is a welcome piece of legislation. A bit of work remains to be done on it but I am sure that, at the end of the day, common sense will prevail, and we will produce a worthwhile piece of legislation.

14:57
Hugh O'Donnell (Central Scotland) (LD): The Scottish Liberal Democrats are happy to support the bill at stage 1. However, wearing two hats, as I am also a member of the Justice Committee, I support my convener's comments about the recommendations in the committee's report, and look forward to engaging in some of the issues that have been raised.

Over the years since the creation of the Scottish Parliament, there have been many opportunities to legislate, but some of the most significant ones have been ignored. In my view, this piece of legislation adds to the small but growing toolkit that we have to address fundamental human rights issues. The existence of that toolkit is a credit to the country.

I do not remember whether the current Administration made a manifesto commitment to legislate on this issue, but I remember that I raised it with the Cabinet Secretary for Justice in 2007. I will, therefore, do the usual politician thing and take some credit for putting the issue on the agenda, if not necessarily, thus far, on the statute book.

The issue that we are discussing is important. Previous speakers, members of the committee, committee witnesses and myself—as someone who has worked with the ethnic communities over a number of years—have been keen to point out that this legislation is clearly and distinctly about force. Other members have spoken about how we define that, and that is a matter for future debate between the Government and the committee. However, I and others have been keen to ensure that we do not intrude on cultural traditions around arranged marriage. That tradition disappeared in the UK and Scotland many years ago, although I remember my great-grandmother being a wedding arranger in Ireland, but we must bear in mind that there is a distinction between arranged marriage and forced marriage. That must be part of the education programme around the legislation that we are discussing today, when it finally makes it into statute.

Elaine Smith (Coatbridge and Chryston) (Lab): Does the member agree that we must be very clear that forced marriage is not cultural, but is firmly viewed as abuse?

Hugh O'Donnell: I have no argument with that at all. I recognise fully that forced marriage in any form, whether it involves physical, psychological or other duress—or indeed cultural duress—is not an acceptable way for anyone to proceed.

Where both parties enter into an open agreement and arrangement of their own and their families' will, that is an entirely different situation, and we need to ensure that the statutory guidelines are clear on how we should proceed in that regard.

I am pleased that the minister has said that he will address the issue of potential difficulties in relation to religious annulment and the statutory civil annulment. I look forward to being part of the committee and discussing those issues with the minister. We will have a very good piece of legislation in Scotland that will, in its final form, be significant in its own way.

15:01
Anne McLaughlin (Glasgow) (SNP): It is incumbent on us all when we talk about forced
marriage to keep making the point that it bears absolutely no relation to arranged marriage. We in the chamber may not need to hear that over and over again, but there are people out there who believe that those practices are one and the same thing. That is a problem because it shows a lack of understanding of the perfectly legitimate practice of arranged marriages, but more important is that it undermines the seriousness of forced marriage.

We need to get the point across that forced marriage is completely against the will of at least one of the marriage partners, and that it is recognised in the United Nations Universal Declaration of Human Rights as a contemporary form of slavery, trafficking and sexual exploitation. It is serious stuff: as Elaine Smith said, it is not cultural, but a form of abuse, and the bill helps to make it stand out as such.

I was surprised to learn that there is at present no law in Scotland that expressly prohibits forced marriage, and that it is not a specific criminal offence. In March 2007, as Mary Mulligan said, the UK Government decided to support a private members’ bill on forced marriage. The bill will introduce to Scotland broadly similar provisions.

Of crucial importance is the provision in the bill for local authorities and the Lord Advocate to be able to apply on behalf of a victim for a forced marriage protection order. That is important in cases in which the victim is unable or unwilling to take action themselves. Given that families of victims are often involved in organising a forced marriage, it must be a terrifying prospect for an individual to decide to ask for help, knowing that they will lose their families altogether.

Not everyone is as brave as my constituent, who I will call Nina. Nina is 20 years old and, considering her frightening childhood, given the fact that she no longer has any family support and taking into account that she is on her own many miles from everyone she has ever known, she does remarkably well. At the age of 15, she ran away to avoid being taken overseas to marry a man in his 50s. When her parents found her, they locked her in her bedroom and starved her for a week to teach her a lesson. She managed to get away again, but it is likely that the fear of them finding her and the loneliness of being completely isolated from her entire family and all her friends will never leave her.

I was interested to read the submissions to the Equal Opportunities Committee’s investigation into the bill. Many groups, including Shakti Women’s Aid, Hemat Gryffe Women’s Aid and Black and Ethnic Minority Infrastructure in Scotland, called for work to be done to bring about a shift in social attitudes.

We must not forget that simply telling people that we do not approve is not the most effective deterrent in the long term. The most effective deterrent is to demonstrate the terrible harm that the practice does to individuals and their families. We must keep in mind that a shift in attitude is needed, but that will not happen overnight, nor will it happen simply as a result of the bill.

BEMIS expressed concerns that tackling the issue could “foster culture stereotyping and antagonism against some groups.”

That is a valid concern, and a reminder that the issue will be used by some people to further their racist views.

When we talk about the issue, and when we legislate, we must be careful about how we articulate our arguments. We should acknowledge that forced marriage happens in all communities, and that it is not simply about religion or race. Indeed, we are hearing about more cases in which someone is forced into marriage to care for a physically or mentally disabled spouse.

We should be clear that it is very rare, in whichever community it happens. There will be cases of which we are unaware, but in 2009 we were aware of 40 incidents of forced marriage in Scotland. It is relatively rare, but each of those 40 people deserves our protection, if that is what they want. For those 40 in 2009, for the many in the years before and for all those who are too frightened or too resigned to their fate to tell someone, the bill says that it is not all right, and that we recognise their right to consent to marriage or not, if it is not what they want to do.

I commend the bill at stage 1.

15:05

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I am pleased to support the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. I believe that it has successfully addressed the problems that were highlighted when legislation on the issue was last considered in Scotland. In 2005, in conjunction with the Westminster Government, I launched the joint consultation “Forced Marriage—A Wrong Not a Right”, to examine whether legislation to create a specific criminal offence would help to combat forced marriage. At that time, the majority of respondents felt that making forced marriage a criminal offence could be counterproductive because it might deter victims from seeking help for fear of the legal repercussions for their families. Consequently, the proposals in the consultation were dropped for the time being.
I am pleased to say that the forced marriage bill that has come before the Equal Opportunities Committee achieves the right balance between categorically setting out Scotland’s opposition to this breach of an individual’s human rights and providing realistic and sensitive access to protection for its victims. The forced marriage protection order creates a simple and understandable legal recourse that will enable a court to both prevent and require certain actions on the part of the perpetrator, thereby ensuring that an appropriate response is tailored to the individual circumstances of each case.

Unlike south of the border, where breach of a protection order is classed only as contempt of court, in Scotland, breach will constitute a criminal offence, with penalties of up to two years in prison for the most serious offences and/or a fine. Together, the provisions will create a strong deterrent to potential perpetrators and send out a clear signal that forced marriage will not be tolerated in Scotland. That message came through strongly in the evidence that was presented to the committee.

However, witnesses were also clear that the bill will live up to its potential only if it is accompanied by a strong public awareness and education campaign. As Assistant Chief Constable Iain Livingstone of ACPOS told the committee:

“The bill’s ... value lies in its public message. We need to bring the matter into the open and to secure an absolute consensus that forced marriage will not be tolerated”.— [Official Report, Equal Opportunities Committee, 23 November 2010; c 2175.]

The committee strongly supports that view and agrees that legislation needs to be supplemented by a strong public awareness raising campaign.

Another strength of the bill is the provision that allows forced marriage protection orders to be sought by third parties including a local authority, the Lord Advocate, or a person specified by Scottish ministers. That will ensure that we have a victim-centred approach by reducing the burden of responsibility on the victim and—at least in theory—by ensuring that the victim receives continuing support through monitoring and aftercare.

However, the committee seeks clarification on a number of points, including which roles or sectors within a local authority will be able to make third-party requests, whether specialist support agencies will also be granted third-party status and, if so, what criteria will be used to decide which organisations qualify, and whether further information will be provided about the continuing responsibilities of third parties to monitor and implement aftercare services. That detail is vital because, as the joint submission from Scottish Women’s Aid, Shakti Women’s Aid and Hemat Gryffe Women’s Aid states,

"it is absolutely crucial that those directly involved in applying for Orders do not simply have this responsibility "bolted on" to their other duties and that care and attention will be taken to ensure that this work is regarded as a specialised support area."

I am pleased that the Scottish Government has committed to providing statutory guidance to support the legislation and I look forward to consultation on the guidance in the near future. I hope that it will provide essential information for third parties, the police, the judiciary and so on about the practical implementation of the bill, and that it will provide strategies for wider public education campaigns for, for example, health and education providers and local communities.

I wanted to say something about the interrelation with immigration issues, but I see that time is running out, so I will merely conclude by saying that, although the scale of forced marriage in Scotland might be relatively small, the impact is extremely big and it cannot and must not be tolerated. The bill and its accompanying guidance will provide some much-needed relief for those who have nowhere else to turn.

15:09

Sandra White (Glasgow) (SNP): I thank Mary Mulligan for her positive response. It has been noted. I also pay tribute to my colleague Bashir Ahmad, who felt strongly about the issue—I think that we all know that—and who led a Government debate on the subject in this very Parliament in 2008. He was clear in his speech in that debate and in the many conversations that I had with him about the issue that arranged marriage with the consent of all is not to be confused with forced marriage. That message has come across well in today's debate.

I congratulate the Equal Opportunities Committee, of which I was a member for a number of years, on its work on the bill. As other members have pointed out, the issue is very emotive. It is not always easy to put emotions to one side when considering legislation, but the Equal Opportunities Committee has managed to do so very successfully.

One thing that we must remember is that although, as the minister has said, the problem predominantly affects women, it can also affect men. Indeed, I was reminded of that fact by a number of young men who spoke to me after a debate on the subject in which I participated in Glasgow city chambers.

Abuse in forced marriages can take many forms: rape, domestic violence, beatings, forced slavery and the victim’s inevitable feeling of
helplessness. Perhaps the worst aspect is that the helpless people who are subjected to that continual violence and abuse are also cut off from the outside world and from help; basically, they have been abandoned by the vast majority of the community. I simply do not know how they manage to cope with having to live in such a terrible atmosphere. Anne McLaughlin was very articulate in highlighting the situation that was faced by one of her constituents, but there are many more such people out there.

We need to get what is a very forward-looking bill right for the victims. I sincerely hope that it gives people the courage to come forward to get the help and guidance that will be provided. I note and welcome the minister’s comments in that respect.

The UK forced marriage unit has stated that in 2009 it dealt with 375 actual forced marriage cases. Up until 2009, approximately 10 per cent per year—or, under the 2009 figure, 40 cases—involved people from Scotland. As Malcolm Chisholm and others have pointed out, that might not seem like a huge number, but given the population differences between England and Scotland, that 10 per cent is quite a large number for a country the size of Scotland. As a result, I ask the minister whether during the bill’s passage and when it comes to fruition, the number of cases, which I hope will not rise, will be monitored.

Finally, with regard to section 2(3)(g), the Law Society of Scotland has said that,

“given that forced marriage legislation is already in place in England and Wales it would suggest substituting ‘United Kingdom’ with ‘Scotland’.”

Is the minister seeking to amend the bill to follow that recommendation or will it be up to members to do so?

I think that we all agree that we need to do something about forced marriages, and I welcome the contributions that have been made by members of all political parties. I look forward to the bill going through Parliament and coming to fruition to give justice to the people in this country who are suffering in forced marriages.

15:13

Marlyn Glen (North East Scotland) (Lab): I am pleased that the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill has at last come before Parliament, thereby allowing us to catch up with legislation in the rest of the UK, and that it will make a breach of an FMPO a criminal offence. I understand the reservations that some witnesses have expressed about that move, but the most important thing is to send a strong signal that Scottish society does not condone forced marriage.

Such marriages have been described as low incidence but high impact, so the issue will not be easy to deal with, but we need to protect all our citizens, whatever their circumstances. Moreover, it must be recognised that human rights cannot be seen to be diluted by culture.

Forced marriage is recognised as a specific manifestation of domestic abuse that can affect both men and women, although in most cases it will be young women and girls who are likely to be forced into marriage. Given that evidence can come to light only after the victim complains of domestic abuse—and when, after further inquiry, it appears that there has, in fact, been a forced marriage—I welcome the fact that the legislation will help victims of forced marriages in the past.

As we have heard, there is broad agreement on the bill’s principles; that consensus will allow us to have a real discussion about the details. Although amendments will be lodged at stage 2, they will be largely technical and will cover, for example, the bill’s definition of relevant third parties applying for a protection order and, as we have heard, its definition of force.

The committee report goes into a lot of detail, but I want to concentrate on one or two issues. The definition of forced marriage that the Scottish Government uses is taken from the UK forced marriage unit’s definition, which says:

“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 cannot) consent to the marriage and duress is involved.”

The report asks the minister to reconsider the use of that definition. Committee members heard evidence of women being forced into marriage to act as carers for physically or mentally disabled spouses or to produce an heir. The distress that is caused by such situations is hard to imagine. There is no informed consent from either partner in those situations. One may have been duped or coerced into the marriage, and the other may not have been capable of giving consent. However, there need not necessarily be duress in the case of a person with learning difficulties, for example. Such a person may not be able to give consent, so the marriage is forced. The definition is not included in the bill, but it still needs to be reconsidered.

That scenario also makes me question the Law Society of Scotland’s suggestion that forced marriage protection orders should have a maximum time limit of five years, unless perhaps a review procedure is to be included. Again, I am concerned about people with permanent learning disabilities. If such people are unable to give consent, the passage of time will not change that fact. A permanent FMPO would therefore be more appropriate in the circumstances.
I welcome the minister’s commitment to all the work that he outlined, and I look forward to hearing his response and to the further passage of this important bill.

The Deputy Presiding Officer (Trish Godman): We move to the winding-up speeches. Hugh O’Donnell has a tight four minutes.

15:16

Hugh O’Donnell: It seems almost no time since I stood up for my opening speech. Unfortunately, this is a very limited debate. I would have welcomed having much more time for it, because it is clear from the speeches that we have heard that people have an interest in the subject, as is only right.

Several members have made the valid point—perhaps I did not make it as clearly as they did—that the difference between an arranged marriage and a forced marriage must be recognised, and that must be followed through in how we engage with communities. We must ensure that they understand such things and that people know what the law is. Sandra White referred to Bashir Ahmad, who spoke eloquently and frequently about that issue, including to me. His contribution in that regard as a person from one of Scotland’s ethnic minority communities was valid, important and significant.

I am not sure where we will get the resources to ensure that, alongside the bill in its final form, the necessary educational framework will be provided. There is concern, which others have voiced, that if we use the legislation as a bolt-on to the responsibilities of women’s aid groups, we will further stretch their resources to do the work that we expect them to do. I hope that, in his winding-up speech, the minister will clarify how things may work, where the targeting will be and how the targeting will be achieved to ensure that people in public agencies, the voluntary sector and community groups are given the information that they need—whether in English or other languages—to make sure that the wider community understands what is going on. A little bit of resource will be needed. I am interested to hear from the minister how resources will be allocated and used, what guidance will be given, what suggestions will be made, and what consultation will take place. Any legislation can be put on to the statute book, but if people do not know that it is there for their protection, they will not use it. It is important that we have a framework or strategy to address those issues as we progress matters.

Marilyn Glen raised the issue of duress. Definitional challenges have been posed, and I agree that there must be some way of overcoming them, but duress takes place in many ways, shapes and forms, of course. I support her view on the issue of what we might call a sunset clause for protection orders. For people who have a learning disability, it might not be appropriate to have a time limit. We might need a case-by-case approach so that each individual case is reviewed over a given period. I would welcome the minister’s response on that, either during his summation or during further discussions with the committee.

