

## SPICe Briefing

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

22 November 2010

10/79

**Lisa Taylor**

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill was introduced in the Scottish Parliament by Nicola Sturgeon MSP on 29 September 2010. The Bill proposes new civil measures for preventing 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. The Bill would give those who fear being married against their will the right to apply to a civil court for a Forced Marriage Protection Order (FMPO). It also makes provision as to the jurisdictional rules applying in the sheriff court in relation to declarators of nullity of marriage.

This briefing is in three parts: background on the issue of forced marriage, existing legal protection for victims of forced marriage; and a discussion of the main provisions in the Bill itself.



# CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>3</b>
<b>INTRODUCTION</b> .....	<b>4</b>
<b>PART 1: BACKGROUND TO FORCED MARRIAGE</b> .....	<b>5</b>
DEFINITION OF FORCED MARRIAGE .....	5
ARRANGED MARRIAGES .....	6
PREVALENCE OF FORCED MARRIAGES .....	6
THE IMPACT OF FORCED MARRIAGE .....	7
FORCED MARRIAGE NETWORK .....	8
UK DEVELOPMENTS .....	8
<i>Criminalisation of forced marriage</i> .....	8
<i>Development of UK civil legislation</i> .....	9
<b>PART 2: EXISTING LEGAL PROTECTION FOR VICTIMS OF FORCED MARRIAGE IN SCOTLAND</b> .....	<b>10</b>
<b>LAW ON MARRIAGE IN SCOTLAND</b> .....	<b>10</b>
<i>Void Marriage- General</i> .....	10
<i>One or both parties is under 16 years old</i> .....	10
<i>Lack of consent due to duress or error</i> .....	10
<i>Declarators of nullity of marriage</i> .....	11
<b>VOID MARRIAGES – THE RULES RELATING TO MARRIAGES WITH A FOREIGN ELEMENT</b> .....	<b>11</b>
<i>A person’s ‘domicile’</i> .....	11
<i>Capacity and consent determined according to domicile prior to the marriage</i> .....	11
<i>Exceptions to the general rule</i> .....	12
<i>The domicile of under 16s</i> .....	12
<i>Interaction between civil law relating to marriages and religious law</i> .....	12
<b>EXISTING CIVIL REMEDIES</b> .....	<b>13</b>
<i>Common law interdicts</i> .....	13
<i>Protection from Harassment Act 1997</i> .....	14
<i>Exclusion orders and matrimonial interdicts</i> .....	14
<b>CRIMINAL OFFENCES</b> .....	<b>15</b>
<i>Abduction</i> .....	15
<i>Assault</i> .....	15
<i>Rape and other sexual offences</i> .....	15
<i>Child protection</i> .....	16
<i>Sexual activity with children</i> .....	16
<b>PART 3: THE FORCED MARRIAGE ETC (PROTECTION AND JURISDICTION) (SCOTLAND) BILL</b> .....	<b>16</b>
SCOTTISH GOVERNMENT CONSULTATION .....	16
<b>BILL PROVISIONS</b> .....	<b>17</b>
<i>Forced Marriage Protection Orders</i> .....	17
<i>Contents of forced marriage protection orders</i> .....	18
<i>Application for orders and third parties</i> .....	18
<i>Interim orders and duration, variation, recall and extension or orders</i> .....	19
<i>Offence of breaching an order</i> .....	19
<i>Power to apply to civil partnerships</i> .....	19
<i>Guidance</i> .....	20
<i>Declarators of nullity of marriage</i> .....	20
<b>FINANCIAL IMPLICATIONS</b> .....	<b>20</b>
<b>SOURCES</b> .....	<b>22</b>
<b>ANNEX A</b> .....	<b>24</b>
<i>Forced Marriage Network Membership List 2010</i> .....	24

## EXECUTIVE SUMMARY

A forced marriage has been defined as one conducted without the valid consent of both people, where coercion, threat or abuse is used, or where one of the parties is not capable of fully consenting. The Scottish Government regards forced marriage as a 'violation of internationally recognised human rights provision and a form of violence against women, it cannot be justified on any religious or cultural basis' (Scottish Government, 2008). A forced marriage must be distinguished from an arranged marriage, where both parties fully and freely consent to the marriage, although their families may take a leading role in the choice of partner, but the final decision on whether or not to accept the arrangement lies with the potential spouses.

The UK Government's Forced Marriage Unit (FMU) deals with 300 to 400 cases a year. For the last few years since the FMU began breaking down figures on forced marriage cases, approximately 10% of these cases (up to 40 per year) have involved victims from Scotland. The main age range affected by forced marriage is young people aged between 15-24 years of age and the majority of victims are female. Although victims of forced marriage can come from different communities, the majority of UK cases which the FMU have dealt with have involved people from Pakistan, Bangladesh and of Indian origin

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.

The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill was introduced in the Scottish Parliament on 29 September 2010 by Nicola Sturgeon MSP. The aim of the Bill is to provide a specific civil remedy for those threatened with forced marriage and those already in such a marriage. Key features of the proposed Bill include:

- Part 1 which would make provision for forced marriage protection orders (FMPOs) to protect 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. 'Force' includes not only coercion but also taking advantage of a person's incapacity to consent to marriage or to understand the nature of marriage. An FMPO will allow the sheriff court or Court of Session to require those responsible for forcing another person into marriage to stop or change their behaviour or to require them to do something. Breach of an FMPO would be a criminal offence. The Bill would also allow for local authorities and the Lord Advocate to act as designated relevant third parties to apply for protection orders on behalf of very vulnerable victims.
- Part 2 would make provision as to the jurisdictional rules applying in the sheriff court in relation to declarators of nullity of marriage.

If passed, the Bill would bring Scotland into line with civil legislation in England, Wales and Northern Ireland which came into force in 2008.

# INTRODUCTION

[The Forced Marriage \(Protection and Jurisdiction\) Bill](#) (The Bill) is an Executive Bill introduced in the Scottish Parliament by Nicola Sturgeon MSP, on 29 September 2010. It is accompanied by [Explanatory Notes](#) and a [Policy Memorandum](#). The Bill makes provision 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.

Between September and December 2005 the UK Government and the then Scottish Executive conducted a joint consultation, [Forced Marriage: A Wrong Not a Right](#) (Home Office at al, 2005). The consultation explored the advantages and disadvantages of introducing a specific criminal offence relating to forced marriage in the UK. An analysis of consultation responses found that the majority of the respondents felt that the disadvantages of creating new legislation to make forced marriage a criminal offence outweighed the advantages. As a result of this both Scottish and UK Ministers decided not to legislate at that time (Home Office, 2006).

In 2007, the UK Government decided to support a Private Members Bill on forced marriage brought by Lord Hester of Herne Hill. The Forced Marriage (Civil Protection) Act 2007 received Royal Assent on 26 July 2007 and came into force on 25 November 2008. The aim of this Act is to provide civil remedies for those at risk of forced marriage in England, Wales and Northern Ireland. In 2008, the Scottish Government published a further consultation [Forced Marriage: A Civil Remedy?](#) which sought views on what action was required to address issues relating to forced marriage in Scotland. Overall, there was a very high level of support for the introduction of civil legislation on forced marriage in Scotland. The introduction of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill would bring Scotland into line with existing civil legislation in England, Wales and Northern Ireland.

