Justice Committee

Supplementary Legislative Consent Memorandum Anti-social Behaviour, Crime and Policing Bill (LCM(S4) 22.2)

Letter from the Minister for Commonwealth Games and Sport

Thank you for the opportunity to provide evidence to the Justice Committee on the supplementary LCM for the Anti-social Behaviour, Crime and Policing Bill in respect of our plans to extend provisions to Scotland in relation to the new criminal offence of forced marriage.

As we discussed, we believe that these provisions will ensure that we meet our international obligations on forced marriage. Article 37 of the Council of Europe Istanbul Convention requires the following:

**Article 37 – Forced marriage**

1 *Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.*

2 *Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.*

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was opted into by the UK Government in June 2012. As such, we are required to comply with the various articles contained within it including the terms of article 37.

In relation to the questions raised by the member on the level of maximum penalties available for the new offence, I would offer the following explanation.

Given the international dimension that can often be involved in cases of forced marriage, we have reflected that it is appropriate for the maximum penalties for the new offence to be aligned across the UK. If we accept, as we and the UK Government do, that this new criminal offence is required as part of complying with the Istanbul Convention, we do not think it is appropriate to have different maximum penalties operating across the UK with, for example, Scotland being seen as attaching a lower level of seriousness to forced marriage compared to other parts of the UK.

In addition though, our thinking has been based fundamentally upon making the normal choice that is made whenever a new criminal offence is being created – and that is a choice on what appropriate maximum penalties should be available for our courts on the basis of the seriousness of the conduct that is being criminalised.
We note the points made by Scottish Women’s Aid. However, we consider that there are a number of existing offences, such as rape for example, which can be committed within a family setting where the victim may well be distraught about what may happen to the perpetrator if they report the offence (eg. if the perpetrator is a close relative). However, we do not consider that is a directly relevant factor when considering what the maximum penalties for the offence should be (rape, of course, has a maximum penalty of life imprisonment).

We consider that the penalty for forcing someone into marriage will reflect the seriousness with which we view this practice and it gives our courts appropriate sentencing powers to sentence offenders that will act as a deterrent to those who may be considering perpetrating such an act. This is in addition to ensuring courts have sufficient sentencing powers to punish offenders directly so they, and others, are clear that their behaviour will not be tolerated and they will face the full force of the law. We believe it will also reassure victims that what is being done to them is wrong and that they can be assured of an effective sanction being available to our courts to deal with the perpetrator/s. Importantly, it is also about preventing the unacceptable behaviours that are associated with forced marriage before they occur.

We believe that forced marriage is an exploitative offence which disempowers victims and takes away their basic human rights and provides a framework for continuous ill treatment of often very young and vulnerable people. It has always been our position to ensure that our courts have appropriate powers whenever criminal conduct forming an offence is of the type where a person/people are exploited. For example, exploitation of other people through human trafficking has a current maximum penalty of 14 years for that offence and I think that demonstrates our commitment to ensuring that we have the necessary means under the criminal law to deal with those who wish to exploit others.

It is also worth recording that the state has an overriding duty to act in a manner that protects the human rights of potential victims, and that this duty outweighs other considerations. Rights to liberty and to personal safety and security, for example, cannot legitimately be traded off against factors such the general desirability of respect for cultural traditions. It is worth observing too that the right to marry guaranteed under the European Convention on Human Rights is by definition concerned with a right which is exercised freely and by choice. The recent debate on Scotland’s National Action Plan for human rights (11 December 2013) touched on this general context, and the fundamental principles were, for example, ably set out by Malcolm Chisholm and others in their contributions to that debate.

To address specifically the point raised in the supplementary evidence submitted by Scottish Women’s Aid, that given the penalty, victims would be even more averse to coming forward if there was the prospect of members of their family facing a significant jail term.

That is a position that we understand and to which we are keenly sensitive. Reporting that a family member has committed a criminal offence is always going to be very difficult and this was an argument that was put forward in relation to the level of sanction which can be applied to a breach of the civil order.
However what we are proposing is that the law be changed so that the current civil Forced Marriage Protection Orders, which will continue to exist, will sit alongside a new criminal offence. Victims could choose to take the civil route, as they now can, or to go to the police should they need to do so.

In terms of details of research from other countries, which I mentioned in the evidence session, Scottish Government analysts are seeking to obtain more detailed statistical information, however, given the short timescale for response they have not been able to report as yet. They will nevertheless report to the Committee as soon as they have any relevant data.

However since Denmark criminalised forced marriage in 2008, the Copenhagen based organisation; LOKK reported an increase in young people coming forward. My officials have made contact with LOKK to obtain, if possible, a breakdown of their statistics, and will provide this to the committee.

They have also made contact with Karma Nirvana, another organisation to which I made reference to in my evidence.

Karma Nirvana have provided statistical data from their honour based violence helpline as follows. Since the announcement by the UK Government of the intention to criminalise forced marriage they have seen a trend in calls that is increasing. While the increase is only 18% in terms of numbers, this is an extra 1200 calls to the helpline (this figure represents calls from the UK).

They have delivered forced marriage roadshows across England and Wales and have seen an increase in reporting (helpline calls) in the areas where they have been delivered of some 35%. In Scotland alone, after their roadshows in 2012 they saw 43% increase in reporting (helpline calls) compared to the previous year.

Committee members also asked about the possibility of bringing a Government Bill to criminalise forced marriage through the Scottish Parliament. Whilst it would be possible to bring forward Scottish legislation in due course, this would clearly leave a considerable time lag where protection in Scotland was not at the same level as protection in England and Wales, which is a concern to me.

Once again, Convener, may I thank you for the opportunity to give evidence to the Committee earlier this week. This is an important issue and it is vital that we have robust scrutiny of such proposals to ensure they are right for Scotland.

Shona Robison MSP
Minister for Commonwealth Games and Sport
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