I get the sense that we all support the bill at stage 1. Certainly, the Liberal Democrats will support the bill at decision time.

15:20

Jamie McGrigor (Highlands and Islands) (Con): As members have said, we are clear that there is a key and fundamental distinction between forced marriages, in which one or both people are forced to marry against their free will and which often involve abduction or abuse, and arranged marriages, to which both parties give their free consent. Although the evidence suggests that the incidence of forced marriage in Scotland is low—we support moves to improve the collection of data on that—it is an extremely high-impact occurrence, so it is right that the Parliament should take strong action against it. It is also right that we bring Scotland into line with legislation elsewhere in the UK to prevent forced marriage and protect victims.

In paragraph 16 on page 5 of the Equal Opportunities Committee’s stage 1 report, I read about the distressing case that was outlined by Laura McCrum of Saheliya in which a young girl of 15, the bride, and a young disabled British national with learning difficulties were turned into tragic victims through no wish of their own and to their considerable detriment through a forced marriage. That is the sort of thing that we hope the bill will prevent. The bill sets out Scotland’s position on forced marriage—namely, that we will not condone it.

There is widespread general support for the bill from many organisations, including Shakti Women’s Aid, Black and Ethnic Minority Infrastructure in Scotland, the Scottish Council of Jewish Communities and ACPOS, to name but a few. I was struck by the comments of Assistant Chief Constable Iain Livingstone of ACPOS, who told the committee:

“The bill’s ... value lies in its public message. We need to bring the matter into the open and to secure an absolute consensus that forced marriage will not be tolerated.”—[Official Report, Equal Opportunities Committee, 23 November 2010; c 2175.]

We support the committee’s calls for the Scottish Government to continue to engage with all
relevant religious authorities on the issue of nullification of forced marriages, to raise awareness of the bill among all religious organisations and communities and to ask for their points of view.

When the Parliament debated the issue in December 2008, as the then communities spokesman for the Scottish Conservatives I said that we were ready to work with the Scottish Government to ensure that the legislation “is as effective as possible, in the interests of all victims and potential victims of forced marriage.”—[Official Report, 4 December 2008; c 13143.]

That remains our approach. We look forward to the subsequent stages of the bill and to achieving a positive outcome for all in what is a sensitive area.

Louise Johnson told the committee:

“The beauty of having a forced marriage protection order is that it does what it says on the tin”.—[Official Report, Equal Opportunities Committee, 23 November 2010; c 2180.]

She beautifully summed up what the bill should do.

15:23

Elaine Smith (Coatbridge and Chryston)(Lab): Consensus seems to have broken out in the chamber this afternoon in what has been a regrettable short debate on an important subject. I agree with my colleague Mary Mulligan that it would have been better to have had the bill sooner but, that said, because of the wait we now have a better bill.

In closing for the Labour Party, I speak in support of the general principles of the bill, which will bring us into line with other parts of the UK. As has been said, the Equal Opportunities Committee expects the Scottish Government to lodge amendments at stage 2 on various matters, many of which were outlined by the committee convenor, Margaret Mitchell, in her opening remarks. We on the Labour benches are clear that the bill is needed to try to stop the horrendous practice of forcing anyone into marriage, whether male or female, but as Marlyn Glen made clear, we recognise that it is mostly young women and girls who are likely to be in that situation. According to Karma Nirvana, 14 per cent of callers to the forced marriage unit are under 16. The committee heard in evidence that the youngest victim that the FMU has dealt with was aged only nine.

Forced marriage is clearly part of the continuum of violence against women and is completely unacceptable. It must, therefore, be exposed and challenged.

The harm to women and girls is becoming clearer as more find the help, support and—importantly—the courage to speak out and to try to leave their situation. Victims seek support from various places, including women’s aid organisations, rape crisis centres and mental health support services. In many cases, only when they seek such help—perhaps for domestic abuse or other issues—does it become apparent that they are in forced marriages.

Harrowing examples were provided to the committee. Some are outlined in the report, and we heard about real-life cases from Anne McLaughlin and, latterly, Jamie McGrigor. I will quote from Jasvinder Sanghera, the author of “Shame”, who founded Karma Nirvana in 1994. The charity, whose name means “peace and enlightenment”, helps the victims of so-called honour crimes and operates a phone line to help the victims of forced marriages. In an article in The Guardian, Jasvinder said:

“I came from a family of seven sisters, and I watched each of them disappear. They’d be taken out of school, sent abroad, and brought back as wives...I saw my sister suffer horrific domestic violence.”

She said:

“When I was 14 my mother showed me a photo of the man I’d been promised to since I was eight years old. I refused to marry him, and for that I was abused, physically and mentally”.

Later, Jasvinder discovered that one of her sisters, Robina, had committed suicide aged 24. She described it:

“She’d doused herself in paraffin and set herself on fire. She knew that because of izzat, or shame, that suicide was the only way out of her marriage.”

There are many such stories of women being beaten, raped, locked up in bedrooms for months on end and murdered. The list of atrocities is huge, and they are being suffered by young women in Scotland as we speak. That is why legislation is important to raise awareness about forced marriage and, ultimately, to stop it happening. Malcolm Chisholm spoke about raising awareness and reiterated why it is so important.

There must be no confusion among official organisations or anyone else about the fact that forced marriage is not cultural but abuse. Sandra White emphasised that in her speech.

Although the bill is a positive step in offering protection to victims of forced marriage and sends a strong message that the practice will not be tolerated in Scotland, it needs amendment. For example, the definition of forced marriage that the Government uses states, “duress is involved”. However, as Marlyn Glen outlined, it could also involve a lack of understanding, so the Government needs to revisit that definition.
Perhaps we will hear something about that in the minister’s closing speech.

Section 1(6) is drafted to assume that major force is included. However, having reflected on the evidence, the committee would like an amendment to strengthen that provision and to make it explicit in the bill, as Bill Aitken outlined. I suggest that the Labour Party would support that, too.

I am pleased that the minister has committed to considering amendments. He has heard various suggestions in the debate.

Hugh O’Donnell raised the matter of religious practices. The committee was keen for the Government to liaise further with religious bodies on nullification of forced marriages. I am pleased to have heard a commitment to that in the minister’s opening speech.

It is difficult to imagine the suffering that those in forced marriages endure, but the bill may give hope to many and provide them with a means of escape to live their lives in peace away from the all-encompassing shadow of fear.

I conclude with more of Jasvinder’s words. Talking about the research for her second book, “Daughters of Shame”, she said:

“I listen to those stories—told by women who have been drugged, beaten, imprisoned, raped and terrorised within the walls of the homes they grew up in. I listen and I am humbled by their resilience.”

Labour will support the general principles of the bill at decision time, but we look forward to seeing the amendments that will address our concerns.

15:28

Alex Neil: Although this has been a short debate, it has been a high-quality one and there is a great deal of consensus around the chamber.

As Sandra White did, I pay tribute to the work of the late Bashir Ahmad, who was keen that we pass such legislation.

I also make it absolutely clear that we will respond positively to the committee’s recommendations. If we are unable to accept a recommendation, we will give a detailed explanation as to why and, if appropriate, offer alternatives. We are all singing from the same hymn sheet on forced marriage and we all want to ensure that the bill fits the bill for what we are trying to do.

I will give some indication of our current thinking on some of the points that have been raised by all parties, although in the short time that is available I will not be able to cover all the points that were raised.

Everybody mentioned the definition of force. I confirm that we will consider the committee’s recommendation on section 1(6). The committee made a fair point and we will give empathetic consideration to it.

On the power of arrest, we do not think it necessary to include an express general power of arrest, because such a power already exists. However, we will consider, with the committee, whether the bill ought to include a specific power for a constable to arrest without warrant a person who is reasonably believed to be breaching, or to have breached, an order.

We will give genuine consideration to the other points that members made. Sandra White mentioned the letter from the Law Society of Scotland. This relates to a minor amendment, but I am happy to consider the Law Society’s suggestion that section 2(3)(g) be amended to substitute “Scotland” for “United Kingdom”—not for any narrow, nationalist reason but because it is a reasonable suggestion, which will no doubt carry unanimous support in the Parliament.

I very much take on board Hugh O’Donnell’s points about resources and the points that Malcolm Chisholm, Sandra White and other members made about implementation and, in particular, the need for education, awareness and training. We will consider our approach to that.

We will consider data collection, which a number of members mentioned. I do not want to underestimate the challenge of data collection. However, we think that we can improve data collection, through partnership working and learning from successful work such as the roll-out in the health sector of routine inquiry about gender-based violence. That is an example of an area in which we can improve data collection.

We will also take positive steps in relation to the police’s approach to identifying cases of honour-based violence. An objective of the work of the national group to address violence against women and the forced marriage network is to improve statistics, not just on forced marriage but on the agenda across the board. We have written to the chief statistician to seek his support in achieving that objective.

Hugh O’Donnell: Will victims automatically appear on the vulnerable persons database, which the police manage, and will that be flagged up through partnership agencies that have access to the VPDB?

Alex Neil: I imagine that that will normally be the case, but there are situations in which the police have discretion to decide what appears on the database. I do not want to interfere in that operational discretion, because part of the issue is protection and we must ensure that we do not do
something that has indirect consequences, to which we have not given proper thought. However, the member has made a fair point.

Bill Aitken talked about marriages that take place abroad. I dealt with the issue in detail when I appeared before the committee. By passing the bill we will send a clear message to other countries and to people in other countries that forced marriage is not acceptable, and we will join countries that want to end the practice, not just in their countries but worldwide.

We will co-operate with Interpol, international organisations and the UK Government as appropriate, to ensure that an individual who attempts to bypass the legislation on forced marriage is brought to justice in Scotland or in another jurisdiction—in some cases, people who have broken the law in Scotland will be brought to justice in other jurisdictions. We will work with other jurisdictions to ensure that that happens.

We will seriously consider the suggestions for amendment and improvement to the bill. I am happy to talk to all concerned parties, including the committee, because the Government is keen that we maintain consensus—indeed, unanimity—on the subject. The greater the unanimity, the louder the message that goes out from the Parliament that the days of forced marriage in Scotland are over.
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL
RESPONSE TO EQUAL OPPORTUNITIES COMMITTEE STAGE 1 REPORT

At the Stage 1 debate of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill held on 2 February 2011, I gave an undertaking to respond to the detailed points raised in the Equal Opportunities Committee’s Stage 1 Report as well as those identified by the Subordinate Legislation Committee.

I am grateful to the Committee for its detailed scrutiny of our proposals and considered conclusions in the Stage 1 Report and I am now writing in response to set out the Government’s position on each of the Report’s recommendations. These are detailed in Annex A of this letter.

I can also now clarify that Government intends to bring forward the following amendments to the Bill at Stage 2:

1) Mandatory guidance

An amendment to section 11(1)(a) to require the Scottish Ministers to provide guidance to such persons as they consider appropriate about the effect of Part 1 of the Bill.

2) Referrals to Reporter under Children’s Hearings (Scotland) Act 2011

A new provision to amend the meaning of “relevant proceedings” in section 62(5) of the Children’s Hearings (Scotland) Act 2011 to include proceedings for, or relating to, a protection order under Part 1 of the Bill.
The purpose is to ensure that where, in the course of such proceedings, a court considers that a section 67 ground (other than where the child has committed an offence) might apply in relation to a child, the court may refer the matter to the Principal Reporter.

3) Example term – to refrain from taking person elsewhere in Scotland

An amendment to section 2(3)(f) to make it clear that the order may also require a person to refrain from taking a protected person to another part of, or outside, Scotland.

4) Example term – to facilitate return to Scotland or any part of Scotland

An amendment to section 2(3)(g) to make it clear that the order may also facilitate or enable a person to return to Scotland, or any part of Scotland.

5) Power of arrest without warrant

A new provision to enable a constable to arrest without warrant any person reasonably believed to be committing or to have committed an offence under section 9(1) but without prejudice to any other power of arrest conferred by law.

I hope this reply is helpful

ALEX NEIL
RECOMMENDATIONS FROM THE EQUAL OPPORTUNITIES COMMITTEE'S STAGE 1 REPORT AND GOVERNMENT RESPONSE

Paragraph 9. The Committee has discussed this definition and questions the inclusion of the words "and duress is involved". Duress is often involved but that is not always necessarily the case. If there was no consent given, because for example, one party did not understand and so could not give consent, then it could still be a forced marriage. The Committee asks the Scottish Government to reconsider its use of this definition.

Response: The Government agrees that where forced marriage cases involve people with learning disabilities the issue of establishing the capacity to consent will be paramount when deciding whether the person is being or has been forced into marriage. The Government appreciates the Committee’s concern that this definition may be seen as inaccurate in relation to some cases involving people with learning disabilities and we acknowledge that it may be difficult to show in all cases that duress, be it physical or emotional, is being used against the person with a learning disability as sometimes this could take the form of very subliminal coercion or coaching.

Consideration must also be given to its use against the potential or actual spouse of the person with a learning disability who could in many cases be subject to duress themselves. Furthermore, revising the recognised and widely used definition to add in further qualifications in an attempt to clarify the issue relating to the use of duress in forced marriage cases, could actually lead to confusion and a diluting of the meaning of what a forced marriage is, at a time when here in Scotland we need to raise awareness and understanding of the issue amongst mainstream services who have very little experience of forced marriage and the support that victims require.

However, given the Committee’s concerns, balanced against the fact that the issue has not been raised by any of the witnesses during the Bill’s Stage 1 scrutiny or indeed in any other context, the Government feels it would be beneficial to explore this further and will therefore include a question relating to the definition in the statutory guidance consultation. We would also look to ensure that any future reference to the definition of 'forced marriage' which refers specifically to the meaning of 'forced marriage' in Part 1 of the Bill, would be consistent with that meaning.

85. The Committee acknowledges the Scottish Government’s view that section 1(6) is drafted in such a way as to assume that major force is included. However, it believes that the definition of “force” should be explicit in the Bill. It therefore supports the view expressed in evidence that the definition of “force” should be strengthened in the Bill by way of amendment to include the physical aspect of coercion and abuse in addition to threats or other psychological means. The Committee believes that by including this on the face of the Bill, it will reinforce the fact that physical violence will not be tolerated.

Response: The meaning of “force” bears its ordinary meaning which includes overpowering or compelling a person by physical means. For the purposes of Part 1 of the Bill, the ordinary meaning of “force” is supplemented by section 1(6) to include coercion by verbal threats and other psychological means. This makes it clear that the type of force used can be verbal, physical or mental. In light of the Committee’s recommendation, however, we propose to revise the explanatory notes to make it clear that the type of force used can be verbal, physical or mental.
106. The Committee notes the concerns expressed in evidence about sections 2(3)(f) and (g) and agrees that these provisions need to be tightened up. It therefore recommends that the Scottish Government should consider an amendment to section 2(3)(f) which would make it clear that an FMPO may require a person to refrain from taking a protected person to another part of Scotland or outside of Scotland. It also recommends that the Scottish Government considers an amendment to Section 2(3)(g) to substitute “United Kingdom” with “Scotland”.

Response: The Government will consider this further at Stage 2 with a view to bringing forward Government amendments to address these points.

110. The Committee acknowledges that the Bill does not make provision for FMPOs to specifically name the person who poses the risk to a protected person. It agrees with the Minister for Housing and Communities that there may be circumstances in which naming the person may present dangers to the protected person, but that there may also be circumstances in which the person should be named. The Committee recommends that the Scottish Government gives further consideration to bringing forward an amendment which would allow for the naming of the person who poses the risk in certain circumstances, which should be defined.