The policy memorandum of the Bill states the following policy objective:

“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” (Scottish Parliament 2010b para 3).

The Bill has two main provisions:

- 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 to protect those who have already been forced to enter into marriage without such consent. ‘Force’ includes not only coercion but also taking advantage of a person’s incapacity to consent to marriage or to understand the nature of marriage. AN FMPO will allow a sheriff court or the Court of Session to require those responsible for forcing another person into marriage to stop or change their behaviour or to require them to do something. Breach of an FMPO would be a criminal offence. The Bill would also allow for local authorities and the Lord Advocate to act as designated relevant third parties to apply for protection orders on behalf of very vulnerable victims.
- Part 2 clarifies the jurisdiction rules that apply where individuals including victims of a forced marriage, wish to seek a declaration from the sheriff court to make such a marriage void;

## PART 1: BACKGROUND TO FORCED MARRIAGE

Before considering the provisions in the Bill in greater detail, the following section provides a brief introduction to the issue of forced marriage in Scotland and the development of UK legislation on this issue.

### DEFINITION OF FORCED MARRIAGE

The Scottish Government uses the Forced Marriage Unit's definition of forced marriage 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”* (Forced Marriage Unit, 2010)

In general, forced marriage includes situations where one or both parties are coerced into the 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 (Scottish Government, 2008).

Forced marriage is recognised as a form of abuse that can affect both men and women although in most cases it is young women and girls who are likely to be forced into marriage (Avan, et al 2005). Although, in the Western world, forced marriage is sometimes viewed as a religious practice, there is no major world faith which condones forced marriage. The freely given consent of both parties to marry is a prerequisite of Christian, Hindu, Muslim, Jewish and Sikh marriages (Home Office, 2000).

A number of human rights provisions are also relevant:

“Marriage shall be entered into only with the free and full consent of the intending spouses” (Universal Declaration of Human Rights, 1948, Article 16).

“No marriage shall be legally entered into without the full and free consent of both parties” (UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962, Article 1).

[Shakti Women's Aid](#) have found that people can be forced into a marriage in different ways:

- **Physically**, including being prevented from leaving the home or from going to school/work/college, being taken out of the country against their will to get married and being beaten or threatened with physical violence if they decide not to marry the chosen person.
- **Emotionally** which could include being made to feel that they will shame their family or community if they do not go through with the marriage, that they will cause suffering to family members if they refuse to marry or being told that they will not be accepted in the family anymore if they refuse the marriage.
- **Through deception:** in a number of cases, people have sometimes been deceived into travelling to a country where they are to be married, thinking they are just going on holiday or visiting family. (Shakti Women's Aid, online)

## ARRANGED MARRIAGES

The literature in this area makes a clear distinction between a forced marriage and an arranged marriage, where both parties fully and freely consent to the marriage, although 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 marriages has operated successfully within many communities for generations (Scottish Government, 2008).

## PREVALENCE OF FORCED MARRIAGES

The true number of cases of forced marriage in Scotland, or the rest of the UK, is not known as cases are often under reported. In 2005, the UK Government's Home Office and Foreign and Commonwealth Office launched the [Forced Marriage Unit](#) (FMU). The FMU provides a confidential information and assistance service to potential victims of forced marriage across the UK. It deals with approximately 300 to 400 cases a year (Forced Marriage Unit, 2010).

### *UK and Scotland*

In 2009, the FMU recorded 1682 instances in which they gave support or advice relating to *possible* forced marriage cases in the UK, with 375 actual forced marriage cases dealt with by the unit (Forced Marriage Unit, 2010). Of these, up until 2009, approximately 10% (approximately 40 cases per year) involved people from Scotland. In 2009, of the 375 forced marriage cases, only 1% were from Scotland (Forced Marriage Unit, 2010). The Scottish Government, however, has noted that neither FMU officials nor Scottish stakeholders who support forced marriage cases in Scotland felt that this decrease in reporting reflected a real reduction in forced marriage cases in Scotland. Rather, the more likely reason is that Scottish victims are seeking advice and support from organisations in Scotland rather than contacting the FMU located in London (Scottish Parliament, 2010c).

The main support organisations in Scotland for female victims are Shakti Women's Aid in Edinburgh and Hemat Gryffe Women's Aid in Glasgow. In 2009-10, Shakti Woman's Aid supported seven women fleeing forced marriage and Hemat Gryffe Women's Aid supported 13 women (Scottish Government, 2010).

In Scotland, the Incompatible Marriages Project, a study set up by the Council of British (Scotland) Pakistanis, funded for three years from April 2001 to March 2004 found that:

- 1 in 10 Asian Women are forced to marry
- 25% of forced marriages involve domestic abuse
- 1 in 3 marriages break down within the first year
- Of the 300 Asian people consulted for the study, 21% were reported to be in a forced marriage. The majority were from Edinburgh and were mainly of Pakistani descent.
- 32% featured physical and mental abuse in forced marriages.
- 38% of the cases were men forced into marriage.
- In 90% of the cases dealt with, one person came from overseas in the time period.
- Young people between the ages of 16 and 20 were most at risk of being forced to marry.

(Avan et al, 2005).

### *Gender*

The majority of reported cases of forced marriage are from women. However contact with male victims of forced marriage has been increasing. In 2009, 14% of cases in the UK were from male victims and 86% were from female victims. (Forced Marriage Unit, 2010) The number of

contacts between the FMU and male victims increased from 134 in 2008 to 220 in 2009, an increase of 65%. Based on evidence of the motivational factors behind forced marriage and information from male victims of forced marriage, it is likely that many will have a physical or learning disability, be gay or have been perceived to be involved in an inappropriate relationship (Forced Marriage Unit, 2010).

### *Age*

The FMU say that those principally affected by forced marriage are young people aged between 15-24 years of age. In 2009 of the 240 assistance cases, where age was known, 62.5% involved adults and 37.5% involved minors (16.5% under 16). The FMU's oldest victim was 62 and the youngest was 9 (Forced Marriage Unit, 2010).

### *Race*

Although victims of forced marriage can come from a number of different communities, the majority of UK cases have involved people from Pakistan, Bangladesh and of Indian origin. In 2009, the geographic balance of FMU cases associated with other countries/regions was as follows: Pakistan (56%), Bangladesh (10%), India (8%), Turkey (2%), Africa (1%), Afghanistan (1%) and other (7%). Fourteen per cent of cases were solely linked to the UK or were of unknown origin (Forced Marriage Unit, 2010).

### *Disability*

The FMU dealt with 15 cases involving victims with learning disabilities and seven with physical disabilities between August (when they started to collect data) and December 2009 (Scottish Government, 2010).

## **THE IMPACT OF FORCED MARRIAGE**

The Home Office working group on forced marriage say that the key motivations behind forced marriage included peer group or family pressure, attempting to strengthen family links, protecting perceived cultural ideals and prevention of what were regarded as unsuitable relationships (Home Office, 2000). The working group also found that the consequences of forced marriage could be devastating for the whole family, with young women, in particular, often becoming estranged from their families. The group also say that many women often suffered from years of domestic violence, loss of educational opportunities and isolation from family and wider social networks (Home Office, 2000).

Other motives for forcing people into marriage in the literature were:

- Control of unwanted behaviour such as alcohol or drug abuse, wearing make-up or behaving in what is perceived to be a "westernised manner";
- Prevention of unsuitable relationships, for example, outside ethnic, cultural, socio-economic, religious or caste groups;
- Control of sexuality (including perceived promiscuity or being lesbian, gay, bisexual or transgender) – particularly the behaviour and sexuality of women.
- Protecting "family honour" or "izzat";
- Achieving financial gain and repayment of debt;
- Ensuring land, property and wealth remain in the family;
- Protecting perceived cultural ideals;

- Ensuring care for a child or adult with additional support needs;
- Long-standing family commitments and to strengthen family links;
- Assisting claims for UK residence and citizenship.

(Rude-Antoine, 2005),

## FORCED MARRIAGE NETWORK

In 2005, the Scottish Government established the Forced Marriage Network which brought together a range of statutory and voluntary sector practitioners to share knowledge and expertise and to inform the Government's work to tackle forced marriage. The network currently meets four times per year and its membership includes representatives from the health services, the Convention of Scottish Local Authorities as well as a range of voluntary sector organisations that directly support those affected by forced marriage (see full Network membership in Annex A). Those organisations include Shakti and Hemat Gryfee Women's Aid and Amina- the Muslim Women's Resource Centre. The policy memorandum to the Bill (Scottish Parliament, 2010b) states that the Network has been influential in the consultative work carried out by the Scottish Government and will play a role in the proposed implementation of the Bill.

## UK DEVELOPMENTS

### Criminalisation of forced marriage

In 2005, the UK Government and the Scottish Government issued a joint consultation, *Forced Marriage: A Wrong Not a Right* (Foreign Office et al, 2005). The consultation sought views on whether the creation of a specific criminal offence would help to combat forced marriage. A total of 157 responses were received from across the UK (Foreign Office et al, 2006). The consultation reported mixed results. Thirty nine per cent of Scottish respondents were not in favour of the creation of a new criminal offence and 36% were in favour. The consultation set out arguments for and against creating a specific criminal offence. Arguments against included:

- The risk that the fear of their families being prosecuted may stop victims from asking for help;
- That a new offence would disproportionately impact on Black and Ethnic Minority communities;
- That increased involvement in criminal prosecutions could be harrowing for the victims to reconcile with family members;
- Introducing a new criminal offence would be costly.

The Bill's policy memorandum notes that if a criminal offence had been introduced, any prosecution would have to be brought by the state in the public interest rather than being initiated by the victim's own interest and needs (Scottish Government, 2010b para 30). It was felt that this would deter victims of forced marriages 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.

Few countries have made forced marriage a specific criminal offence. In 2003, Norway<sup>1</sup> was the first country to introduce a specific criminal offence in relation to forced marriage. This followed a number of high profile cases in the mid 1990's which generated media attention and political

---

<sup>1</sup> S 222(2) Norwegian Penal Code

action to change relevant legislation and policy (Dauvergne and Millbank, 2010). In Norway “anyone who forces another person to conclude a marriage through recourse to violence, deprivation of liberty, undue pressure or other unlawful behaviour, or through the threat of such behaviour, shall be guilty of the offence of forced marriage. The penalty shall be imprisonment for a period of up to six years. Accomplices shall be liable to the same penalty”<sup>2</sup>. The criminalisation of forcing someone to marry was then followed in Germany in 2005 under federal statute <sup>3</sup> and in Belgium in 2007<sup>4</sup>. During the same period, France made several changes to procedural requirements to ensure genuine consent to marriage (Clark and Richards, 2008).

## Development of UK civil legislation

In March 2007, the UK Government decided to support a Private Members Bill on forced brought by Lord Hester of Herne Hill. [The Forced Marriage \(Civil Protection\) Act 2007](#) (‘the UK Act’) received royal assent on 26 July 2007 and came into force on 28 November 2008. The UK Act provides civil remedies to those at risk of forced marriage, as well as those who have already been in a forced into marriage. The UK Act introduces a number of legislative provisions in England and Wales on forced marriage which currently have no equivalent in Scotland. Under the UK Act, 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). The UK Act also enables “relevant third parties” to make an application for a forced marriage protection order on behalf of a victim. At present, the only relevant third party are local authorities.

The UK Government’s Ministry Of Justice (2009) conducted a review of the first 12 months of the UK Act seeking views from a range of stakeholders including judges, court staff, local authorities, police and community support groups. Eighty-six FMPOs were issued in England and Wales during the first year of the UK Act coming into force (Ministry of Justice, 2009). The review found that the police had been active in bringing cases forward, seeing the value of FMPOs in preventing further serious offences and providing emergency intervention. The review also found that FMPOs work well as a procedure and adds to the current set of measures for protecting adults and children from domestic abuse (Ministry of Justice, 2009). No breach of an FMPO had been made to date.

The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill would introduce broadly similar provisions to Scotland. At present there is no law in Scotland expressly prohibiting forced marriage and it is not a specific criminal offence. As the definition of forced marriage demonstrates offences associated with forced marriage can range from breach of the peace and civil offences to more serious criminal offences such as rape and assault. However, not all behaviour in the context of forced marriage would constitute a criminal offence (for example, withholding money and travel documentation and other forms of controlling behaviour, such as isolation from family or friends etc, are unlikely to result in criminal prosecution).

There are currently a number of civil remedies and criminal offences which may be relevant in relation to forced marriage. These are discussed in the following section of this briefing.

---

<sup>2</sup> Ibid.

<sup>3</sup> S 240(1)&(4) German Criminal Code as amended in 2005.

<sup>4</sup> Law of 25 April 2007

## **PART 2: EXISTING LEGAL PROTECTION FOR VICTIMS OF FORCED MARRIAGE IN SCOTLAND**

Before discussing the proposed provisions in the Bill, this following section discusses the law of marriage in Scotland, and the existing civil remedies and criminal offences which may be relevant to the issue of forced marriage. The Bill does not propose to change any of the existing law on marriage, nor the law that applies when determining whether a marriage is void.

### **LAW ON MARRIAGE IN SCOTLAND**

#### **Void Marriage- General**

For a marriage to be valid under Scots law, a number of legal requirements must be met. Failure to meet certain key requirements will result in the marriage being considered void, i.e. regarded as a matter of law as having never taken place.<sup>5</sup> Victims of a forced marriage at present may apply for an order at the Court of Session to declare the marriage null and void (a declarator of nullity). A void marriage is regarded, as noted above, as having never taken place. A forced marriage may also be dissolved by a decree of divorce under the Divorce (Scotland) Act 1976, but nullity is often the preferred option as it gives a legal acknowledgment that the marriage was never valid (Harvie-Clark, 2010).