Response: Having considered carefully the Committee’s recommendation, we do not think that further provision is necessary. The person who poses the risk will be, and is intended to be, named in any order made against that person but there may be exceptional circumstances in which the court considers it necessary to withhold the name of that person.

130. The Committee acknowledges the evidence it received from local authorities seeking clarification of their role in relation to being designated a relevant third party. It also notes concerns expressed by other witnesses that the term “local authority” is too general and should be more specific in terms of who within a local authority can make a third party application.

131. The Committee notes the Minister’s comments that lead responsibility within each local authority may rest within a particular area, and that there is recognition of the need for a specialist team with the necessary skills to deal with the Bill.

132. It accepts that the term “local authority” may have been used in the Bill to cover all eventualities in terms of who within each authority can make an application for an FMPO. However, given the concerns expressed in evidence, the Committee asks the Scottish Government to look again at section 3(7)(a) and consider whether this needs to be more specific in relation to which relevant posts within a local authority can make a third party application.

Response: Posts and internally organised divisions within a local authority may change over time, but it is the authority as a body corporate which has the legal personality necessary to apply for an order. We do not think that it would be appropriate to specify which parts of each local authority should have responsibility for making such applications. Provision specifying that the local authority may apply is consistent with provision in relation to applications by local authorities for orders under other legislation including, for example, antisocial behaviour orders. It will therefore be for each local authority to decide how best to deliver and assign its functions under the Bill.
for a wide range of people who will be involved in implementing and using the legislation, including victims, third parties, schools, health services, victim support agencies, the police and the judiciary.

**Response:** The Government agrees with the Committee and will consult on the statutory guidance shortly, using the consultation as the start of awareness raising work with public sector organisations on forced marriage and their role in ensuring the safety of victims that they are supporting.

189. The Committee recognises the merit in commencing the Bill as soon as it receives Royal Assent. The Committee also recognises the merits of the requirement to consult on the guidance before it is issued. However, the issuing of guidance is critical to ensuring that the legislation works effectively; therefore the Committee recommends that this be issued as quickly as possible following the Bill coming into force.

**Response:** The Government agrees that guidance be issued as quickly as possible following the Bill's coming into force. It is critical to the success of the Bill's objectives that each of the organisations and agencies who will be responsible for implementing and operating Forced Marriage Protection Orders are fully aware of the new rules, options and procedures surrounding FMPOs before they become available to the courts. Consultation on draft guidance under the Bill and an awareness-raising and training programme is intended to begin as soon as possible after the Bill successfully passes its Stage 3 scrutiny, with the power to formally issue guidance, and the provisions relating to FMPOs being commenced once the additional rules of court are prepared and in place to allow court staff to effectively deal with FMPO cases.

193. The Committee asks the Scottish Government to provide further justification for the inclusion of Section 12 in the Bill. If the Government is minded to retain this section, the Committee invites it to consider the amendment suggested by the Law Society of Scotland. Its suggested amendment would substitute a provision which provides that the rights conferred by the Act do not prejudice any other action that might be taken at common law or under statute to prevent the occurrence of a forced marriage or any remedies available in respect of such a marriage.

**Response:** Section 12 makes it clear that other existing statutory and common law remedies are unaffected by the provision of the Bill and may continue to be sought as alternative remedies, or used in combination with the forced marriage protection provisions in Part 1 of the Bill. For the avoidance of doubt, we think it is better to set out what the main alternative remedies are, rather than to rely on a general reference to existing law.

201. The Committee acknowledges that the Bill cannot make changes to religious and governance practices. However, the Committee calls on the Scottish Government to continue to engage with relevant religious authorities on the issue of nullification of forced marriages and to raise awareness of the Bill among all religious organisations and communities.

**Response:** The Government has listened to what stakeholders and the Committee have said during the evidence gathering about concerns that victims could be “trapped” in a religious marriage once the civil marriage has been ended. We are committed to continue to engage with relevant religious authorities on the issue of nullification of forced marriages and to raise awareness of the Bill among all religious organisations and communities. The first of these forums will be with groups representing the Muslim community in Scotland.
133. The Committee notes that the Scottish Government is consulting with local authorities and COSLA on issues such as training and aftercare services. The Committee believes these are vital in terms of the Bill’s victim centred approach. However, in light of concerns expressed in evidence about the ongoing monitoring of cases following the issue of an FMPO, the Committee asks the Scottish Government to provide it with further information on the ongoing responsibilities of all third parties to monitor and implement aftercare services, and to consider whether the Bill and the guidance on the Bill needs to reflect these important responsibilities.

Response: We intend to include relevant information on the ongoing responsibilities of all third parties in the accompanying statutory guidance. We propose to submit a final draft of the first such substantive guidance to the Equal Opportunities Committee for consideration, once it has gone through the formal public consultation process, prior to its publication and wider dissemination.

159. In light of concerns expressed in evidence, the Committee calls on the Scottish Government to provide greater clarity on how the reporting and notification procedure for acting upon a breach of an FMPO will operate, particularly regarding who will have the authority to report the breach of an FMPO.

Response: Forced marriage protection orders are civil orders that carry a criminal penalty for breach. We envisage, as with any other civil order, that the applicant or the protected person would be the persons who would either go to court or report the matter to the police in relation to any criminal offence. However, any person including, for example, a friend or relative of the protected person (even if not directly affected by the order) may of course report a breach of a FMPO to the police for investigation.

160. The Committee is persuaded by the arguments put forward by witnesses, including ACPOS, for the Bill to be consistent with other legislation by placing a power of arrest on the face of the Bill. It recommends that the Scottish Government should lodge an amendment in this regard.

Response: The Government does not think that it is necessary to include an express general power of arrest because the police already have common law powers for this. However, in light of the Committee recommendation, we intend to bring forward an amendment at Stage 2 to add a specific power for a constable to arrest without warrant any person reasonably believed to be committing, or have committed, a breach of an order under Part 1 of the Bill.

187. The Committee supports the provisions at Section 11 of the Bill which provide for statutory guidance on the Bill to be published. It welcomes the commitment made by the Minister for Housing and Communities to lodge an amendment which will ensure that the Scottish Government “will” rather than “may” issue guidance.

Response: The Government intends to bring forward an amendment at stage 2 to require the Scottish Ministers to provide guidance as appropriate in relation to the provisions in Part 1 of the Bill.

188. The Committee acknowledges that whilst this legislation is an important step in tackling the issue of forced marriage in Scotland, it must be supplemented by guidance and training
205. The Committee notes that whilst the SLC determined that it did not need to draw the attention of the Parliament to the delegated powers in sections 10(1), 11, 15(1) and 18(2), it did make a recommendation in relation to the power at section 3(7)(c).

206. The Subordinate Legislation Committee recommends that the power at section 3(7)(c), to specify a person, or a person falling within a description of persons, as a relevant third party, should be amended so that it is subject to a requirement on Ministers to consult the Lord President prior to making an order.

Response: The position in the Bill at present is that the leave of court must be obtained before an application for a FMPO may be made. The exceptions are the protected person and "relevant third parties". The power to extend the group of relevant third parties in section 3(7)(c) is expected to be used only sparingly and in relation to persons with a clear interest in seeking a FMPO on behalf of victims of forced marriage. Consequently, it is not considered necessary for the Lord President to be consulted whenever the power is exercised, notwithstanding the removal of the courts' discretion to entertain an application from a person designated a relevant third party. Therefore at present the Government is not minded to bring forward an amendment in relation to this recommendation.

214. The Committee acknowledges that a situation may arise where the immigration status of a victim of a forced marriage makes the Crown's actions in relation to an FMPO unlawful. The Committee notes the Lord Advocate's response that section 17 protects the Crown from criminal liability if it were to breach an FMPO, but allows a public body to seek a declaration from the Court of Session that the Crown has acted unlawfully. It further notes that the Lord Advocate does not anticipate practical difficulties in the application of these provisions to the Crown Office and the Procurator Fiscal Service.

215. The Committee asks the Scottish Government to clarify the position in relation to the interaction that immigration status will have on the treatment of an applicant following an FMPO being made.

Response: The flexibility of the forced marriage protection regime enables the courts to take account of the immigration status of any person affected by a forced marriage protection order so as to avoid any conflict with the responsibilities of immigration authorities. If a person's immigration status changes, a variation of the order could be sought, if necessary.

The Government is conscious of how the forced marriage issue connects with the immigration issue and would wish to make sure as far as possible that the Lord Advocate and Crown carry out their duties as normal but not if it conflicts with a forced marriage protection order. In those circumstances, we want to give the Lord Advocate and Crown a degree of flexibility but our main emphasis always has to be on the side of the victim.

221. The Committee accepts the assurances provided by the Minister that the Scottish Government will ensure that provisions in the Bill are compatible with the Children Hearings (Scotland) Act 2011 and other relevant legislation.

Response: The Government will bring forward an amendment at Stage 2 to add proceedings for a Forced Marriage Protection Order to the list of proceedings in relation to which a referral may be made to the Children's Reporter under the 2011 Act.
Present:
Marlyn Glen (Deputy Convener) Jamie Hepburn
Christina McKelvie Stuart McMillan
Margaret Mitchell (Convener) Hugh O'Donnell
Elaine Smith

Apologies were received from Malcolm Chisholm.

**Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill:** The Committee considered the Scottish Government's response to its Stage 1 report.
Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill

10:08

The Convener: The second item of business is consideration of the Scottish Government’s response to our stage 1 report on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. Stage 2 of the bill will be taken at next week’s committee meeting. Are there any comments on the response, which members have in front of them?

Elaine Smith: Overall, I think that the Government has picked up on many of the issues that we raised during our deliberations on the bill. It is difficult to comment further until we see the Government’s amendments, but on the whole it has covered a lot of the issues and has even suggested that certain things should be clarified in guidance.

Marilyn Glen: I am pleased that in response to what we said in paragraph 9 of our report about the reference to duress in the definition, the Government has said that it will explore the issue and include a question on it in the consultation on the guidance.

The Government has covered virtually everything that we picked up on at stage 1. In response to our comment in paragraph 201 about religious and governance practices, the Government said that it is “committed to continue to engage with relevant religious authorities ... The first of these forums will be with groups representing the Muslim community in Scotland.”

Can we ask when the forum will take place?

The Convener: Perhaps we can ask the minister about that next week at stage 2—[ Interruption.] The clerk tells me that we can try to get the information before then, which would be even better.

Marilyn Glen: That would be good.

The Convener: It is encouraging that the Government has taken up so many of our recommendations and will lodge amendments that will address the points that we made.

Christina McKelvie: I am delighted that the Government will lodge an amendment, the effect of which will be to ensure that proceedings for a forced marriage protection order will be added to the list of proceedings in relation to which a referral may be made under the Children’s Hearings (Scotland) Act 2011.

The Convener: That is a nice tidying up of the situation.
Forced Marriages etc. (Protection and Jurisdiction) (Scotland) Bill – Response from Minister for Housing and Communities

Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Forced Marriages etc. (Protection and Jurisdiction) (Scotland) Bill on 8 December 2010 in its 67th Report of 2010.

Government response

2. The Committee was satisfied with the choice of negative procedure for the power in section 3(7)(c) (Power to specify a person, or a person falling within a description of persons, as a relevant third party). However, it did recommend that the Government should amend the power, making a requirement for Ministers to consult the Lord President before making an order.

3. The Equal Opportunities Committee also agreed with this recommendation.

4. In his response, the Minister for Housing and Communities argues that as this power is expected to be used only sparingly and in relation to persons with a clear interest in seeking a Forced Marriage Protection Order on behalf of victims of forced marriage, it is unnecessary to consult the Lord President whenever the power is exercised.

5. The Subordinate Legislation Committee will give further consideration to the delegated powers contained in the Bill after Stage 2.

Recommendation

6. Members are invited to note the Government’s response on this matter and to reconsider the powers in the Bill after it has completed Stage 2.

Irene Fleming
Clerk to the Committee
Correspondence from the Scottish Government dated 14 February 2011

FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

I am writing in response to one of the Subordinate Legislation Committee's recommendations included in the Equal Opportunities Committee's Stage 1 Report for the above Bill.

In paragraph 206 of the Report, the Equal Opportunities Committee agreed with the Subordinate Legislation Committee's recommendation that the power at section 3(7)(c) of the Bill, to specify a person, or a person falling within a description of persons, as a relevant third party, should be amended so that it is subject to a requirement on Ministers to consult the Lord President prior to making an order.

The position in the Bill at present is that the leave of court must be obtained before an application for a FMPO may be made. The exceptions are the protected person and “relevant third parties”. The power to extend the group of relevant third parties in section 3(7)(c) is expected to be used only sparingly and in relation to persons with a clear interest in seeking a FMPO on behalf of victims of forced marriage. Consequently, it is not considered necessary for the Lord President to be consulted whenever the power is exercised, notwithstanding the removal of the courts' discretion to entertain an application from a person designated a relevant third party.

Therefore at present the Government is not minded to bring forward an amendment in relation to this recommendation.

ALEX NEIL
MINISTER FOR HOUSING AND COMMUNITIES
SUBORDINATE LEGISLATION COMMITTEE

EXTRACT FROM THE MINUTES

5th Meeting, 2011 (Session 3)

Tuesday 22 February 2011

Present:

Bob Doris (Deputy Convener)       Helen Eadie
Rhoda Grant                      Alex Johnstone
Ian McKee                        Elaine Smith
Jamie Stone (Convener)           

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill: The Committee considered the Scottish Government's response to its Stage 1 report and agreed to write to the Minister for Housing and Communities requesting that the Lord President be consulted before making an order under the power in section 3(7)(c).
Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: After Stage 1

14:24

The Convener: We have seen the Government’s response to our stage 1 report. We questioned only one power at stage 1. However, in this case, although we were content with the power itself, we had asked for a requirement for consultation with the Lord President before making an order. The minister considers that that is unnecessary.

Do members have strong views, given what the minister said, or are we happy to note the response at this stage and reconsider the bill in a couple of weeks’ time, after it has completed stage 2?

Helen Eadie: We should go back to the Government and say that, even if only as a matter of courtesy, the Lord President should be consulted. Whether to consult him is a value judgment, but I think that it would be appropriate.

The Convener: Is that the view of colleagues?

Bob Doris (Glasgow) (SNP): No. Is it not enough just to note the matter at this stage, rather than take a definitive view? We have raised the issue, so we could just note it.

The Convener: We have two opposing views.

Bob Doris: Do we get an opportunity to come back to the bill?

The Convener: We do.

Bob Doris: If this was the last opportunity for us to consider the bill and Helen Eadie was keen to do what she suggests, I would not object. However, if we have the opportunity to return to the matter at a later date, I suggest that we note it at this stage.

Helen Eadie: No. The Lord President would probably look at an order and think that it was okay, but it would be a bit of a cop-out if we did not ensure that it was put in front of him. I imagine that, if he was on the ball, he would already have had someone consider the matter.

Why is the Government resisting? Why not, as a matter of courtesy, send an order to the Lord President?

Bob Doris: I am not dead keen to push the matter. It would be for the minister to decide what was or was not courteous—not for the committee, which deals with legal matters. I have put it on the record that I do not think that it is necessary to pursue the matter, but I have no wish to break the committee’s harmony by opposing Helen Eadie’s suggestion. It is a little unnecessary but, by all means, pursue it.

Helen Eadie: Thank you, Bob.

The Convener: In that conciliatory and recorded manner we go forward.

What a splendid example of how the committee works. Let us hope that the next Parliament takes note of it. Some of us will not be here.
Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 18  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Marilyn Glen

10 In section 1, page 2, line 1, leave out <threats or other psychological> and insert <physical, verbal or psychological means, threatening conduct, harassment or other>

Section 2

Alex Neil

1 In section 2, page 2, line 25, leave out <abroad> and insert <from such place as the court may specify>

Marilyn Glen

1A As an amendment to amendment 1, line 1, after <from> insert <, or to,>

Alex Neil

2 In section 2, page 2, line 26, leave out from third <to> to end of line 27 and insert <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,>

Section 9

Alex Neil

3 In section 9, page 5, line 22, at end insert—

<\(1A\) A constable may arrest without warrant any person the constable reasonably believes is committing or has committed an offence under subsection (1).