The legal requirements which are relevant in the context of forced marriages are considered in more detail below.

#### **One or both parties is under 16 years old**

No person domiciled in Scotland (i.e. treated in law as permanently residing there) may marry before he or she attains the age of 16 (Marriage (Scotland) Act 1977, s 1(1) and (2)). This means for example that an individual aged 15 years old domiciled in Scotland cannot marry in Scotland or in any other country in the world, even if the law of a particular foreign country allows those domiciled there to marry under 16.

On the other hand, where a person domiciled in Scotland is over the age of 16 he or she has legal capacity to marry somebody domiciled in a foreign country under the age of 16, providing that: 1) the ceremony takes place abroad; 2) the person he or she is marrying has legal capacity to marry where he or she is domiciled and where the ceremony takes place (Thompson, 2006 para 2.5)

#### **Lack of consent due to duress or error**

A marriage is void if at the time of the ceremony a party who was capable of consenting to a marriage purported to give his or her consent, but did so only by reason of duress. (Marriage (Scotland) Act 1977, s 20A(2) inserted by s 2 of the Family Law (Scotland) Act 2006).

---

<sup>5</sup> It should be noted that there are some legal requirements relating to marriage (e.g. those relating to the formalities of the ceremony) which, if not complied with, do not affect the validity of the marriage. Furthermore, Scots law also recognises the concept of a voidable marriage which is regarded as existing in law until a court order is obtained declaring the marriage null and void. The only ground on which a marriage is voidable (as opposed to void) in Scotland is the incurable impotency of one or both of the parties to the marriage.

A marriage can also be void through lack of consent because one party made an error regarding the nature of the ceremony or the identity of the other party (Marriage (Scotland) Act 1977, s 20A(2) inserted by s 2 of the Family Law (Scotland) Act 2006). Section 36 of the Family Law (Scotland) Act 2006 enables Scottish courts to apply Scottish rules about capacity to consent to marriage, regardless of whether the marriage was performed in Scotland or elsewhere.

### **Declarators of nullity of marriage**

As mentioned above, a void marriage is regarded as a matter of law as having never taken place and accordingly, in theory, a party to such a marriage need do nothing to bring it to an end. However, such a marriage will have been registered and, thus, the world at large would be entitled to believe that the parties are married to each other. Indeed, one of the parties may believe the marriage is valid. Accordingly, the desirable course of action is to have the matter clarified by the court. At present, this can be done by applying for a 'declarator of nullity of marriage' from the Court of Session or the sheriff court.

The Law Society of Scotland's response (Law Society of Scotland 2009, p 3) to the Scottish Government consultation notes that such a court action can be a costly and difficult process requiring skilled legal assistance. Accordingly, a party to an allegedly void marriage may elect not to obtain confirmation from the court of its void nature but instead raise divorce proceedings under the Family Law (Scotland) Act 1985. The Law Society suggests that while not perhaps the preferred choice for victims of forced marriage, as there is no legal acknowledgement that the marriage wasn't valid, "divorce might be the easier option" (The Law Society of Scotland, 2009 p.3).

## **VOID MARRIAGES – THE RULES RELATING TO MARRIAGES WITH A FOREIGN ELEMENT**

Where the Court of Session has authority to hear and determine a case where a declarator of nullity is sought, section 38 of the Family Law (Scotland) Act 2006 outlines some of the key rules which the Court must apply relating to void marriages with a foreign element. Examples of marriages where there is a foreign element include where one party resided in a country other than Scotland prior to the marriage or where the marriage ceremony takes place outside Scotland (although the parties later return to Scotland).

### **A person's 'domicile'**

Key to the understanding of section 38 (and associated sections) is an understanding of the legal concept of 'domicile'. A person's domicile is decided according to a complex set of legal rules but broadly speaking (and as mentioned above) an individual is domiciled in a particular place when they are treated in law as permanently residing there. It is possible for an individual to have one domicile at birth but later acquire a different domicile or indeed successive different domiciles. In deciding whether a new domicile has been acquired the courts will have regard to an individual's intentions as well as, for example, the duration of his or her residence in a particular place (Harvie-Clark, 2010).

### **Capacity and consent determined according to domicile prior to the marriage**

Section 38 of the 2006 Act provides that the question of whether a person had capacity to marry, or had consented to marry, will be determined according to the law of that person's

domicile as it was immediately before the marriage. This means, for example, that if a woman was domiciled in Pakistan immediately before her marriage her capacity to marry will be determined according to the law of Pakistan, as will the issue of whether she gave her consent, even if she later comes to reside in Scotland after her marriage (Harvie-Clark, 2010).

## **Exceptions to the general rule**

Section 38 creates several exceptions to the general rule. One such exception gives the Scottish courts discretion as to which country's law to apply in relation to issues of capacity when there is a matter of public policy at stake. A further exception provides that if the marriage actually takes place in Scotland (even if one or both of the parties were domiciled elsewhere prior to the marriage) the Scottish legal rules relating to void marriages will prevail (Harvie-Clark, 2010).

## **The domicile of under 16s**

Section 22 of the 2006 Act is also relevant in the context of the rules relating to void marriages with a foreign element as section 22 makes provision in relation to the domicile of a person under 16 years old. In particular, it provides that where the parents of such a person are domiciled in the same country as each other and the child has a home (or homes with) one or both parents, the child is treated in law as domiciled in the same country as his or her parents. In other circumstances the domicile of a person under 16 will be treated in law as the country with which he or she is, for the time being, most closely connected.

The effect of section 22 can perhaps be illustrated by reference to an example: a female under 16 marries in Estonia<sup>6</sup> then comes to live with her husband in Scotland. Issues later arise about whether the individual consented to marry under duress. The Court of Session will first have to determine the domicile of such a person according to the rules set out in section 22. If the under 16 is found by the Court of Session to have a Scottish domicile, on account of being most closely connected with Scotland, then, by virtue of section 38 of the Act, the issue of her alleged lack of consent will then fall to be determined by the Court of Session according to Scots law (Harvie-Clark, 2010).

Section 2 of the Family Law (Scotland) Act 2006 amends Section 20A of the Marriage (Scotland) Act 1977 (grounds on which a marriage is void) to void a marriage if either party was forced to marry against their will under "duress or error", and therefore did not give true consent (20A(2)). It also states that a marriage is void if either of the party is incapable of consenting to marriage or understanding the nature of marriage (Harvie-Clark, 2010).

## **Interaction between civil law relating to marriages and religious law**

Sometimes the ordinary civil law relating to marriage (discussed above) interacts with the specialist provisions of religious law. The main examples relate to Judaism and Islam where a decree of divorce or a declarator of nullity granted by a Scottish civil court cannot end a religious marriage according to the provisions of the relevant religious law. Until the appropriate action is taken under religious law to end the marriage an individual is regarded as a matter of religious law (although not Scottish civil law) as still married and therefore unable to marry someone else (Harvie-Clark, 2010).

Section 3A of the Divorce (Scotland) Act 1976 (added by section 15 of the 2006 Act) empowers (but does not require) a court to postpone the granting of a decree of divorce (on the application

---

<sup>6</sup> In Estonia, legal marriageable age is 15 with parental or court consent.

of either spouse) where there is a religious impediment to re-marriage. The postponement provided for by section 3A lasts until the non-applicant spouse takes the requisite step in religious law to end the religious marriage. The Scottish Council of Jewish Communities noted this issue in their written evidence to the Equal Opportunities Committee call for written evidence on the Bill:

“a civil court ruling cannot end or declare void religious marriages in some faith traditions, notably Judaism and Islam. Clause 15 of the Family Law (Scotland) Act 2006 introduced to prevent sanctions in which a religious marriage persists after the parallel civil marriage has been ended, although it is only of assistance in cases 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 only be applied in relation to Jewish religious marriages. As a result an individual who had contracted a religious marriage, even under duress might still be married according to religious law and therefore not able 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 the future”.

(Scottish Council of Jewish Communities, 2010)

## EXISTING CIVIL REMEDIES

This section will focus on the current civil remedies available in Scotland in relation to forced marriage. When seeking a civil remedy, the victim of abuse must make their own application and the burden of proof lies with the victim. In contrast, in the criminal justice system the prosecutor (the Lord Advocate or procurator fiscal) is responsible for determining whether a case is to be prosecuted and for bringing it to court (Hough, 2010). The Bill does not propose to change any of the existing civil remedies. The main civil remedies 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.
- An interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 that is an 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).

### Common law<sup>7</sup> interdicts

An interdict is a court remedy forbidding the commencement or continuation of an act or course of action by a named individual. An interdict is always a ‘prohibitory order’ so it can only be used to stop someone from doing something, not to make someone do something. Evidence must be presented at court of a threatened or continuing infringement of the pursuer’s rights and the pursuer must state precisely what it is the defendant must stop doing.

Breaching such an interdict is not a criminal offence and ordinarily the police have no power to arrest someone who breaches the terms of an interdict (unless the behaviour complained of is itself a criminal offence). Instead, an individual who is granted an interdict must raise a further action in the civil court for breach of interdict.

---

<sup>7</sup> Common law is the branch of law developed by judges when considering cases before them.

The Protection from Abuse (Scotland) Act 2001 allows a court to attach a power of arrest to any interdict granted for the purpose of protection from abuse. The police may arrest a person without warrant if there is reasonable cause to suspect that person of being in breach of the interdict and if there is considered to be a risk of abuse if the person is not arrested. Even where a power of arrest is attached to an interdict it remains the case that breach of an interdict is not a criminal offence (unless the behaviour leading to the breach also separately constitutes a criminal offence).

The Domestic Abuse (Scotland) Bill is currently being considered by the Scottish Parliament (Scottish Parliament, 2010e). Section 3 of the Bill would make it criminal offence to breach an interdict with a power of arrest in domestic abuse cases. The offence created by the Bill is punishable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both. On conviction on indictment, such an offence is punishable by imprisonment for a term not exceeding 5 years or to a fine or to both (Hough, 2010 see SPICe Briefing [10/53](#)).

In the case of a forced marriage interdicts can be used in the following way:

- When the marriage has not yet taken place:

A common law interdict could be granted to prohibit unlawful behaviour associated with forced marriage, such as assault or threatening behaviour.

- When the marriage has taken place:

A common law interdict could be sought in order to put a stop to ongoing behaviour such as violence or abuse.

## **Protection from Harassment Act 1997**

The Protection from Harassment Act 1997 provides that every individual has a right to be free from harassment and accordingly, a person must not:

“pursue a course of conduct which amounts to harassment of another and (a) is intended to amount to harassment of that person; or (b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person”.

In the 1997 Act, ‘harassment of a person includes causing a person alarm or distress. ‘Conduct’ includes speech, and a ‘course of conduct’ requires conduct on at least two occasions. The Domestic Abuse (Scotland) Bill, if successfully passed, will remove the requirement to show a *course* of conduct for a non-harassment order to be granted in domestic abuse cases

In an action raised under the 1997 Act, the court may award damages, grant interdict, or grant a non-harassment order. Breach of a non-harassment order is a criminal offence, punishable by up to 5 years imprisonment, or an unlimited fine, or both. A power of arrest can be attached to an interdict under the 1997 Act by virtue of the Protection from Abuse (Scotland) Act 2001 provided it protects against conduct that is likely to give rise to physical or mental injury, fear, alarm or distress.

## **Exclusion orders and matrimonial interdicts**

Under Section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, a non-entitled spouse has rights (a) if in occupation, to continue to occupy the matrimonial home and (b) if not in occupation, to enter into and occupy the family home. If the entitled spouse refuses to allow the non-entitled spouse to exercise the right in (b) to enter into and occupy the

matrimonial home, the non-entitled spouse may exercise that right only with leave of the court under section 3.

Either spouse may also apply to the court for an exclusion order, to suspend the occupancy rights of the other spouse, which may be granted if the court considers it is necessary for the protection of the person who applied for it, or, any children of the family. An exclusion order means that the spouse against whom it is directed no longer has the right to occupy the family home. In making the exclusion order, the court must, if sought by the applicant, also grant warrant for summary ejections of the other spouse and grant an interdict to prohibit that other spouse from entering the family home or removing any property from it.

The Civil Partnership Act 2004 replicated the provisions of the 1981 Act for civil partners. The 1981 Act was further amended by the Family Law (Scotland) Act 2006 which created the 'domestic interdict'- the equivalent to a matrimonial interdict for civil partners (either opposite-sex or same-sex).

At present, there is no law expressly prohibiting a forced marriage (forcing someone to marry) in Scotland and it is not a specific criminal offence. However, there is a range of current criminal offences which may be relevant in relation to forced marriage. These are discussed below.

## **CRIMINAL OFFENCES**

Depending on the circumstances, perpetrators could be prosecuted for a number of different criminal offences in relation to forced marriage in Scotland. These can include:

### **Abduction**

This is a common law crime. Abduction for any purpose, including marriage, constitutes a criminal offence. The abduction need not be accompanied by assault or fraud in order to be characterised as a criminal act. The essential element of the crime of abduction is the deprivation of the victim's personal freedom.

### **Assault**

Any attack upon the person of another is assault. "Attack" has a very wide meaning and an assault may still be committed in the absence of significant violence or injury to the victim. The deliberate use of threatening gestures in order to place a person in a state of fear and alarm for his safety is thought to be sufficient to constitute the crime of assault.