\(1B\) Subsection \(1A\) is without prejudice to any power of arrest conferred by law apart from that subsection.>
Section 11

Alex Neil

4 In section 9, page 5, line 23, leave out <such an offence> and insert <an offence under subsection (1)>

Section 11

Alex Neil

5 In section 11, page 6, line 3, leave out <may> and insert <must, no later than the day on which section 1 comes into force,>

Alex Neil

6 In section 11, page 6, leave out line 6 and insert—

<( ) The Scottish Ministers may give guidance to such persons or descriptions of persons as Ministers consider appropriate about matters (other than that mentioned in subsection (1)) relating to forced marriages.>

Alex Neil

7 In section 11, page 6, line 7, leave out <subsection (1)> and insert <this section>

Alex Neil

8 In section 11, page 6, line 9, leave out <subsection (1)> and insert <this section>

Section 12

Elaine Smith

11 In section 12, page 6, line 17, leave out <equitable jurisdiction> and insert <nobile officium>

After section 12

Alex Neil

9 After section 12, insert—

<Amendment of Children’s Hearings (Scotland) Act 2011

(1) The Children’s Hearings (Scotland) Act 2011 (asp 1) is amended as follows.

(2) In section 62(5) (provision of information by court)—

(a) the word “or” immediately following paragraph (l) is repealed,

(b) after paragraph (m) insert—

“(n) an application for the making, variation, recall or extension of—

(i) a forced marriage protection order (as defined in section 1(6) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 00)), or
(ii) an interim forced marriage protection order (as defined in section 5(2) of that Act),

(o) civil proceedings in which a court makes an order such as is mentioned in sub-paragraph (i) or (ii) of paragraph (n) by virtue of section 4(1) of that Act (power to make order without application), or

(p) proceedings relating to an offence under section 9(1) of that Act (offence of breaching order).”

(3) In section 67(2) (meaning of “section 67 ground”)—

(a) in paragraph (p)(i) the words “marriage or” are repealed,

(b) after paragraph (p) insert—

“(q) the child—

(i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 00)) or,

(ii) is, or is likely to become, a member of the same household as such a child.”.>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Definition of force**
10

**Contents of forced marriage protection orders**
1, 1A, 2

**Breach of forced marriage protection orders: arrest without warrant**
3, 4

**Duty to give guidance about effect of Part 1**
5, 6, 7, 8

**Matters unaffected by Part 1**
11

**Amendment of Children’s Hearing (Scotland) Act 2011**
9
Present:

Malcolm Chisholm  Marlyn Glen (Deputy Convener)
Jamie Hepburn  Christina McKelvie
Stuart McMillan  Margaret Mitchell (Convener)
Hugh O'Donnell  Elaine Smith

**Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill:** The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 10, 1A, 1, 2, 3, 4, 5, 6, 7, 8, 9.

Amendment 11 was moved and, with the agreement of the Committee, withdrawn.

Sections 1, 2, 9, 11, were agreed to as amended.

Sections 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18 and the long title were agreed to without amendment.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament

Equal Opportunities Committee

Tuesday 1 March 2011

[The Convener opened the meeting at 10:06]

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: Stage 2

The Convener (Margaret Mitchell): Good morning everyone, and welcome to the fourth meeting in 2011 of the Equal Opportunities Committee. I remind all those present that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system.

The first item on the agenda is consideration of amendments at stage 2 of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. There are 12 amendments, which have been organised into six groups.

I welcome Alex Neil MSP, Minister for Housing and Communities, and his officials: Lesley Irving, team leader, equality and communities division; Eileen Flanagan, policy manager, equality and communities division; David McLeish, assistant Scottish parliamentary counsel; and Mark Eggeling, solicitor for the Scottish Government.

We move to consideration of the bill.

Section 1—Forced marriage protection orders

The Convener: Amendment 10, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen (North East Scotland) (Lab): This issue was discussed quite widely in the committee’s evidence sessions. I understand that, as the minister said in his response, there is an assumption in the bill that major force is included. However, our witnesses suggested strongly that the definition should be made explicit in the text of the bill, and amendment 10 attempts to do that.

I agree that it is essential to revise the explanatory notes to make that absolutely clear, and I would appreciate it if the notes also included mention of threat of blackmail and the use of deception. However, I would like members to consider amendment 10, to make it clear to everyone—not just legal experts—that physical force is indeed included in the bill. I agree with our witnesses that including it in the text of the bill would give a much clearer message.

I move amendment 10.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I support amendment 10. If Scottish Women’s Aid and the Association of Chief Police Officers in Scotland have come together on an amendment, that creates quite a powerful coalition, and I cannot see that there is any argument against it in principle. Apart from anything else, it reads better: the phrase “threats or other psychological means” was always slightly ambiguous anyway. It is very important that it is explicit in the text of the bill.

The Minister for Housing and Communities (Alex Neil): I indicated at stage 1 that I would consider this issue further, since it was raised by witnesses including those from the Association of Chief Police Officers in Scotland and Scottish Women’s Aid. After consideration, I decided not to lodge an amendment in this regard, on the basis that it was clear that the type of force that is used can be physical, verbal or psychological, as the ordinary meaning of the word “force” includes overpowering or compelling a person by physical means. Section 1(6) provides that it also includes coercion by verbal threats “or other psychological means”.

However, I appreciate the sentiments behind the police and Scottish Women’s Aid calling for an amendment such as amendment 10, to ensure that the bill sends out an unequivocal message, using unambiguous language, to those who might use it or who could be subject to it, that coercing someone to enter into a marriage by physical violence or any other means is unacceptable and will be punishable, alongside the other types of behaviour that can be used to force someone into a marriage.

I have noted the points that Marlyn Glen made as she spoke to her amendment, and I accept amendment 10 in her name. I furthermore take the points that she made about the explanatory notes, and I will amend them accordingly.

Marlyn Glen: I thank the minister for taking on board the points that have been made, and I am sure that the witnesses who were at the committee will take some reassurance from that.

Amendment 10 agreed to.

Section 1, as amended, agreed to.

Section 2—Contents of orders

The Convener: Amendment 1, in the name of Marlyn Glen, is in a group on its own.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I support amendment 10. If Scottish Women’s Aid and the Association of Chief Police Officers in Scotland have come together on an amendment, that creates quite a powerful coalition, and I cannot see that there is any argument against it in principle. Apart from anything else, it reads better: the phrase “threats or other psychological means” was always slightly ambiguous anyway. It is very important that it is explicit in the text of the bill.

The Minister for Housing and Communities (Alex Neil): I indicated at stage 1 that I would consider this issue further, since it was raised by witnesses including those from the Association of Chief Police Officers in Scotland and Scottish Women’s Aid. After consideration, I decided not to lodge an amendment in this regard, on the basis that it was clear that the type of force that is used can be physical, verbal or psychological, as the ordinary meaning of the word “force” includes overpowering or compelling a person by physical means. Section 1(6) provides that it also includes coercion by verbal threats “or other psychological means”.

However, I appreciate the sentiments behind the police and Scottish Women’s Aid calling for an amendment such as amendment 10, to ensure that the bill sends out an unequivocal message, using unambiguous language, to those who might use it or who could be subject to it, that coercing someone to enter into a marriage by physical violence or any other means is unacceptable and will be punishable, alongside the other types of behaviour that can be used to force someone into a marriage.

I have noted the points that Marlyn Glen made as she spoke to her amendment, and I accept amendment 10 in her name. I furthermore take the points that she made about the explanatory notes, and I will amend them accordingly.

Marlyn Glen: I thank the minister for taking on board the points that have been made, and I am sure that the witnesses who were at the committee will take some reassurance from that.

Amendment 10 agreed to.

Section 1, as amended, agreed to.

Section 2—Contents of orders

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 1A and 2.

Alex Neil: As I indicated during the stage 1 debate, I have responded to members’ concerns regarding the examples in section 2(3), paragraphs (f) and (g). Amendment 1 makes it clear that a forced marriage protection order may
prohibit a person from taking the victim away from a place specified by the courts, thus potentially preventing removal from Scotland or from a particular place in Scotland.

Marilyn Glen’s amendment 1A adjusts amendment 1 to make it clear that the order can also prohibit someone from taking the victim to, not just from, a specified place.

Amendment 2 makes it clear that the order may require a person to facilitate or enable another person, including the victim, to return to or go to any place, whether in Scotland or elsewhere.

I ask the committee to support amendments 1 and 2 in my name, and amendment 1A in Marlyn Glen’s name.

I move amendment 1.

Marlyn Glen: It is important to have clarity so that the protected person has the full protection of the courts and so that the court is empowered, regarding all sorts of details, when it is determining the terms of the order. I am glad that the minister has accepted my amendment, which I think adds clarity to the bill.

I move amendment 1A.

Amendment 1A agreed to.

Amendment 2 moved—[Alex Neil]—and agreed to.

Section 2, as amended, agreed to.

Sections 3 to 8 agreed to.

Section 9—Offence of breaching order

The Convener: Amendment 3, in the name of the minister, is grouped with amendment 4.

Alex Neil: I lodged amendment 3 in light of the evidence that the committee received from ACPOS and Scottish Women’s Aid, which both identified the benefits of having an explicit power of arrest included in the bill.

Although I do not feel that it is necessary to include an express general power of arrest—as the police already have common-law powers for that—amendment 3 gives a specific power for a constable to arrest without warrant any person who is reasonably believed to be committing, or to have committed, a breach of a forced marriage protection order.

Amendment 4 is consequential on amendment 3. It makes it clear that the reference to an offence in section 9(2) refers to an offence under section 9(1). I ask the committee to support amendments 3 and 4 in my name.

I move amendment 3.

10:15

Marilyn Glen: I appreciate the fact that the minister lodged amendment 3 in response to the concerns that were expressed.

Amendment 3 agreed to.

Amendment 4 moved—[Alex Neil]—and agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Section 11—Guidance

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 6 to 8.

Alex Neil: Guidance has been identified by the majority of those who gave evidence on the bill, as well as by committee members, as essential for the purposes of informing practitioners and others of the effect of part 1, so that they are clear about how its provisions can be used to tackle forced marriage in Scotland. I agree. Therefore, at the earliest stage of the bill’s scrutiny, I identified that we would strengthen that commitment by amending the wording of section 11 to state that the Government must, rather than may, introduce guidance on the effect of part 1.

I have listened to the committee’s views on the timing of the dissemination of guidance, and we have amended the bill to require ministers to provide guidance on part 1 before it is commenced, to reflect the committee’s wish to ensure that guidance is available early.

Amendment 6 restates, in consequence of amendment 5, the power in section 11(1)(b), as a separate paragraph, to make it clear that guidance on other matters relating to forced marriages will remain at the discretion of Scottish ministers.

Amendment 7 is consequential on amendments 5 and 6. It makes it clear that the duty in section 11(2) to have regard to guidance applies to both mandatory guidance and discretionary guidance, as provided for under section 11.

Amendment 8 makes it clear, in consequence of amendments 5 and 6, that the Scottish ministers may not give guidance, whether it is required or not under section 11, to a court or tribunal.

I move amendment 5.

Amendment 5 agreed to.

Amendments 6 to 8 moved—[Alex Neil]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Other protection or assistance against forced marriage
The Convener: Amendment 11, in the name of Elaine Smith, is in a group on its own.

Elaine Smith (Coatbridge and Chryston) (Lab): Amendment 11 replaces the term “equitable jurisdiction” with “nobile officium”. The suggestion comes from the Law Society of Scotland, which gave evidence to the committee on section 12 in particular. The reason for replacing the term “equitable jurisdiction” is that it is not a recognised term in Scots law.

I will explain the background. Equity, as a feature of English law, was developed in response to the inflexibility of early common law, and a practice developed of petitioning the king for a remedy where none existed at common law. The king delegated disposal of the petitions to the chancellor, as keeper of the king’s conscience, which—due to the number of petitions that were sent to the chancellor to dispose of—gave rise to the creation of the Court of Chancery, which, in turn, gave rise to the creation of a separate body of rules, the rules of equity, for dealing consistently with the petitions that were received.

Scots law, based as it is on Roman law, did not create a distinction between rules of law and rules of equity; instead, it is a mixed body of rules of strict law and of principles founded on equity. As such, the ordinary equitable jurisdiction of Scotland is not exclusive to the higher courts but may be exercised by all courts.

What is meant by equitable jurisdiction in the context of the bill is the extraordinary equitable power to do justice where ordinary procedure would provide no remedy, which in Scotland is called the nobile officium of the higher courts. The Law Society is therefore of the view that the term “equitable jurisdiction” should be replaced by the Scots law term “nobile officium” as it more accurately reflects the intention behind the provision.

I move amendment 11.

The Convener: Do members have any comments on amendment 11?

Hugh O’Donnell (Central Scotland) (LD): I simply want to acknowledge Elaine Smith’s knowledge of Scots law and history and use of Latin.

Alex Neil: The expression “equitable jurisdiction” in section 12(2)(a) includes the nobile officium; however, it is important to point out that it also ensures that part 1 affects no other aspect of the equitable jurisdiction of the Court of Session and High Court, regardless of whether a distinction is drawn between the ordinary form of this jurisdiction and the extraordinary or ultimate form, namely the nobile officium. As agreeing to amendment 11 would actually dilute section 12 and the remedies available, I strongly suggest that Elaine Smith withdraw the amendment.

Elaine Smith: I am happy to withdraw the amendment at this stage, with the proviso that I might bring it back at stage 3 after considering further information on the matter.

Amendment 11, by agreement, withdrawn.

Section 12 agreed to.

After section 12

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

Alex Neil: I made a commitment to Parliament to ensure best fit between this bill and the Children’s Hearings (Scotland) Act 2011, and amendment 9 does so by adding proceedings under part 1 to the list of relevant proceedings included in section 62(5) of the 2011 act. Moreover, new paragraph (q) is added to section 67(2) of the act to create a further ground in respect of a child forced into a marriage, with the term “force” being given the same definition used in section 1.

In consequence, amendment 9 adjusts the ground in section 67(2)(p) of the 2011 act to remove the reference to marriage so that it applies only to civil partnerships. That will help to ensure a coherent relationship between the courts and the hearings system with regard to the handling of forced marriage cases and the decisions made to protect these very vulnerable children.

I move amendment 9.

Christina McKelvie (Central Scotland) (SNP): I thank the minister for lodging amendment 9. As a member of the committee that oversaw the passage of the 2011 act, I remember that we were concerned about the grounds with regard to forced marriage, particularly because of the lack of any definition at the time. Indeed, I opposed the measure because I felt that we would need to come back at some point and tidy things up. I think that amendment 9 does that tidying up very well and ties together the two pieces of legislation. First and foremost, it protects children at or around the age of 16, who might find themselves getting forced into a situation that they do not want to be in.

I welcome amendment 9 and commend the minister on lodging it.

The Convener: Do you wish to make any final comments, minister?

Alex Neil: I simply endorse Christina McKelvie’s remarks. I hope that this very sensible amendment will have the full committee’s support.

Amendment 9 agreed to.
Sections 13 to 18 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister for his very positive response to the committee’s comments, as reflected in the amendments that we have just agreed to.
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Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill
[AS AMENDED AT STAGE 2]

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  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.

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).

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,
(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.
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.

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 or the High Court, and
   (b) the sheriff 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 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.

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”.

(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.

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.

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), or
(c) any other person affected by the order.

(2) 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.

(3) Section 5 applies to the variation of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to varying a forced marriage protection order.