### **Rape and other sexual offences**

The Sexual Offences (Scotland) Act 2009, which was introduced in Parliament in June 2008 will come into force on 1<sup>st</sup> December 2010. The Act will repeal the common law offences of rape and a number of statutory sexual offences in addition to creating new statutory offences relating to sexual conduct, in particular where that takes place without consent. It provides a general definition of consent as "*free agreement*" and supplements this with a non-exhaustive list of factual circumstances in which free agreement, and therefore consent, is not present. Part Three of the Act makes provision regarding the capacity of persons with a mental disorder to consent to sexual intercourse.

## Child protection

The Children (Scotland) Act 1995 provides a number of provisions to safeguard the welfare of a child under the age of 16. Section 22 of the Act imposes a general duty on local authorities to safeguard and promote the welfare of children in their area where there is risk of harm. The Children's Hearing System which is governed largely by the provision of the 1995 Act, allows for the imposition of compulsory measures of supervision on a number of grounds, including being 'exposed to moral danger' or 'likely to suffer unnecessarily or be impaired seriously in their health or development, due to a lack of parental care'. Children's Hearings also have powers to issue warrants to keep a child in a place of safety pending the hearing or disposal of the case. Under Section 38 of the Act, a child can also request that the local authority provide them with short-term refuge.

The Children's Hearing (Scotland) Bill (Scottish Parliament, 2010d) was introduced in the Parliament on 23 February 2010 and at the time of writing is currently being considered at Stage 3. An amendment proposed by Ken McIntosh MSP (177)<sup>8</sup> which adds forced marriage as a specific ground for referral to a Children's Hearing, was agreed to as a Stage 2 amendment.

## Sexual activity with children

The Sexual Offences (Scotland) Act 2009 also contains provisions which criminalise adults engaging in sexual activity with children under the age of 16. Separate 'protective' offences are provided for in respect of sexual activity with young children (under the age of 13) and older children (from age 13 to age 15). In addition, the Act creates the offence of 'abuse of position of trust' for a person in a position of trust (over a child or person with a mental disorder) to engage in sexual activity with that child or person.

## PART 3: THE FORCED MARRIAGE ETC (PROTECTION AND JURISDICTION) (SCOTLAND) BILL

The aim of the Bill is to make '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' (Scottish Parliament, 2010a). It also clarifies the jurisdiction of the sheriff courts in relation to actions for declarator of nullity of marriage.

## SCOTTISH GOVERNMENT CONSULTATION

In light of the introduction of civil 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? (Scottish Government 2008) which ran until 27 March 2009. A large majority of respondents to the Scottish Government consultation considered that there are difficulties in accessing and using existing civil remedies in forced marriage cases such as the costs involved for victims, access to legal aid and there to be a lack of awareness and understanding of civil remedies amongst members of the public, victims and legal professionals (Reid Howie Associates, 2009). There was also a view that the current legal structure, nature of the remedies and procedural requirements of the process were not flexible enough to deal with the particular circumstances of forced marriage. A

---

<sup>8</sup> See Official Report: <http://www.scottish.parliament.uk/s3/committees/ellc/or-10/ed10-2402.htm#Col3929>

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 (Reid Howie Associates, 2009).

Respondents to the Scottish Government consultation felt that new legislation 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
- Send a clear message to the Scottish population that forced marriage has no place in Scotland.

(Reid Howie Associates, 2009)

The Scottish Government have not consulted on the specific content of a draft Bill. The Scottish Parliament's [Equal Opportunities Committee](#) issued a call for written evidence on the general principles of the Bill on 29 September until 25 November 2010. The Committee has been designated as the lead committee for scrutinising the Bill at Stage 1.

## **BILL PROVISIONS**

### **Forced Marriage Protection Orders**

Section 1(1) would enable the Court of Session or a sheriff court to make a forced marriage protection order (FMPO) for the purposes of protecting a person from being forced, or any attempt to force the person into a marriage for protecting a person who has been forced into a marriage. Although the existing civil remedies identified on pages 13-16 on this briefing may also be available to victims of forced marriage they are often costly and complex. In particular, the Scottish Government consultation found that there are often limitations on who can apply, who each remedy can be directed against and how a breach can be remedied (Reid Howie Associates, 2009). It is intended that FMPOs should be able to protect victims who are being or have been forced into a marriage, ranging from emotional pressure exerted on victims by family members, to more extreme cases involving assault, being held unlawfully, rape, including the threat of any of these types of conduct.

Sub-sections 1(2) and (3) set out the circumstances that the court would consider when deciding whether to make an order and the type of order that should be made. The Policy Memorandum (Scottish Parliament, 2010b) states that 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. The Bill states that:

“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 courts must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court consider the appropriate on the basis of the person’s age and understanding” (Scottish Parliament, 2010a, Sections 1(2) & (3)).

Section 1(4) provides that a forced marriage, for the purpose of making an FMPO, is where “a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into marriage (whether with B or another person) without A’s free and full consent” (Scottish Parliament, 2010a). ‘Force’ is defined as including 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 who has been forced into a marriage

## **Contents of forced marriage protection orders**

Section 2 makes provisions for the contents of an FMPO. It provides that the court may make an order containing any terms that it considers appropriate to prevent a forced marriage from occurring or protecting someone who is in a forced marriage. An order can contain “prohibitions, restrictions or requirements”. Subsection 2(3) provides examples of the requirements an FMPO can place on a person. There include a requirement to:

- Stop threatening, violent or intimidating behaviour.
- Refrain from taking the protected person abroad.
- Provide the court with documents such as passports and birth certificates of the protected person.
- Facilitate or enable the protected person or another person to return to the UK within a specified time period.

The terms of an FMPO may also relate to conduct outwith Scotland. FMPOs can also be directed against other individuals (other than the principal perpetrator) who are or may become involved in aspects of the forced marriage. This would allow orders to apply to a range of people who may be involved in perpetrating a forced marriage, such as other family or community members.

Respondents to the Scottish Government consultation welcomed the fact that FMPOs could require, as well as prohibit, actions. For example, some respondents noted that this would be particularly welcome in forced marriage cases which have an overseas element as the requiring of a passport from the perpetrator would prevent the victim being removed from the UK (Reid Howie Associates, 2009).

## **Application for orders and third parties**

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.

Most respondents (90%) to the Scottish Government consultation were in favour of allowing third party involvement in the application process for protection orders. A number of respondents suggested that third party involvement would allow others to progress issues on their behalf, providing an alternative option for victims who feel unwilling or unable to apply to the court for a range of reasons such as family pressure discomfort in approaching the police, uncertainty of the law; issues relating to stigma, shame and fear, being overseas or imprisoned. Although there was considerable agreement amongst most respondents about the value of allowing third party involvement, many respondents cautioned that these should be carefully and for it to be regulated (Reid Howie Associates, 2009).

Subsection 3(2) of the Bill states that any other applicant would first have to obtain permission of the court before they are able to make an application and subsection 3(3) sets out the criteria

that the court must consider in deciding whether to grant permission including the “wishes and feelings” of the protected person (Scottish Parliament, 2010a).

Subsection 4(1) would enable the court to make an FMPO on its own initiative if, in civil proceedings before the court, the court considers that an order should be made to protect a person. If in criminal proceedings before the sheriff or the High Court and the court considers that an FMPO 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.

### **Interim orders and duration, variation, recall and extension of orders**

Sections 5 to 8 of the Bill enables the courts to make interim orders in the absence of a protected person, to specify a time period for an order 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 court to do so.

### **Offence of breaching an order**

Section 9 of the Bill, would make it a criminal offence to “knowingly and without reasonable excuse” breach an FMPO. The Bill sets out the penalties for such an offence which include imprisonment for up to 12 months, and, or a fine. For more serious offences, the period of imprisonment can extend to up to 2 years. Respondents to the Scottish Government consultation were broadly supportive of this proposal. Respondents suggested that the provision would discourage wider family and third party involvement, increase accountability, strengthen the message that forced marriages will not be tolerated, make a perpetrator take the issue more seriously, and provide for greater protection and safety for victims (Reid Howie Associates, 2009).

This differs from the Forced Marriage (Civil Protection) Act 2007 (in England, Wales and Northern Ireland) where breach on an order is not a criminal offence, but the respondent may be arrested if the police believe there is reasonable cause to suspect there is a breach of the order. Under the above Act, the court may add a power of arrest where violence is threatened or used or where there is a risk of significant harm, either to the intended victim or to someone else in connection with the intended marriage and when the court considers that there will be inadequate protection without it. Breach is dealt with as contempt of court and the courts will have the full range of sanctions available to them, including imprisonment.

### **Power to apply to civil partnerships**

Section 10 of the Bill would enable Part 1 of the Bill to be applied, by order, to civil partnerships so that the Scottish Ministers can react quickly, subject to Parliamentary approval, to make equivalent provision if required to do so. The option of equivalent civil remedies for civil partnerships was also explored during the Scottish Government consultation. The policy memorandum of the Bill states that, 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 (Scottish Parliament, 2010b). A small number of respondents identified that while they saw it as unlikely that someone would be forced into a civil partnership for cultural reasons, the issue might arise for other reasons, such as for financial gain or to make it possible for partners to migrate to the UK (Reid Howie Associates, 2009).

## **Guidance**

Scottish Ministers would be able to issue statutory guidance on any of the provisions in Part 1 of the Bill or on other matters relating to forced marriage under section 1 of the Bill. A person exercising public functions to whom the guidance is given must have 'regard to it' in exercising those functions. Some respondents to the Scottish Government consultation identified problems with, or inconsistency, in the current level of knowledge, awareness and understanding of forced marriage in Scotland among the general public, local authorities and within the legal profession (Reid Howie Associates, 2009).

## **Declarators of nullity of marriage**

Part 2 of the Bill makes provision as to the jurisdictional rules applying in the sheriff court in relation to declarators of nullity of marriage. The explanatory notes state (Scottish Parliament, 2010c) that these jurisdictional rules parallel those that already apply in the Court of Session. (Scottish Parliament, 2010c). Uncertainty surrounding the jurisdictional rules applying in the sheriff courts was seen as a barrier to individuals, including victims of forced marriage, accessing this particular civil remedy (Scottish Parliament, 2010b).

## **FINANCIAL IMPLICATIONS**

The Scottish Government intends to allocate £90K for the period 2011-14 to support the implementation of the Bill. This is intended to cover the estimated costs relating to the development of a monitoring and evaluation framework, data collection, training, education and awareness raising (Scottish Parliament, 2010c). The financial memorandum suggests that the main financial impact of the Bill will fall on the sheriff court and Court of Session in exercising their new powers to grant a civil FMPO and in relation to the creation of a new criminal offence of breach of a forced marriage protection order. The Scottish Government estimates that 10 or fewer FMPOs would be made in Scotland in the first year of legislation (Scottish Parliament, 2010b).

As discussed, one significant feature of the Bill is that it proposes to enable local authorities as relevant third parties, to make applications for FMPO on behalf of victims. The financial memorandum notes that the Scottish Government have consulted with the Convention of Scottish Local Authorities regarding the potential impact on local authorities. COSLA has indicated that the Bill does not impose an additional financial burden on councils given the relatively low numbers of expected third party applications that local authorities will have to make.

A number of third sector support organisation such as Shakti Women's Aid, Hemat Gryfee Women's Aid, Amina and Saheliya have indicated that they foresee increased demands on their services due to the raised profile of forced marriage as a consequence of the Bill, including the need to provide one to one support, awareness raising within particular schools and in the case of women's aid groups, refuge accommodation. They also identified a need to train their staff in relation to the content of the Bill as well as delivering training to mainstream services such as health professionals, social workers and police (Scottish Parliament, 2010b). The financial memorandum does not provide any detail of Scottish Government plans to give direct funding to any support organisations.

The additional costs associated with the Bill are estimated in table 1 below:

**Table 1: Scottish Government's summary of costs of implementation of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill 2011-14**

Organisation	Financial Year					
	2011-12		2012-13		2013-14	
	Estimates* based on range between 1 and 10 forced marriage protection orders		Estimates based on range between 1 and 13 forced marriage protection orders		Estimates based on range between 1 and 16 forced marriage protection orders.	
	1 FMPO per year	10 FMPOs per year	1 FMPO per year	13 FMPOS per year	1 FMPO per year	16 FMPOS per year
<b>Scottish Government</b>	£45,000	£45,000	£30,000	£30,000	£15,000	£15,000
<b>Scottish Courts Service</b>	£508	£187,590	£508	£236,906	£508	£291,577
<b>Scottish Legal Aid Board</b>	£1,000	£54,000	£1,000	£70,200	£1,000	£86,000
<b>Local Authorities</b>	£2,800	£28,000	£2,800	£36,400	£2,800	£44,800
<b>Police</b>	ACPOS were unable to supply as estimate of expected costs.					
<b>TOTAL COST</b>	£49,308	£314,590	£34,308	£373,506	£19,308	£437,377

Source: Scottish Parliament (2010c page 16)

\*Estimated costs are based on a range of minimum and maximum costs that might be associated with between 1 and 10 forced marriage protection orders being issues in Scotland and in 2011-12 and then with an additional annual increase of 25% to the maximum number of cases in the subsequent 2 years of the Spending Review Period.