(4) In this Part, where a forced marriage protection order specifies a period for which it is to have effect, references to varying an order do not include extending any such period.
Extension of orders

(1) This section applies where a forced marriage protection order specifies a period for which it is to have effect.

(2) Before the expiry of the period, a person mentioned in subsection (3) may apply to the court for an extension of the order.

(3) The persons are—
   (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.

(4) In addition, where the order was made by virtue of section 4(1), the court may before the expiry of the period extend the order even though no application has been made to the court.

(5) An order may be extended on more than one occasion.

(6) Section 5 applies to the extension of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to extending such an order.

Offence

(1) Any person who, knowingly and without reasonable excuse, breaches a forced marriage protection order commits an offence.

(1A) A constable may arrest without warrant any person the constable reasonably believes is committing or has committed an offence under subsection (1).

(1B) Subsection (1A) is without prejudice to any power of arrest conferred by law apart from that subsection.

(2) A person guilty of an offence under subsection (1) is liable—
   (a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,
   (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

(3) A breach of a forced marriage protection order is not to be punishable other than in accordance with subsection (2).

Power to apply Part to civil partnerships

(1) The Scottish Ministers may by order make provision applying this Part (or particular provisions of it) to civil partnerships as it applies (or as the particular provisions of it apply) to marriages.
(2) An order under subsection (1) may, for the purposes of the application mentioned in that
subsection, make such modifications of enactments (including of this Act) as the
Scottish Ministers consider necessary.

Supplementary

11 Guidance

(1) The Scottish Ministers must, no later than the day on which section 1 comes into force,
give guidance to such persons or descriptions of persons as Ministers consider
appropriate about the effect of this Part or any provision of it.

(1A) The Scottish Ministers may give guidance to such persons or descriptions of persons as
Ministers consider appropriate about matters (other than that mentioned in subsection
(1)) relating to forced marriages.

(2) A person exercising public functions to whom guidance is given under this section must
have regard to it in the exercise of those functions.

(3) The Scottish Ministers may not give guidance under this section to any court or tribunal.

12 Other protection or assistance against forced marriage

(1) This Part does not affect any other protection or assistance available to a person who—
(a) is being, or may be, forced into a marriage,
(b) is being, or may be, subjected to an attempt to force the person into a marriage, or
(c) has been forced into a marriage.

(2) In particular, it does not affect—
(a) the equitable jurisdiction of the High Court or the Court of Session,
(b) any criminal liability,
(c) any civil remedies under the Protection from Harassment Act 1997 (c.40),
(d) any right to—
   (i) an order under the Matrimonial Homes (Family Protection) (Scotland) Act
       1981 (c.59) relating to occupancy rights,
   (ii) an exclusion order under that Act,
(e) any protection or assistance under the Children (Scotland) Act 1995 (c.36) or the
    Children’s Hearings (Scotland) Act 2010 (asp 00),
(f) any claim in delict, or
(g) the law of marriage.

12A Amendment of Children’s Hearings (Scotland) Act 2011

(1) The Children’s Hearings (Scotland) Act 2011 (asp 1) is amended as follows.

(2) In section 62(5) (provision of information by court)—
(a) the word “or” immediately following paragraph (l) is repealed,
(b) after paragraph (m) insert—
   “(n) an application for the making, variation, recall or extension of—
(i) a forced marriage protection order (as defined in section 1(6) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 00)), or
(ii) an interim forced marriage protection order (as defined in section 5(2) of that Act),
(o) civil proceedings in which a court makes an order such as is mentioned in sub-paragraph (i) or (ii) of paragraph (n) by virtue of section 4(1) of that Act (power to make order without application), or
(p) proceedings relating to an offence under section 9(1) of that Act (offence of breaching order).”.

(3) In section 67(2) (meaning of “section 67 ground”)—
(a) in paragraph (p)(i) the words “marriage or” are repealed,
(b) after paragraph (p) insert—
“(q) the child—
(i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 00)) or,
(ii) is, or is likely to become, a member of the same household as such a child.”.

13 Interpretation of Part
In this Part (except where the context otherwise requires)—
“court” means the Court of Session or the sheriff,
“force” and related expressions have the meanings given by section 1(6),
“forced marriage protection order” has the meaning given by section 1(6),
“interim forced marriage protection order” has the meaning given by section 5(2),
“marriage” means any religious or civil ceremony of marriage (wherever carried out and whether or not legally binding under the law of Scotland or any other place),
“protected person” has the meaning given by section 1(1).

PART 2
DECLARATORS OF NULLITY OF MARRIAGE IN SHERIFF COURT

14 Action of declarator of nullity in sheriff court: jurisdiction
(1) Section 8 of the Domicile and Matrimonial Proceedings Act 1973 (c.45) (jurisdiction of sheriff court in respect of certain actions) is amended as follows.
(2) In subsection (1)—
(a) the word “and” immediately following paragraph (a) is repealed, and
(b) after paragraph (b) insert “; and
(c) an action for declarator of nullity of marriage.”.
(3) After subsection (2) insert—

“(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and

(b) either—

(i) the Scottish courts have jurisdiction under the Council Regulation; or

(ii) the action is one to which subsection (2B) below applies and a condition mentioned in either subsection (2C) or (2D) is satisfied.

(2B) This subsection applies to an action—

(a) which is an excluded action; or

(b) where one of the parties to the marriage in question died before the date when the action is begun.

(2C) The condition is that either party to the marriage in question is domiciled in Scotland on the date when the action is begun.

(2D) The condition is that either party to the marriage in question died before the date when the action is begun and either—

(a) was at death domiciled in Scotland; or

(b) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”.

(4) In subsection (3)—

(a) after “divorce” insert “or declarator of nullity of marriage”,

(b) after “subsection (2)”, where it first occurs, insert “or (2A)”, and

(c) for “or of” substitute “(2A) or”.

(5) In subsection (4), after “divorce” insert “or declarator of nullity of marriage”.

PART 3
GENERAL

15 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).
16  **Subordinate legislation**

(1) Any power conferred by this Act on the Scottish Ministers to make orders is exercisable by statutory instrument.

(2) Subject to subsection (3), a statutory instrument containing an order under this Act (other than one under section 18(2)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) No order under—
   (a) section 10(1),
   (b) section 15(1) containing provisions which add to, replace or omit any part of the text of any Act,

may be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

17  **Crown application**

(1) No contravention by the Crown of—
   (a) section 9(1), or
   (b) any provision made by virtue of section 10,

makes the Crown criminally liable.

(2) But the Court of Session may, on the application of any public body or office holder having responsibility for enforcing section 9(1) or any provision made by virtue of section 10, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 9(1) and any provision made by virtue of section 10 apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this section affects Her Majesty in Her private capacity.

18  **Short title and commencement**

(1) The short title of this Act is the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011.

(2) This Act (other than this section) comes into force on such day as the Scottish Ministers may by order appoint.
Forced Marriage etc. (Protection and Jurisdiction) 
(Scotland) Bill 
[AS AMENDED AT STAGE 2]

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.

Introduced by: Nicola Sturgeon
On: 29 September 2010
Supported by: Alex Neil
Bill type: Executive Bill
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (introduced in the Scottish Parliament on 29 September 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (“the Bill”) and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill makes provision for protecting people from being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent. It also amends the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage.

Overview of the Structure

5. The Bill is divided into three parts:
   - Part 1 makes provision for forced marriage protection orders to protect people from being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent (and makes provision for connected purposes, such as the issuing of guidance on matters connected with forced marriage);
• Part 2 clarifies the circumstances in which individuals, including victims of a forced marriage, can seek a declaration from the sheriff court that a purported marriage is void; and
• Part 3 makes provision in relation to ancillary orders, subordinate legislation, Crown application and commencement.

COMMENTARY ON SECTIONS

PART 1: FORCED MARRIAGE PROTECTION ORDERS

Section 1: Forced marriage protection orders

6. Subsection (1) enables the Court of Session or a sheriff to make a forced marriage protection order for the purposes of protecting a person from being forced, or from any attempt to force the person, into a marriage or protecting a person who has been forced into a marriage.

7. Subsections (2) and (3) set out the issues that the court must consider when deciding whether to make an order and the type of order that should be made.

8. Subsection (4) describes what a forced marriage means for the purposes of Part 1. Subsection (5) makes it clear that the conduct which forces a person into marriage does not have to be directed against that person and includes, for example, circumstances in which the perpetrator threatens to commit suicide if the person does not submit to the marriage.

9. Subsection (6) defines “force” to include coercion by physical, verbal or psychological means, threatening conduct, harassment or other means. This would include, for example, coercion by the threat of blackmail and coercion by other means which may involve the use of deception. It is also “force” to knowingly take advantage of a person’s incapacity to consent to marriage or to understand the nature of the marriage.

Section 2: Contents of orders

10. Subsection (1) provides that the court may make an order containing any terms that are considered appropriate for the purposes of protecting a person from being forced into a marriage or who has been forced into a marriage. Subsection (3) gives some examples.

11. Subsection (2) makes it clear that the terms of the order may relate to conduct outwith, as well as within, Scotland. It also makes it clear that, in addition to persons who force or attempt to force a person to enter into a marriage, the terms of the order may relate to persons who are, or may become, involved in other respects. Subsection (4) provides examples of such involvement.

Section 3: Applications for orders

12. Subsection (1) provides that the person to be protected or a relevant third party can apply without leave to the court. Subsection (7) defines “relevant third party” to mean a local authority, the Lord Advocate or a person specified by order made by the Scottish Ministers.
13. Subsection (2) provides that any other applicant must first get the permission of the court before they are able to make an application and subsection (3) sets out the criteria that the court must consider in deciding whether to grant permission.

14. Subsections (5) and (6) provide that applications to a sheriff are to be made by summary application to the sheriff in whose sheriffdom the person to be protected is ordinarily resident or, if the protected person is not ordinarily resident in Scotland, to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.

**Section 4: Power to make orders without application**

15. Subsection (1) enables the court to make a forced marriage protection order on its own initiative if, in civil proceedings before the court, the court considers that an order should be made to protect a person, provided that a person who would be a party to any proceedings for the order is also a party to the civil proceedings currently before the court.

16. Subsection (2) provides that, in criminal proceedings before the sheriff or the High Court of Justiciary, if the court considers that a forced marriage protection order should be made to protect a person, the sheriff or the High Court may refer the matter to the Lord Advocate who may apply for an order or take such other steps as are appropriate.

**Section 5: Interim orders**

17. This section enables the court to make interim orders in the absence of a person who is, or would be, a party to proceedings for the order where it considers it is equitable to do so. In deciding whether to make an interim order, the court must have regard to all the circumstances including any risk of significant harm if the order is not made immediately.

**Section 6: Duration of orders**

18. This section provides that where the court specifies, in a forced marriage protection order, a period for which it is to have effect, the order has effect until the expiry of that period (unless the order is recalled under section 7 or extended under section 8). If no period is specified, the order has effect until it is recalled.

**Section 7: Variation and recall of orders**

19. This section provides for the variation and recall of orders. A person mentioned in subsection (1) who wishes to vary or recall an order must apply to the court. But no application is necessary in the case of orders made by virtue of section 4(1). The court can vary or recall such orders on its own initiative. Other persons for the purposes of section 7(1)(c) may include individuals who are not directly involved but are otherwise affected such as a sibling of someone who is required to be taken to a place of safety and other persons who are required to disclose certain information or take steps to facilitate the protection of a person.
Section 8: Extension of orders

20. This section provides for extensions to the period for which an order has effect. A person mentioned in subsection (3) who wishes to extend an order must apply to the court. But no application is necessary in the case of orders made by virtue of section 4(1). The court can extend such orders on its own initiative. Other persons affected by the order for the purposes of section 8(3)(c) may include the persons referred to above in relation to section 7(1)(c).

Section 9: Offence of breaching order

21. This section makes it a criminal offence to breach a forced marriage protection order and sets out the penalties that may be imposed. It also provides that a constable may arrest without warrant any person the constable reasonably believes is committing or has committed an offence under this section.

Section 10: Power to apply Part to civil partnerships

22. This section enables the Scottish Ministers to make provision by order to apply the provisions (or particular provisions) in Part 1 to forced civil partnerships, with such modifications as are considered necessary.

Section 11: Guidance

23. This section provides that the Scottish Ministers must issue guidance to such persons as they consider appropriate about the effect of any of the provisions in Part 1 before section 1 comes into force. This section also provides that the Scottish Ministers may, if they wish, give guidance to such persons as they consider appropriate on other matters relating to forced marriage (such as practitioner guidance covering information sharing, data collection, risk assessment and safety planning that will assist those working with victims of forced marriage to ensure their safety). A person exercising public functions to whom any such guidance is given must have regard to it in exercising those functions.

Section 12: Other protection or assistance against forced marriage

24. This section provides that Part 1 does not affect any other protection or assistance already available including, in particular, the matters listed in subsection (2).

Section 12A: Amendment of Children’s Hearings (Scotland) Act 2011

25. This section amends section 62(5) of the Children’s Hearings (Scotland) Act 2011 to enable the court, in the course of any proceedings under Part 1 of the Bill, to refer certain matters to the Principal Reporter if it considers that any ground in section 67(2) of the 2011 Act applies. It also amends the grounds in section 67(2) to establish a separate ground in respect of a child being forced into a marriage, “force” being construed in accordance with section 1 of the Bill.
Section 13: Interpretation of Part

26. This section defines various terms and expressions used in Part 1.

PART 2: DECLARATORS OF NULLITY OF MARRIAGE IN SHERIFF COURT

Section 14: Action of declarator of nullity in sheriff court: jurisdiction

27. This section amends section 8 of the Domicile and Matrimonial Proceedings Act 1973 to make provision for jurisdictional rules applying in the sheriff courts in relation to declarators of nullity of marriage. These jurisdictional rules parallel those that apply in the Court of Session.

PART 3: GENERAL

Section 15: Ancillary provision

28. This section enables the Scottish Ministers, by order, to make incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of the Bill and, in particular, section 10.

Section 16: Subordinate legislation

29. This section regulates the powers conferred on the Scottish Ministers to make orders. It requires these powers to be exercised by statutory instrument and also establishes the type of Parliamentary procedure which applies to these instruments.

Section 17: Crown application

30. By virtue of section 20(1) of the Interpretation and Legislative Reform (Scotland) Act 2010, the provisions of the Bill bind the Crown except in so far as section 17 provides otherwise. Section 17 provides that the Crown cannot be held criminally liable for breaching a forced marriage protection order (or for contravening any provision made by virtue of section 10, such as breaching a forced civil partnership protection order). However, the Court of Session may, on a relevant application, declare unlawful any such breach or contravention by the Crown. Subsection (3) provides that the Crown immunity under subsection (1) does not extend to persons in the public service of the Crown. Subsection (4) provides that nothing in the section affects Her Majesty in her private capacity. So, for example, no declaration under subsection (2) may be made in that respect.

Section 18: Short title and commencement

31. Section 18(2) provides that the Bill (other than section 18) comes into force on such day as the Scottish Ministers may by order appoint. By virtue of section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010, this power may be exercised so as to appoint different days for different purposes for the coming into force of the provisions of the Bill.
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

   (i) subordinate legislation laid before the Parliament;

   (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter;

   (iii) Pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Bob Doris (Deputy Convener)
Helen Eadie
Rhoda Grant
Alex Johnstone
Ian McKee
Elaine Smith
Jamie Stone (Convener)
Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Jake Thomas

Support Manager
Lori Gray
Subordinate Legislation Committee

21st Report, 2011 (Session 3)

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

1. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill was introduced into the Parliament on 29 September 2010 by Nicola Sturgeon MSP. The Bill completed Stage 2 on 1 March 2011 and Stage 3 will be held on 22 March 2011.