## SOURCES

- Avan, G, Bakshi, N., and Chaudry, F. (2005) *Right to choose? Research into domestic abuse and forced marriages within black and minority ethnic communities in Glasgow*. Glasgow City Council, Strathclyde Police and Hemat Gryffe. Available at: <http://www.glasgow.gov.uk/NR/rdonlyres/C775232F-C359-467F-8B35-1A9D40120130/0/RighttoChoose.pdf> [Accessed 18 October 2010].
- Clark, B and Richards, C. (2008) *The prevention and prohibition of forced marriages: a comparative approach*. International and Comparative Law Quarterly no. 57(3) p.507-528.
- Dauvergne, C and Millbank, J. (2010) *Forced marriage as a harm in domestic and international law*. The Modern Law Review no. 73(1) p.57-88.
- Forced Marriage Unit (2010) *General Forced Marriage Statistics* (unpublished).
- Foreign Office/Home Office/Scottish Executive (2005) *Forced Marriage: A wrong not a right. A joint Foreign Office, Home Office and Scottish Executive consultation*. Available at: [http://www.fco.gov.uk/resources/en/pdf/pdf14/fco\\_pdfforcedmarriageconsult](http://www.fco.gov.uk/resources/en/pdf/pdf14/fco_pdfforcedmarriageconsult) [Accessed 19 October 2010].
- Foreign Office/Home Office/Scottish Executive (2006) *Forced Marriage: A wrong not a right: Consultation Report*.
- General Assembly of the United Nations (1948) The Universal Declaration of Human Rights, Article 16.
- General Assembly of the United Nations (1962) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1. General Assembly resolution 1763 A (XVII)
- Harvie-Clark, S. (2010) Personal Communication [Unpublished].
- Home Office (2000) *A Choice by Right: The Report of the Working Group on Forced Marriage*. Available at: <http://www.fco.gov.uk/resources/en/pdf/a-choice-by-right> [Accessed 20 October 2010].
- Hough, R. (2010) Domestic Abuse (Scotland) Bill. SPICe Briefing 10/53. Available at: <http://www.scottish.parliament.uk/business/research/briefings-10/SB10-53.pdf>. [Accessed 10 November 2010].
- Judges of the Court of Session (2009) *Scottish Government's Consultation Forced Marriage: a Civil Remedy? Judges of the Court of Session response (41)*. March 2009. Available at: <http://www.scotland.gov.uk/Resource/Doc/276783/0083114.pdf> [Accessed 21 October 2010].
- Law Society of Scotland (2009) *Scottish Government's Consultation Forced Marriage: a Civil Remedy? The Law Society of Scotland's Response (41)*. March 2009. Available at: <http://www.scotland.gov.uk/Publications/2009/06/22112358/0> [Accessed 19 October 2010].
- Ministry of Justice (2009) *One Year On: the initial impact of the Forced Marriage (Civil Protection) Act 2007 in its first year of operation*. Available at: <http://www.justice.gov.uk/one-year-on-forced-marriage-act.pdf>
- Reid Howie Associates (2009) *Consultation on "Forced Marriage: A Civil Remedy?" Analysis of Responses*. Scottish Government. Available at: <http://www.scotland.gov.uk/Publications/2009/06/11141824/0> [Accessed 19 October 2010].

Rude-Antoine, E. (2005) *Forced marriages in Council of Europe Member States: A comparative study of legislation and political initiatives*. Directorate General of Human Rights of the Council of Europe. Available at: [http://www.tirol.gv.at/fileadmin/www.tirol.gv.at/themen/gesellschaft-und-soziales/integration/downloads/Leitbild-neu-Stand\\_Jaenner\\_2009/AK6-Gesundheit/Zwangsheirat\\_in\\_MG-Staaten\\_des\\_Europarates.pdf](http://www.tirol.gv.at/fileadmin/www.tirol.gv.at/themen/gesellschaft-und-soziales/integration/downloads/Leitbild-neu-Stand_Jaenner_2009/AK6-Gesundheit/Zwangsheirat_in_MG-Staaten_des_Europarates.pdf) [Accessed 3 November 2010].

Scottish Council of Jewish Communities (2010) *Forced Marriage etc (Protection and Jurisdiction) Bill call for evidence*. Submission FM01: Available at: <http://www.scottish.parliament.uk/s3/committees/equal/inquiries/documents/FM1SCoJeCFMBill.pdf> [Accessed 16 November 2010].

Scottish Government (2008) *Forced Marriage: A Civil Remedy? A Consultation Paper*. Available at: <http://www.scotland.gov.uk/Publications/2008/11/25131845/0> [Accessed 19 October 2010].

Scottish Government (2010) *Equality impact assessment- Forced marriage etc (Protection and Jurisdiction) (Scotland) Bill*. Available at: <http://www.scotland.gov.uk/Topics/People/Equality/violence-women/forcedmarriage/FMBill/ForcedMarriageBillEQIA> [Accessed 19 October 2010].

Scottish Parliament (2010a) *Session 3 SP Bill 53- Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (as introduced)*. Available at: <http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd.pdf> [Accessed 19 October 2010].

Scottish Parliament (2010b) *Session 3 SP Bill 53- 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> [Accessed 19 October 2010].

Scottish Parliament (2010c) *Session 3 SP Bill- Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill- Explanatory Notes*. Available at: <http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd-en.pdf> [Accessed 19 October 2010].

Scottish Parliament (2010d) *Session 3 SP 41-The Children's Hearing Scotland Bill (as introduced)*. Available at: <http://www.scottish.parliament.uk/s3/bills/41-ChildrensHearing/b41s3-introd.pdf> [Accessed 21 October 2010].

Scottish Parliament (2010e) *Session 3 SP 45- The Domestic Abuse (Scotland) Bill (as introduced)* Available at: <http://www.scottish.parliament.uk/s3/bills/45-DomesticAbuse/b45s3-introd.pdf>. [Accessed 10 November 2010].

Scottish Parliament Education, Lifelong Learning and Culture Committee (2010) *Official Report 24<sup>th</sup> meeting 2010, Session 3, 29 September 2010*. Edinburgh. Scottish Parliament. Available at: <http://www.scottish.parliament.uk/s3/committees/ellc/or-10/ed10-2402.htm#Col3929> [Accessed 21 October 2010].

Thompson (2006) *Family Law in Scotland 2006*, Edinburgh, Tottel.

## **ANNEX A**

### **Forced Marriage Network Membership List 2010**

Association of Chief Police Officers in Scotland  
Amina- the Muslim Women's Resource Centre  
Association of the Directors of Social Work  
British Red Cross Refuge Unit  
City of Edinburgh Council  
Citizens Advice Scotland  
Convention of Scottish Local Authorities  
Council of British Pakistanis (Scotland)  
Dundee City Council  
Family Law Association  
General Register Office for Scotland  
Glasgow City Council  
Glasgow Violence Against Women Partnership  
Greater Glasgow Training Consortia  
Hemat Gryffe Women's Aid  
The Law Society of Scotland  
Nasra Bibi Consultancy  
NHS Greater Glasgow and Clyde  
Rape Crisis Glasgow  
Saheliya  
Salma Siddique, Napier University  
Scottish Refugee Council  
Scottish Women's Aid  
Shakti Women's Aid  
Victim Support Scotland  
West Lothian Council  
Women and Children First  
Women's Support Project

This page is intentionally blank

This page is intentionally blank

This page is intentionally blank



# SPICe

The Information Centre

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Lisa Taylor on extension 85190 or email [Lisa.Taylor@scottish.parliament.uk](mailto:Lisa.Taylor@scottish.parliament.uk) Members of the public or external organisations may comment on this briefing by emailing us at [spice@scottish.parliament.uk](mailto:spice@scottish.parliament.uk). However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk).

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)