2. The Committee is content with the power in section 11 to issue guidance about the effect of the Bill or forced marriage generally to such persons as Ministers consider appropriate (other than a court or tribunal).

Stage 1 Report

3. In its stage 1 report the Committee recommended that the power under section 3(7)(c) to specify additional persons who have an automatic right to apply for a forced marriage protection order (FMPO) should be subject to a requirement to consult the Lord President before it is exercised. At present the only third parties who have the right to apply for a FMPO are the Lord Advocate and local authorities. Other third parties have to apply to the court for permission before they can make an application. The effect of an order under section 3(7)(c) is therefore to remove the court’s discretion over whether to hear such an application. On that basis the Committee considered that it would be appropriate for Ministers to consult the Lord President before making the order. This approach was endorsed by the lead committee in their stage 1 report.

4. In his response to the Committee’s report, the Minister in charge, Alex Neil says:

“The power to extend the group of relevant third parties in section 3(7)(c) is expected to be used only sparingly and in relation to persons with a clear interest in seeking a FMPO on behalf of victims of forced marriage. Consequently, it is not considered necessary for the Lord President to be consulted whenever the power is exercised, notwithstanding the removal of
the courts’ discretion to entertain an application from a person designated a relevant third party.”

5. It is not clear why the Government is resisting this proposal. It seems sensible for the Government to have heard the Lord President’s views on whether or not any particular group of persons should be given an automatic right to make an application. The courts will be the place in which the merits of applications from such parties will already have been discussed. When considering the order extending rights to make applications the Parliament may find it helpful to know that the Lord President has already made his views known. The Government need not follow the Lord President’s advice if it does not agree with it, but the Parliament may wish to know that he has had the opportunity to comment.

6. The Committee repeats its recommendation that before exercising the power to specify additional relevant third parties the Scottish Ministers should be required to consult the Lord President.
Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 18   Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 7

Alex Neil

1 In section 7, page 4, line 30, at end insert <, or (d) with the leave of the court only, any person not falling within paragraphs (a) to (c)>

Alex Neil

2 In section 7, page 4, line 30, at end insert—

<(  ) In deciding whether to grant leave under subsection (1)(d), the court must have regard to all the circumstances including—

(  ) 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.

(  ) 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.>

Section 8

Alex Neil

3 In section 8, page 5, line 10, at end insert <, or (d) with the leave of the court only, any person not falling within paragraphs (a) to (c)>

Alex Neil

4 In section 8, page 5, line 10, at end insert—

<(  ) In deciding whether to grant leave under subsection (3)(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.

( ) 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.

Section 9

Alex Neil

5 In section 9, page 5, line 32, leave out subsection (3) and insert—

<( ) Where a person is convicted of an offence under subsection (1) in respect of any conduct, that conduct is not punishable as a contempt of court.>

Section 17

Alex Neil

6 In section 17, page 9, line 24, leave out <section> and insert <Act>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Group 1: Variation, extension and recall of forced marriage protection order: applicants
1, 2, 3, 4

Group 2: Conviction for offence under section 9 to preclude contempt of court
5

Group 3: Crown application
6

Debate to end no later than 10 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

Forced Marriage etc (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.
The following amendments were agreed to (without division): 1, 2, 3, 4, 5 and 6.

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill: The Minister for Housing and Communities (Alex Neil) moved S3M-8157—That the Parliament agrees that the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
The Presiding Officer (Alex Fergusson): The next item of business is stage 3 proceedings on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. In dealing with the amendments, members should have: the bill as amended at stage 2, which is SP bill 53A; the marshalled list of amendments, which is SP bill 53A-ML; and the groupings, which I have agreed as Presiding Officer. If there is a division, the division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, we will have a voting period of one minute for the first division after a debate, with all other divisions being 30 seconds.

Section 7—Variation and recall of orders

The Presiding Officer (Alex Fergusson): Amendment 1, in the name of the minister, is grouped with amendments 2, 3 and 4.

The Minister for Housing and Communities (Alex Neil): I lodged amendments 1 to 4 as a result of the on-going dialogue on the bill between the Government and the Law Society of Scotland. As the bill stands, an individual who had no involvement in the original proceedings for an order under part 1 of the bill, and who is not otherwise directly affected by the order, is unable to apply to vary, recall or extend the order. That might cause a difficulty for the victim, if the original application was made by a support agency and the victim then moves to another part of Scotland and wishes to rely on a different support agency to apply to vary, recall or extend the order. Given that the bill already makes provision for other persons, including the victim and those who would be affected by the order, to apply to vary, recall or extend the original order without leave of the court, it is not thought that that difficulty will arise often. The amendments are intended to ensure that no such difficulty will arise, however infrequent. I therefore ask members to support amendments 1 to 4.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Alex Neil]—and agreed to.

Section 8—Extension of orders
Amendments 3 and 4 moved—[Alex Neil]—and agreed to.

Section 9—Offence of breaching order

The Presiding Officer: Amendment 5, in the name of Alex Neil, is in a group on its own.

Alex Neil: Amendment 5 will ensure that if a person is convicted for breach of a forced marriage protection order, that person cannot thereafter be punished again for contempt of court for the same conduct that constituted the breach. Although the person cannot thereafter be punished for contempt, the amendment will not alter the fact that the individual could still be convicted of a separate criminal offence, such as assault. The amendment will therefore ensure that any criminal offence in relation to conduct involving cases of forced marriage can be prosecuted by the courts and sentenced appropriately.

I move amendment 5.

Amendment 5 agreed to.

Section 17—Crown application

The Presiding Officer: Amendment 6, in the name of Alex Neil, is in a group on its own.

Alex Neil: Amendment 6, the final Government amendment, will put it beyond doubt that Her Majesty will not in any way be affected in her private capacity by the bill. In particular, it will make it clear that Her Majesty cannot be made criminally liable under section 9(1) of the bill for breach of a forced marriage protection order or for breach of any equivalent offence in an order under section 10 relating to civil partnerships. I hope that the Parliament will vote for amendment 6 and that I will appear in the next honours list as a consequence.

I move amendment 6.

The Presiding Officer: Remarkably, no one has asked to add further comment to that.

Amendment 6 agreed to.

The Presiding Officer: Her Majesty will be greatly relieved.
necessary for the safety of the victim. That means that forced marriage protection orders will genuinely be able to provide the highest level of protection to each individual victim.

I made it clear from the development stages of the bill that I wanted it to have teeth, so I was pleased that the inclusion of a new criminal offence of breach of a forced marriage protection order was welcomed by support organisations such as Scottish Women’s Aid, and by the Law Society of Scotland, the police and the Equal Opportunities Committee.

I also wanted the legislation to be as easy to use and accessible to victims as possible. That is why I included the provision for relevant third parties to be able to step in and take forward the process of having a protection order put in place. That is because in many cases, disturbingly, the victim is not at liberty to do that. In some cases, the victim might not even be in this country and might therefore be unable to apply for such an order.

The bill has survived relatively unscathed from the version that was introduced to Parliament last September and the amendments to it have made it stronger. The amendments very much had an eye on how the main provision—the introduction of forced marriage protection orders—would be implemented in practical terms.

I listened to what the witnesses and committee members had to say when I considered the recommendations in the committee’s stage 1 report. Even when I felt that amendments were not strictly necessary, there was a clear feeling that they would assist those who would use the legislation at grass-roots level. For that reason—and because they did not detract from the effect of the bill—I was happy to accept the amendments.

We have now debated all the amendments and reached an agreed position on them. Once again, I thank members, particularly members of the Equal Opportunities Committee, for the supportive manner in which they have dealt with matters. It is clear that we in the chamber are united in a desire to ensure that the victims of forced marriage have the best possible protection.

On implementation, we all know that what we do here in Parliament in relation to shaping the law of Scotland is only part of the picture. With an issue such as forced marriage, which we hope will not happen every day and therefore will not be a common issue for those who are asked to support victims, the legislation will not do its job without an appropriate implementation package. I know that support must therefore be in place to help the users of the legislation understand its effects and get the most out of it.

Quite rightly, the implementation phase of the legislation has been a particular focus of the committee’s attention. The consultation on draft statutory guidance will begin later today. I felt that it was important to get it under way before the pre-election period began. I want to ensure that, in producing the guidance, we can take on board the views of Scotland’s public sector, including police and local authorities, while ensuring that it is in place in time to allow organisations to be ready for the introduction of forced marriage protection orders in the autumn. I will ensure that the Parliament is informed of the developments from the consultation and that the revised guidance is shared with members.

Witnesses, the committee and members have regularly raised the lack of good data on forced marriage. I am very aware of the need to have more robust data for Scotland and I am confident that the bill will act as a driver for data collection, as has happened in England.

Training on forced marriage is another important issue. Particularly important is training for key professionals, which will be developed in the months ahead to ensure that anyone who might come into contact with a victim of forced marriage knows what to look for, how to support them and what remedies are available.

We do not expect a large number of people to apply for forced marriage protection orders on their own behalf or via third parties.

Elaine Smith (Coatbridge and Chryston) (Lab): Will the minister take an intervention?

Alex Neil: I am afraid that I am just finishing my speech.

We expect the bill to result in more victims seeking help because—for the first time in Scotland—a focus will have been created for the message that such behaviour is unacceptable.

I thank everybody who has been involved. I look forward to the debate and—I hope—to the bill’s successful passage.

I move,

That the Parliament agrees that the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill be passed.

The Presiding Officer: I call Johann Lamont, who has about six minutes.

09:31

Johann Lamont (Glasgow Pollok) (Lab): For once, I might not use my full quota of minutes, but that does not mean that the bill is not significant. It is relatively straightforward and short, and it has managed to be the subject of consensus in the end, but that does not necessarily mean that it is not significant—perhaps that reflects how people
have come together in committee and externally. As the minister said, amendments were agreed to so that people could reach a consensus on the issue’s significance and on the measures that are outlined in the bill.

In reading the stage 1 debate again, I noted Malcolm Chisholm’s comments on the original consultation, in which people expressed anxiety that legislating to create legal consequences might deter victims from coming forward. It is interesting that we had a difficulty or challenge in making a judgment on that. The way in which the committee has considered matters reassures us, because we do not want to do something that will make the situation worse.

What the minister said about implementation is important, and his plan for that provides reassurance. Post-legislative scrutiny is also important. The committee will have a role in making us alive to ensuring that the anxieties that were expressed in the original consultation in 2005 and 2006 are no longer a concern. The Parliament will have a role in that.

We should remember the power of the message that victims have sent to Parliament. In the stage 1 debate, Anne McLaughlin and Elaine Smith gave voice to victims’ experiences. It is important to recognise that the experience of forced marriage is horrific. For someone to force another person into marriage is a horrific crime. That underlines the bill’s significance.

One of the Parliament’s strengths, on which we should reflect, is that we do not just tick boxes for a bit of legislation and then move on. In implementing the bill and in post-legislative scrutiny, it will be critical to ensure that the bill meets its intended purpose. A strength in the Parliament’s culture is that Parliament does not simply move on; the opportunity exists to refresh legislation and to consider the issues that drove the legislation to be created in the first place.

In all the debate about the bill, it has been emphasised time and again that what matters is not just the bill. The bill is not just symbolic: it does send signals and it is a symbol of what we say about the offence, but it will also provide protection and offer people legal measures that are not insignificant.

We must place the bill in the context of education of our young people. We must give people the confidence to know that, despite what they have been told, forced marriage is not acceptable or reasonable, is not to do with their culture and is not expected of girls. There is a specific role for that educational side of the bill to be rolled forward. Public education is also important, given the anxieties about the degree of stereotyping around forced marriage. The challenge in the public debate is for people not to be allowed to retreat into such attitudes.

We also have to recognise that many women in such circumstances may be very isolated—perhaps deliberately so. We have to think carefully about the trusted intermediaries who will reach out to those women. An important bit of work that needs to be done is to consider which organisations—which women’s organisations—may be best placed to support women in the circumstance of forced marriage. If evidence emerges of a need for support, it is essential that the Government, of whatever colour, wills the means for that support to happen. The amount of funding that is required for such support may not be huge; small bits of funding can allow organisations to offer it. If the support is not there, victims may not have the confidence to come forward. Ignorance or fear of family consequences are not always an issue—it may be lack of confidence.

We all understand that forced marriage of any kind is unacceptable. In saying that, we recognise that forced marriage is not particular to women; it affects men, too. It is also fair to say that the issue must be seen in the broader context of the rights and role of women and their abuse in society.

The bill shines a light on the issue and challenges the attitudes that underpin forced marriage. I, for one, welcome the legislation. It will be good to come together at the end of this session of Parliament to vote on the bill before we go our separate ways. We have reached consensus on a difficult issue for which we have worked out a solution. The bill will make a difference.

09:37

Margaret Mitchell (Central Scotland) (Con):
The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill is important legislation that the Equal Opportunities Committee had the opportunity to consider in detail, and to comment on, as the lead committee. As convener of the Equal Opportunities Committee, I outlined the committee’s recommendations and views in what was a productive stage 1 debate. I thank committee members and the EOC clerks for all their hard work on the bill.

I speak in this stage 3 debate not as the convener of the Equal Opportunities Committee but from the Conservative benches. I acknowledge and thank the minister and the Scottish Government for their willingness to listen to and take on board the committee’s concerns and suggestions to improve the bill at stage 1. Thanks to the amendments that the Government lodged or did not oppose at stage 2, the definition of “force”
Forced Marriage etc (Protection and Jurisdiction)

Parliament can be justifiably proud of passing the bill on this last day of its third session, the Scottish Kingdom that is aimed at preventing forced marriages and protecting the victims of forced marriage. It will help to eradicate an abhorrent practice that has no place in a civilised society. It is as effective as it can be and most beneficial to those whom it affects.

The bill sends a clear message to the wider public in Scotland. As Margaret Mitchell said, it is clear that we need an awareness-raising campaign to ensure that people understand what rights and protections the bill provides.

Back benchers do not often get an opportunity to claim even a bit of credit, and it may be a bit tenuous for me to do so in this case, but I will do so anyway. I first raised the issue of forced marriage with Kenny MacAskill back in 2007. All too often, when issues that are small but of considerable concern are raised, they disappear off the radar. I was pleased that the Government took up the issue, looked at what had happened in previous sessions and decided to run with it. I take small credit for at least bringing the issue back on the agenda.

I hope that the bill will give some protection to those who deserve it. Like other members, I look forward to the bill being passed at decision time today.

The bill will send a clear message to the wider public in Scotland. As Margaret Mitchell said, it is clear that we need an awareness-raising campaign to ensure that people understand what rights and protections the bill provides.

Back benchers do not often get an opportunity to claim even a bit of credit, and it may be a bit tenuous for me to do so in this case, but I will do so anyway. I first raised the issue of forced marriage with Kenny MacAskill back in 2007. All too often, when issues that are small but of considerable concern are raised, they disappear off the radar. I was pleased that the Government took up the issue, looked at what had happened in previous sessions and decided to run with it. I take small credit for at least bringing the issue back on the agenda.
speech written out in front of me in 16-point bold, with double spacing, I have a few notes. I am beginning to regret that, because I am not sure in what order the notes are supposed to go, but I will do my best. Presiding Officer, I am glad that you said that we have a bit of extra time. When I told Bill Kidd that I was challenging myself, he said that the challenge would be to shut me up.

It is less a challenge than a pleasure to speak on the bill, for three reasons. First, it allows me to reiterate the point that I made when I last spoke on the bill, which is that forced marriage bears no relation to arranged marriage. All of us must continue to make that point. Somebody recently said to me that I should stop talking about the two in the same breath, so that people would not associate them, but it is not as easy as that. People believe that they are one and the same thing. Even an MSP colleague asked me this morning, “Are you speaking in the arranged marriage debate?” Just after that, he said, “No—I couldn’t have said that; I must have said ‘forced marriage’.” There is something in people’s minds—they see the two as one and the same thing, and we have to keep making the point.

It is not just we who need to be educated. The Law Society of Scotland made a good point when it wrote to us all yesterday saying that the legal framework is very helpful and that it supports it. As Johann Lamont said, we have to educate children and let them know that they do not have to put up with forced marriage. We have to educate the whole of Scotland, and we have to keep doing it.

The second reason is that the debate allows me to pay tribute to the constituent of mine about whom I spoke at stage 1, whom I have called Nina. She came to me with a housing problem. She had been housed on a main road in Glasgow. We might not think that that would be a problem, but this young woman has been terrified that her family will find her. Every time a car door has shut—which can be heard pretty often on a main road—she has thought that they might be coming to get her.

No wonder Nina was frightened. She had escaped a flight to a forced marriage at the age of 15. When her parents caught up with her, they put her in a room for a week. They starved her, giving her nothing to eat for a week. They starved her in a room for a week. They starved her, giving her only water. This is the part that really shocked me: her nothing to eat for a week. Her family will find her. Every time a car door has shut—which can be heard pretty often on a main road—she has thought that they might be coming to get her.

No wonder Nina was frightened. She had escaped a flight to a forced marriage at the age of 15. When her parents caught up with her, they put her in a room for a week. They starved her, giving her nothing to eat for a week—they gave her only water. This is the part that really shocked me: her teachers came round and, while they were downstairs, her mother poured a sugar solution down her throat so that she could at least look healthy and pretend that she had just been a little bit unwell.

Not everyone has the guts that my constituent Nina has. She escaped, and she has built a life for herself. She works full time—she does not earn very much, but she works really hard. She always goes to her work, as well as looking after her child. I pay tribute to her.

Because not everyone has the guts that Nina has, it is of crucial importance to have provision in the bill for local authorities and the Lord Advocate to apply on behalf of a victim for a forced marriage protection order.

What happened to Nina was not cultural; it was abuse. Someone once said:

“Forced marriages are, and always will be, an abuse of human rights and human dignity carried out by cowards who hide behind the veil of honour, shame and family pride.”

Those were the words of the late Bashir Ahmad, who is the reason I am here today. He is the reason I have been here for the past two years. It was a terrible reason, but it has been an honour to attempt to follow in his footsteps. Bashir has had a great influence on my time here. Any time that I have read something about myself that bears no relation to the truth, or that I have felt frustrated with the political process—as we all do from time to time—I always try to think of what Bashir would have said. He always said that everyone had their reasons for the way in which they behaved, and that there was good in everyone. I have always tried to believe that, too—although it does not always work.

Bashir Ahmad is not just the reason why I am here today; he is one of the reasons why the bill is before us. He was passionate in his support of victims of forced marriage, and he was determined not to allow any community, race or religion to be stigmatised by it. Had the bill before us today not been introduced, he would, he said, have introduced a member’s bill. I will end with his words:

“I am pleased that the Scottish Government and indeed all political parties in Scotland are recognising the need to act against this horrific crime. Today in the Scottish Parliament we will be debating the way forward in tackling forced marriages.”

If the late Bashir Ahmad MSP is watching now, I am sure that he will be so proud to know that today, the final day of the Scottish parliamentary session in which he became the first Muslim MSP, we are not just debating the way forward; we are finally passing laws that will protect the victims that he was so passionate about.

09:49

Marlyn Glen (North East Scotland) (Lab): I am pleased to make my final contribution in the Parliament during this important debate on forced marriages. The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill can, and I hope will, make a profound difference to people’s lives.
As a Law Society witness rightly described the situation,

"although forced marriage is low incidence, it has an extremely high impact."—[Official Report, Equal Opportunities Committee, 23 November 2010; c 2172.]

I am confident that we understand by now what forced marriage is. It is not arranged marriage, and it is not just an incompatible marriage. It is a marriage where one or both parties do not or cannot give consent.

Members of the Equal Opportunities Committee heard some pretty powerful evidence about rape, torture and assault carried out in the name of marriage. The Scottish Parliament has to put out the strongest signal that that is wholly unacceptable in our society—and neither is it condoned by any religion. The fact that breach of a forced marriage protection order is to be a criminal offence leaves no one in doubt about how serious a matter it is.

I am pleased that there is a commitment to include in the consultation on the statutory guidance a question on the definition of forced marriage. The UK forced marriage unit’s definition includes the phrase “and duress is involved”. We are well aware of the mental and physical duress that can be involved, but there is concern about individuals who might be forced to marry through much more subtle means, in particular if they have learning difficulties or if they are unaware of what is happening.

The bill’s passage has not been contentious and is an example of the cross-party working that has made it a pleasure and a privilege to be part of the Equal Opportunities Committee. I thank the minister and the bill team for their work in response to the committee’s report. I thank them for the amendments that they lodged and for accepting the amendments that I lodged at stage 2.

The amendments that I lodged arose from our discussions with agencies such as Scottish Women’s Aid. It is essential that people who want the bill to help them to do preventive work as well as work with victims are confident that the new legislation will make a difference. A strength of the Equal Opportunities Committee is its relationships with groups and its openness in discussing their concerns. We worked not just with groups that represent the legal profession but with equality groups, which were diligent in responding to our work.

Yesterday, I had the privilege of being interviewed for a film on forced marriages, which was initiated and is being directed by Loudy Othman. Students from Stevenson College’s creative industries department are working on the project with Saheliya and it is heartening to know that they are spreading the word and beginning the essential education process that is needed to accompany the bill.

It is sad that instances of forced marriage are being uncovered all the time. Although we know that it is usually women who are the victims, Saheliya is working on a small but important project, my story of drug addiction, with young men who are being forced to marry in a perverse attempt by their families to deal with their addiction and find support for them. The fate of the young women who are involved in such marriages does not bear thinking about. We must hope that the passing of the bill sends the strongest signal that forced marriage will not be tolerated in Scotland.

I give special thanks to the clerks and to members and former members for making the Equal Opportunities Committee’s work such a worthwhile part of my work as a member of the Scottish Parliament.

09:52

Christina McKelvie (Central Scotland) (SNP): I am pleased to speak in the debate on the second-last bill that we will pass in this session of the Scottish Parliament—the first session in which I have had the privilege of being elected to serve.

It seems to me that the bill is an appropriate one to pass today with the support of MSPs from all sides, with support from all parties—I am sorry, Presiding Officer, I thought that I had put my teeth in—

Hugh O’Donnell: Perhaps they are someone else’s.

Christina McKelvie: Perhaps they are.

When the Parliament was established, human rights and equality were written into its proceedings from the outset. The Parliament was established to represent and serve all the people of Scotland.

The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill is emblematic of the Parliament’s principles. It was introduced to counteract one of the worst violations of human rights that can be perpetrated on a person. At its heart is an insistence on freedom of choice, which is essential to any meaningful concept of equality.

The bill was designed to tackle a crime that happens to only a small number of people in Scotland, which in itself makes the bill even more important. There have been occasions when critics of the Parliament accused us of using legislation as a sledgehammer to crack a variety of nuts, but just because a problem affects a small number of people, that does not make it insignificant. On the contrary, the smaller the
number of victims, the more vulnerable the victims are and the more vital it is that their elected representatives step up on their behalf. When we decide today to legislate against forced marriage, we will give strength to people who were powerless and give protection under the law to people who previously lacked such protection.

During the Equal Opportunities Committee’s consideration of the bill, we discussed the imperative of avoiding the perception that the bill is directed at a particular ethnic group or culture. I will say a couple of things about that. First, forced marriage is not about religion, culture or race; it is a crime. It is a complex crime, to be sure, which stems from old and deep-seated attitudes about the role of women and girls—and sometimes, as we heard from Marlyn Glen, boys—but, as Burns said many years ago, “The Rights of Woman merit some attention.”

Forced marriage happens in society and within families, but it is a crime nonetheless. What is more, it seldom happens in isolation. Almost by its nature, it is a precursor to other crimes: child abuse, rape, domestic violence and sometimes even murder. Those crimes and their victims must be pre-eminent in our minds, and I applaud the Scottish Government for sticking to those facts in introducing the bill.

Nonetheless, there are complexities of which we must be aware, such as the need to make clear the distinction between arranged and forced marriage. Other speakers have addressed that point, so I will not go into it.

I thank all the witnesses who came forward. I especially thank the clerks, who tried hard to ensure that we had a cross-cultural group of witnesses. We could not find some of the evidence that we needed even though we knew that it existed, which shows how deep-seated some of the issues are. The clerks tried hard to ensure that we had witnesses to provide that evidence.

I also thank the committee members for their diligence in scrutinising the evidence, which was helpful for me.

At stage 2, we linked the bill with the Children’s Hearings (Scotland) Act 2011, which is a particular interest of mine. When we passed the 2011 act, I was concerned that, although forced marriage was a ground for referral, the term was not defined. I thank the minister for lodging amendments at stage 2 that fixed that anomaly and will bring the two pieces of legislation together to ensure that young people are supported in a welfare-based system. That further strengthens the approach of the Scottish Government and the Scottish Parliament to protecting children and young people.

I am very proud that the Parliament can come together to ensure that we continue to enshrine human rights in our laws. That shows our Parliament working at its best.

I said earlier that choice is essential to a meaningful definition of equality. If I had to pick one word to sum up what the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill is about, it would be choice. The bill will write clearly into Scots law that it is an individual’s— a woman’s—choice to enter freely into a marriage or to reject it. That choice, as the UN Committee on the Elimination of Discrimination Against Women puts it, “is central to her life and to her dignity and equality as a human being.”

That is the core of the bill, and I commend it to the Parliament.

09:57

Elaine Smith (Coatbridge and Chryston) (Lab): Having served on the Equal Opportunities Committee since 1999, I am pleased that the last debate of the parliamentary session in which I will participate concerns a bill that was subject to scrutiny by that committee.

Before I address forced marriages, I pay tribute to the work that my friend and comrade Marlyn Glen has carried out in her role as deputy convener. She has been on the committee since being elected and her contribution has been invaluable over the years, particularly on the bill. Marlyn is off to pursue new challenges. Knowing her ability, work ethic and commitment to her values, I am sure that she will succeed at whatever she does next. I wish her all the best.

The Scottish Government accepted Marlyn Glen’s stage 2 amendments. Sadly, it did not accept mine—I note that the minister did not mention that in his opening speech. At stage 2, I put the case for replacing the term “equitable jurisdiction” with “nobile officium”. That suggestion came from the Law Society, whose reason for wishing to replace the term used in the bill was that it was not a recognised term in Scots law. What is meant by equitable jurisdiction in the context of the bill is the extraordinary equitable power to do justice where ordinary procedure would provide no remedy, which in Scotland is called the nobile officium of the higher courts. However, the Scottish Government believed and argued that equitable jurisdiction includes the nobile officium. Therefore, I did not bring the amendment back at stage 3, as it seemed we would just have the same disagreement.

Overall, the Law Society was not entirely convinced that section 12 is necessary, so I helpfully suggest that it be subject to post-
legislative scrutiny at a future date, which adds to the comments that Johann Lamont made about the need for such scrutiny.

Aside from that minor disagreement, the committee was pleased to recommend support at stage 1 for the general principles of the bill, which is an important piece of legislation, and its suggested amendments were accepted at stage 2. There was certainly no disagreement about the need for the bill or the principle that everyone should be able to enter into a marriage or civil partnership without being forced or coerced to do so. When the bill is passed later today, it will bring us into line with other parts of the UK with similar legislation; indeed, I think that our legislation will be better.

We in the Labour Party are clear that the bill is needed to try to stop the horrendous practice of forcing anyone into marriage, whether male or female. However, we know that it is mostly young women and girls who are likely to be in that situation and that forced marriage is part of the continuum of violence against women and is completely unacceptable. As Marlyn Glen pointed out, it is linked with horrendous acts of violence, rape and domestic abuse. We need to be clear that forced marriage is not a cultural phenomenon but is abuse.

Sadly, the people in victims’ families who should protect them are often the perpetrators, as Anne McLaughlin pointed out. When the bill was first proposed, it was welcomed by a victim, who chose to remain anonymous, in a statement that was provided through Shakti Women’s Aid. The victim described the experience of forced marriage as surreal and immensely traumatic. She added:

“We often rely on our families for support but when that family subjects you to marry unwillingly you feel it is impossible to escape.”

It is up to us as a society to protect vulnerable people, and we have a duty as lawmakers to ensure that appropriate legislation is in place to help to do that. We also need to raise awareness about the issue of forced marriage and ensure that victims know what support is available to them, as other members have said. If the number of victims coming forward increases, we may need to consider the resources for support agencies.

I thank all the witnesses who helped the committee with the work of scrutinising the bill and I acknowledge that all committee members worked together in a non-partisan fashion to ensure that the bill would be the best legislation possible. I note the consensual way in which the Government accepted most of the amendments that were proposed to improve the bill, which meant that there was no need for a great deal of amendments at stage 3 today. Last but not least, I thank the clerking team who, with the Scottish Parliament information centre, helped to draw information together for the committee.

The bill is not a major piece of legislation in parliamentary terms, but it will have a major impact. It will not affect vast numbers of people but, for those whom it helps, its impact will be substantial. With the passing of the bill later, the Parliament will send out a clear message that forced marriages are completely unacceptable, are part of the spectrum of violence against women and girls and will not be tolerated in Scotland.

10:02

Hugh O’Donnell: This has been a short and sweet, consensual debate. However, I suspect that another event later this morning, commonly known as First Minister’s questions, is likely not to take a lesson from the way in which we have conducted ourselves in dealing with the politics of this place.

As other members have said, the bill demonstrates Scotland choosing a piece of legislation that is desperately needed, taking it forward in a constructive and positive manner and arriving at a conclusion to which everyone who has spoken in the debate contributed, such as Anne McLaughlin, who gave an emotive recounting of a constituent’s experience, Christina McKelvie, Marlyn Glen and Elaine Smith, who again demonstrated her command of the Latin language.

As has been said, we will need a mechanism to allow us to undertake post-legislative scrutiny. If I have had a theme as a member of the Scottish Parliament for the past four years, it is that, although the process is sometimes contentious, we as a Parliament are good at taking legislation forward but are not necessarily as good at reviewing its effectiveness and usefulness. In that regard, I am pleased to have been a member of a committee that has reviewed legislation on mental health and other issues.

As my final contribution to this session of Parliament, I ask that, whoever is in government in the next session, we consider what we have done as well as what we would like to do and ensure that it all works for all the people of the country.

10:05

Jamie McGrigor (Highlands and Islands) (Con): I, too, thank Marlyn Glen for everything that she has done in the Parliament and wish her happiness and success in the future.

It is a pleasure to close for the Scottish Conservatives in this short debate on the last day of the present session. Like others, I pay tribute to
the work of the Equal Opportunities Committee, ably led by my friend Margaret Mitchell, for a very good stage 1 report and for its subsequent work at stage 2. All those who gave evidence to the committee are to be commended, as are the staff members of SPICe, who produced two extremely useful briefings that helped to inform our debates.

The bill has enjoyed widespread cross-party support since its publication last year, and rightly so. The whole Parliament is united in seeking to ensure that people who wish to marry or enter into a civil partnership can do so freely and without coercion of any kind. It is the duty of any Government to protect the citizens who elected it from bullying, harassment and threats, especially in the case of marriage. It is appropriate that the bill will bring Scotland into line with legislation elsewhere in the UK. The value of the bill also lies in the public message that it sends: that the Parliament is prepared to bring the matter out into the open and to take the lead in achieving a consensus that forced marriage will not be tolerated.

As we heard earlier and during the stage 1 proceedings, although the evidence suggests that the incidence of forced marriage in Scotland is low, it is an extremely high-impact occurrence, and one that it is right that the Parliament takes strong action against. The ability for victims of forced marriage to apply to a civil court for a forced marriage protection order has been widely welcomed. As Louise Johnson told the committee, “it does what it says on the tin”. [Official Report, Equal Opportunities Committee, 23 November 2010; c 2180.]

In conclusion, the Scottish Conservatives welcome the improvements to the bill that were made at stage 2 and are very happy to support its passing at stage 3. All of us hope that, when its provisions are enacted, the bill will prove to be of real use in preventing forced marriages and assisting the victims of such a dreadful occurrence. Our Parliament can be proud to pass the bill.  

The Presiding Officer: I call Johann Lamont to close on behalf of the Scottish Labour Party. You have quite an amount of flexibility, Ms Lamont.

10:07 Jo hann Lamont: Hugh O’Donnell described this as a short and sweet debate. Neither the minister nor I often contribute to short and sweet debates, so we should cherish the moment—it is possible for anything to happen in this world.

It is an important debate and, as has been said, the bill is significant. Its journey through the parliamentary process has been highly productive. Now, the challenge is to ensure that it makes the difference that we aspire for it to make. I add the thanks of Labour members to the clerks, the committee’s convener, Margaret Mitchell, the witnesses, committee members—for taking their job so seriously—and the bill team, who will have had to wrestle constantly with what was possible from the point of view of the legal people and with the political imperative of addressing what the witnesses brought to the table.

Forced marriage is an important issue, but it is fair to say that it does not form part of mainstream discourse on a regular basis. The bill is not one that I expect will create a huge number of headlines but, for all that, we must recognise that it may make a difference to the lives of women and to the attitudes and views of families, individuals and communities, and in that regard it is important.

I know that I have a great deal of time to speak, but I plan to make only a couple of points. One point that it is worth making is that, although the Parliament has a proud record of exposing and highlighting issues to do with violence against women, I would not want anyone to think that, in debating issues to do with violence against women and abuse, we can somehow always reach a consensus. In fact, those who first raised such matters, who first challenged attitudes to marriage and who first discussed the role of women did so in a context of hostility, not one of consensus. It is a mark of the journey that we have made that we can discuss such an issue as forced marriage in a Parliament that has constructed a consensus. However, we must understand how that has happened, because it was not by accident. It has happened because women’s organisations have spoken out on behalf of women and have found a way of bringing the experience of individuals into the political process. Parliament must continue with that important job, not with a sense of self-satisfaction but recognising how challenging it is. It is about changing lives, expectations and people’s fundamental roles in life.

Women are suffering disproportionately in these challenging economic times and we must also challenge that situation. The economic challenge that women are facing is an expression of their inequality.

It is also true to say that one reason why the Parliament has got to a place where it can spend time talking about issues to do with women’s role in society and violence against women, and where Governments of all colours fund organisations that help it to do that job, is that there are a significant number of women in the Parliament—some feminists and some not, but women who understand the important job that Parliament might have in making a difference to women’s lives. Across the chamber are women who are choosing to leave the Parliament today. Those of us who
have to face the electorate have yet to have that verdict passed upon them. However, we know that there will be a challenge in future to make sure that women’s voices continue to be heard in Parliament.

Although I recognise and celebrate all the women who have chosen to go today, I am sure that I will be forgiven if I mention in particular my sister Marlyn Glen, who has a long and proud record of fighting to ensure that women’s voices are heard. Her persistence and passion for working on behalf of those who are without power, particularly women, are probably without match. She played a part in shaping the Parliament and has played a significant part in its work since she became a member. I wish her all the best. Should I be in the privileged position of coming back to Parliament, I know that Marlyn Glen will continue to work from outside Parliament to ensure that we continue to understand the importance of speaking out about the needs of the most vulnerable people in our communities—those without voices.

The message to all parties is that, if we want to form a consensus around difficult issues, it is critical that all ensure that women’s representation in Parliament is sustained. The first parliamentary session was record breaking and there has been some retreat in all parties. Parliament will be weaker if we go back to not reflecting the experience of women, not representing women and not facing the continuing challenge to reflect society’s diversity. It is not simply that the representation of women and black and minority ethnic communities is important in itself but that that representation helps Parliament to understand disadvantage and inequality and brings us to this bill and issues that matter to communities across Scotland. I support the bill and look forward to it being passed at decision time.

The Presiding Officer: We come to the minister to wind up the debate. Minister, I can offer you your second 15-minute slot in a row. You have until 10.30 should you choose to use the time.

10:13

Alex Neil: Johann Lamont started by saying that it is not often she and I do short and sweet. I disagree. We do short and sweet all the time: she does the short, and I do the sweet. [Laughter.]

I endorse all the comments that have been made about Marlyn Glen. SNP members will miss her input, particularly in relation to equal opportunities issues. We appreciate and admire her contribution to the Equal Opportunities Committee and to issues around equal opportunities, human rights and women’s rights. We wish her all the best in whatever she decides to do next.

I endorse Anne McLaughlin’s comments about the late Bashir Ahmad. In this four-year session, the high point at the beginning was when he was elected as the first Muslim MSP; the low point was when he passed away so suddenly halfway through the session. The bill is as much a tribute to him, his philosophy and his thoughts as it is to anyone else.

Bashir would have been not just very proud of our passing the bill but proud and appreciative of the tremendous contribution that his successor Anne McLaughlin has made to the Parliament and, particularly, to the kind of issues that we are discussing this morning. She has been an able and fit successor to him.

As members from all sides of the chamber have said, forced marriage has no place in any civilised society. Today the Scottish Parliament is taking an important step towards eradicating this dreadful practice in Scotland. I thank members from all sides of the chamber for their excellent contributions to the debate. As I said in my opening speech, I have been encouraged by the support for the bill throughout the parliamentary process and throughout the country. It truly has been an example of the Parliament at its best, and it has been a pleasure to be the minister in charge of the bill.

Nearly every member who spoke raised the importance of awareness raising. A big part of the success of the bill’s implementation will be that people know about the legislation and the issues surrounding forced marriage. As a Government, we share the Parliament’s view that significant work is required to raise awareness and understanding of forced marriage in Scotland—especially, although not exclusively, among young people. We are committed to undertaking that work and have established a group of forced marriage network members to develop and take it forward as a matter of priority over the coming months. The group has already met and is due to meet again in early April. Members will also know from the bill’s financial memorandum that I have allocated resources to that work over the next three years.

I want to pick up on the point made by Hugh O’Donnell, Johann Lamont and Elaine Smith that it is important for the Parliament to engage in post-legislative scrutiny. As a Government we will take measures to monitor the effectiveness of the implementation of the legislation. That will be done 12 months on from the bill’s passage today. We have already put resources in place for that, and we will share all the information with the Parliament and with the relevant committee in particular. If we identify any issues that need to be taken forward to make the implementation of the
legislation more robust and effective, we will be prepared to address them.

On the wider issue of representation, we have identified a budget of £90,000 over the next three years to support implementation. Half will be committed during this financial year to the development of practitioner guidance and the delivery of training. In subsequent years, resources will be committed to monitor and evaluate the success of the legislation, as I just said.

Although as everybody has said the bill concerns an issue that affects a relatively small number of people, it potentially has a huge impact on the lives of that small number of people. I believe that it also sends an important message to wider Scotland about the kind of country that we want Scotland to be: a Scotland where no one is at risk of abuse or is forced to do anything against their will and where everyone is free to participate in society and achieve to their fullest potential. A country that does nothing to tackle the evils of forced marriage fails on all those counts. Today we have taken the first important step towards ridding Scotland of that totally unacceptable practice. Importantly, we have made it clear that we are just as concerned about issues that impact on the few as we are about issues that impact on the many.

Earlier, we agreed amendments to the bill that will ensure that it is as clear and unequivocal as it can be. I thank individual members and the committee as a whole for their suggestions on amendments, which I think have strengthened the bill and made it much more lucid and therefore much more effective.

I apologise that I could not accept Elaine Smith’s amendment on nobile officium—a common term in Coatbridge—but as I said to the committee the advice that we received was that the equitable distribution provision in the bill incorporates the points validly and lucidly made by her and by the Law Society of Scotland about nobile officium. On the campaign trail, therefore, we can all discuss nobile officium knowing very well that we all know what it is, as does everyone out there.

Elaine Smith: Will the minister join me in thanking Jean McFadden for my knowledge of Latin? She taught me at St Patrick’s high school in Coatbridge.

Alex Neil: The Minister for Community Safety has just intimated to me that the correct pronunciation is “nobil-ay” officium. I am sure that the minister knows all about Latin, having been a top-class lawyer prior to being a top-class minister.

Robert Brown (Glasgow) (LD): I was going to make that point to the minister.
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Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

[AS PASSED]

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 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.

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).

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,

(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.
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.

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 or the High Court, and
   (b) the sheriff 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 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.

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”.

(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.

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.

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).

(1A) 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.
(1B) 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.

(2) 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.

(3) Section 5 applies to the variation of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to varying a forced marriage protection order.

(4) In this Part, where a forced marriage protection order specifies a period for which it is to have effect, references to varying an order do not include extending any such period.

8 Extension of orders

(1) This section applies where a forced marriage protection order specifies a period for which it is to have effect.

(2) Before the expiry of the period, a person mentioned in subsection (3) may apply to the court for an extension of the order.

(3) The persons are—

(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).

(3A) In deciding whether to grant leave under subsection (3)(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.

(3B) 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, where the order was made by virtue of section 4(1), the court may before the expiry of the period extend the order even though no application has been made to the court.

(5) An order may be extended on more than one occasion.

(6) Section 5 applies to the extension of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to extending such an order.
Offence

9 Offence of breaching order

(1) Any person who, knowingly and without reasonable excuse, breaches a forced marriage protection order commits an offence.

(1A) A constable may arrest without warrant any person the constable reasonably believes is committing or has committed an offence under subsection (1).

(1B) Subsection (1A) is without prejudice to any power of arrest conferred by law apart from that subsection.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

(4) Where a person is convicted of an offence under subsection (1) in respect of any conduct, that conduct is not punishable as a contempt of court.

Power to apply Part to civil partnerships

10 Power to apply Part to civil partnerships

(1) The Scottish Ministers may by order make provision applying this Part (or particular provisions of it) to civil partnerships as it applies (or as the particular provisions of it apply) to marriages.

(2) An order under subsection (1) may, for the purposes of the application mentioned in that subsection, make such modifications of enactments (including of this Act) as the Scottish Ministers consider necessary.

Supplementary

11 Guidance

(1) The Scottish Ministers must, no later than the day on which section 1 comes into force, give guidance to such persons or descriptions of persons as Ministers consider appropriate about the effect of this Part or any provision of it.

(1A) The Scottish Ministers may give guidance to such persons or descriptions of persons as Ministers consider appropriate about matters (other than that mentioned in subsection (1)) relating to forced marriages.

(2) A person exercising public functions to whom guidance is given under this section must have regard to it in the exercise of those functions.

(3) The Scottish Ministers may not give guidance under this section to any court or tribunal.

12 Other protection or assistance against forced marriage

(1) This Part does not affect any other protection or assistance available to a person who—

(a) is being, or may be, forced into a marriage,

(b) is being, or may be, subjected to an attempt to force the person into a marriage, or
(c) has been forced into a marriage.

(2) In particular, it does not affect—

(a) the equitable jurisdiction of the High Court or the Court of Session,
(b) any criminal liability,
(c) any civil remedies under the Protection from Harassment Act 1997 (c.40),
(d) any right to—
(i) an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59) relating to occupancy rights,
(ii) an exclusion order under that Act,
(e) any protection or assistance under the Children (Scotland) Act 1995 (c.36) or the Children’s Hearings (Scotland) Act 2011 (asp 1),
(f) any claim in delict, or
(g) the law of marriage.

12A Amendment of Children’s Hearings (Scotland) Act 2011

(1) The Children’s Hearings (Scotland) Act 2011 (asp 1) is amended as follows.

(2) In section 62(5) (provision of information by court)—

(a) the word “or” immediately following paragraph (l) is repealed,
(b) after paragraph (m) insert—

“(n) an application for the making, variation, recall or extension of—
(i) a forced marriage protection order (as defined in section 1(6) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 00)), or
(ii) an interim forced marriage protection order (as defined in section 5(2) of that Act),
(o) civil proceedings in which a court makes an order such as is mentioned in sub-paragraph (i) or (ii) of paragraph (n) by virtue of section 4(1) of that Act (power to make order without application), or
(p) proceedings relating to an offence under section 9(1) of that Act (offence of breaching order).”.

(3) In section 67(2) (meaning of “section 67 ground”)—

(a) in paragraph (p)(i) the words “marriage or” are repealed,
(b) after paragraph (p) insert—

“(q) the child—
(i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 00)) or,
(ii) is, or is likely to become, a member of the same household as such a child.”.
13 Interpretation of Part

In this Part (except where the context otherwise requires)—

“court” means the Court of Session or the sheriff,

“force” and related expressions have the meanings given by section 1(6),

“forced marriage protection order” has the meaning given by section 1(6),

“interim forced marriage protection order” has the meaning given by section 5(2),

“marriage” means any religious or civil ceremony of marriage (wherever carried out and whether or not legally binding under the law of Scotland or any other place),

“protected person” has the meaning given by section 1(1).

PART 2

DECLARATORS OF NULLITY OF MARRIAGE IN SHERIFF COURT

14 Action of declarator of nullity in sheriff court: jurisdiction

(1) Section 8 of the Domicile and Matrimonial Proceedings Act 1973 (c.45) (jurisdiction of sheriff court in respect of certain actions) is amended as follows.

(2) In subsection (1)—

(a) the word “and” immediately following paragraph (a) is repealed, and

(b) after paragraph (b) insert “; and

(c) an action for declarator of nullity of marriage.”.

(3) After subsection (2) insert—

“(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and

(b) either—

(i) the Scottish courts have jurisdiction under the Council Regulation; or

(ii) the action is one to which subsection (2B) below applies and a condition mentioned in either subsection (2C) or (2D) is satisfied.

(2B) This subsection applies to an action—

(a) which is an excluded action; or

(b) where one of the parties to the marriage in question died before the date when the action is begun.
(2C) The condition is that either party to the marriage in question is domiciled in Scotland on the date when the action is begun.

(2D) The condition is that either party to the marriage in question died before the date when the action is begun and either—

(a) was at death domiciled in Scotland; or
(b) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”.

(4) In subsection (3)—

(a) after “divorce” insert “or declarator of nullity of marriage”,
(b) after “subsection (2)”, where it first occurs, insert “or (2A)”, and
(c) for “or of” substitute “(2A) or”.

(5) In subsection (4), after “divorce” insert “or declarator of nullity of marriage”.

PART 3
GENERAL

15 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

16 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make orders is exercisable by statutory instrument.

(2) Subject to subsection (3), a statutory instrument containing an order under this Act (other than one under section 18(2)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) No order under—

(a) section 10(1),
(b) section 15(1) containing provisions which add to, replace or omit any part of the text of any Act,

may be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

17 Crown application

(1) No contravention by the Crown of—

(a) section 9(1), or
(b) any provision made by virtue of section 10,

makes the Crown criminally liable.
(2) But the Court of Session may, on the application of any public body or office holder having responsibility for enforcing section 9(1) or any provision made by virtue of section 10, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 9(1) and any provision made by virtue of section 10 apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this Act affects Her Majesty in Her private capacity.

18 Short title and commencement

(1) The short title of this Act is the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011.

(2) This Act (other than this section) comes into force on such day as the Scottish Ministers may by order appoint.
Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

[AS PASSED]

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.

Introduced by: Nicola Sturgeon
On: 29 September 2010
Supported by: Alex Neil
Bill type: Executive Bill