

SPICe Briefing

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill: Stage 3

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Lisa Taylor

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill ('The Bill') was introduced in the 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. The Bill makes provision for victims of forced marriage to apply to a civil court for a Forced Marriage Protection Order (FMPO).

Stage 3 proceedings are scheduled to take place on 22 March 2011.

This briefing considers the main points that arose at Stage 1, including the recommendations made by the Equal Opportunities Committee in its Stage 1 report, and the amendments that were lodged at Stage 2.



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INTRODUCTION

[The Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Bill](#) ('The Bill') was introduced by Nicola Sturgeon MSP as an Executive Bill on 29 September 2010 to the Parliament. 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 the Government to protect citizens from pressure, harassment or threat 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).

To achieve this policy objective, the Bill [as introduced] has two main provisions:

- **Part 1** adds to existing civil remedies by making provision for forced marriage protection orders (FMPO) 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 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 carry out one or more of a range of actions, for example, refrain from certain conduct, comply with certain directions or provide information to the court. 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 third parties to apply, without leave, for an FMPO on behalf of vulnerable victims.
- **Part 2** clarifies the jurisdiction rules that apply where individuals including victims of a forced marriage, wish to seek declaration from the sheriff court to make such a marriage void.

Further background on the provisions in the Bill [as introduced] is provided in the [SPICe Briefing on the Bill](#) (Taylor, 2010).

The Equal Opportunities Committee ('the Committee') was designated as the lead Committee for parliamentary consideration of the Bill. The Bill was also considered by the Subordinate Legislation Committee in relation to the designated power provisions in the Bill. The Committee published its [Stage 1 Report](#) on 26 January 2011. The Bill completed Stage 1 with the [Stage 1 debate](#) taking place on 2 February 2011 where the general principles of the Bill were unanimously agreed to by the Parliament (Scottish Parliament, 2011b). The Scottish Government [responded](#) to the Committee's Stage 1 report on 14 February 2011 (Scottish Government, 2011).

Stage 2 was completed by the Committee [on 1 March](#) and was followed by the publication of the Bill (as amended at Stage 2) on [1 March 2011](#).

Stage 3 proceedings of the Bill by the Parliament are scheduled to take place on 22 March 2011.

Key dates in the Parliament’s consideration of the Bill are set out in Table 1 below.

Table 1: Summary of Parliamentary Consideration	
Bill introduced	29 September 2010
Stage 1: Equal Opportunities Committee evidence sessions	23 November 2010; 14 December 2010
Stage 1: Subordinate Legislation Committee session	23 November 2010; 22 February 2011 (after Stage 1)
Stage 1: Equal Opportunities Committee Stage 1 report	26 January 2011
Stage 1: Plenary Debate	2 February 2011
Stage 2: Equal Opportunities Committee	1 March 2011
Stage 3: Plenary Debate and consideration of amendments	Scheduled for 22 March 2011

STAGE 1 REPORT

During Stage 1 consideration, the Committee held two oral evidence sessions on the general principles of the Bill from a range of stakeholders (including, Scottish Women’s Aid, the Law Society of Scotland, Hemat Gryffe Women’s Aid, Shakti Women’s Aid, the Forced Marriage Unit, UK Minister of Justice, Council of British Pakistanis (Scotland) and Saheliya) as well as from the Minister for Housing and Communities, Alex Neil MSP (“the Minister”). The Committee also received [22 written responses](#) to its call for written evidence on the general principles of the Bill. 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 (Scottish Parliament 2011, p.13).

The Committee’s Stage 1 report (Scottish Parliament, 2011) was supportive of the main principles of the Bill:

“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.” (Scottish Parliament, 2011 para 65)

There was general agreement at Stage 1 that the existing civil remedies for preventing and tackling forced marriage are insufficient and under-utilised. The Committee also recognised that

the introduction of civil legislation would bring Scotland into line with existing legislation in the rest of the UK in terms of preventing forced marriage and protecting victims.

However, the Committee also raised some issues where further clarification was needed on various aspects of the Bill. Table 2 summarises (below) some of the main recommendations made by the Committee during its Stage 1 proceedings and the Scottish Government's response to the recommendations:

Table 2: A Summary of the Equal Opportunities Committee's Stage 1 Report Recommendations and Scottish Government Response	
Committee Recommendation	Scottish Government Response
The Committee supported the view expressed in evidence that the definition of "force" in the Bill should be strengthened by way of amendment to include the physical aspect of coercion and abuse in addition to threats or other physical means used in the Bill as introduced.	The Scottish Government agreed to revise the Explanatory Notes associated with the Bill to make it clearer that the type of coercion used can be verbal, <u>physical</u> or mental.
The Bill provides 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. The Committee acknowledged evidence it received from local authorities seeking clarification on their role in relation to being designated a relevant third party, and also noted concerns that the term "local authority" was too general.	The Scottish Government did not think it was appropriate to specify which parts of each local authority should have responsibility for making such applications and stated that it was for each local authority to decide how best to deliver and assign its functions under the Bill. The Government indicated that relevant information on the ongoing responsibility of third parties will be made explicit in accompanying statutory guidance.
Section 9 of the Bill would make it a criminal offence to breach an FMPO. The Committee was persuaded by arguments put forward by witnesses including ACPOS and Scottish Women's Aid that the Bill should be consistent with other legislation by placing on the face of the Bill a power of arrest in relation to breach of an FMPO.	The Scottish Government did not think it was necessary to express a general power of arrest in relation to Section 9 because the police already have common law powers for this. The Government however agreed 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 FMPO.
A number of witnesses in both the oral and written evidence raised concerns that a decree of divorce or declarator of nullity, granted by a civil court in Scotland, 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, a victim may still be regarded as married (under their relevant religion) even if was declared a forced marriage and annulled in civil courts.	The Scottish Government acknowledged their commitment to continue to engage with relevant religious authorities on the issue of nullification of forced marriages and to raise awareness of the Bill among religious organisations and communities.

<p>The Committee acknowledged that whilst the Bill cannot make changes to religious practices, it called on the Scottish Government to engage with relevant religious authorities on the issue of nullification of forced marriages and to raise awareness of the Bill among all religious communities.</p>	
<p>The Committee sought clarification in relation to the interaction that immigration status will have on the treatment of an applicant following an FMPO being made.</p>	<p>The Scottish Government responded; “the flexibility of the forced marriage protection regime enables courts to take account of the immigration status 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 order could be sought if necessary’.</p>

(Scottish Government, 2011)

STAGE 2 PROCEEDINGS

[Twelve amendments](#) were lodged at Stage 2, of which 9 were Scottish Government amendments lodged by the Minister. All Government amendments, and the two proposed by Marlyn Glen MSP, were agreed to unanimously. An amendment proposed by Elaine Smith MSP, was withdrawn on the provision that further explanation was provided by the Scottish Government prior to Stage 3 proceedings (Scottish Parliament, 2011c). All of the Stage 2 amendments are outlined in Table 3 below:

Amendment number(s)	Lodged by	Issue	Effect
10	Marlyn Glen MSP	Definition of forced marriage	Inserts “physical, verbal or psychological means, threatening conduct, harassment or other” in the definition of “force” in Section 1 of the Bill. Ensures that physical, verbal and psychological threat is used in the definition of ‘force’ on the face of the Bill.
1, 1A, 2	Alex Neil MSP, Marlyn Glen (1A)	Content of forced marriage protection orders	Makes it clearer that an FMPO may be used to prohibit a person from taking a protected person to another place, whether in Scotland, the rest of the UK, or abroad. Also makes it clear that a court can specify a specific place (such as an address) in Scotland or another UK country as the place to which the person is

			to be returned or to go to.
3-4	Alex Neil MSP	Breach of forced marriage protection order- power of arrest	Enables a constable to arrest without warrant a person who they reasonably believe has breached or is breaching an FMPO.
5-8	Alex Neil MSP	Mandatory guidance	Places a duty on Scottish Ministers that they “must” provide guidance, rather than “may” provide guidance, to appropriate persons no later than the day Section 1 of the Bill comes into force. Also restates the existing discretionary power in section 11(1)(b) that guidance may be issued on other matters relating to forced marriage.
9	Alex Neil MSP	Referrals to Reporter under the Children’s Hearing (Scotland) Bill	Ties together the Bill with Section 67 of the Children’s Hearing (Scotland) Act 2011. Creates a new section 67 ground to refer a child who has been, or is likely to be, forced into a marriage, to the Principal Reporter. Defines forced marriage by reference to Section 1 of the Bill.
Further Consideration Prior to Stage 3			
11	Elaine Smith MSP	Matters unaffected by Part 1- to replace the term “ <i>equitable jurisdiction</i> ” with “ <i>nobile officium</i> ” in Section 12	Should be replaced by the Scots law term “ <i>nobile officium</i> ” as it more accurately reflects the intention of the provision. This amendment was supported by the Law Society of Scotland.

STAGE 3

Stage 3 proceedings are scheduled to take place on 22 March 2011.

SOURCES

Scottish Government (2011) *Scottish Government response to the Equal Opportunities Committee Stage 1 Report*. Edinburgh. Scottish Government. Available at: <http://www.scottish.parliament.uk/s3/committees/equal/inquiries/documents/ScottishGovernmentResponse.pdf> [Accessed 1 March 2011].

Scottish Parliament (2010a) *Session 3 SP Bill 53- Forced Marriage Bill etc. (Protection and Jurisdiction) (Scotland) Bill [as introduced]*. Available at: <http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd.pdf> [Accessed 1 March 2011].

Scottish Parliament (2010b) *Session 3 SP Bill 53- Forced Marriage Bill etc. (Protection and Jurisdiction) (Scotland) Bill-Policy Memorandum*. Available at: <http://www.scottish.parliament.uk/s3/bills/53-forcedMarriage/b53s3-introd-pm.pdf> [Accessed 1 March 2011].

Scottish Parliament (2011) *Equal Opportunities Committee Stage 1 Report on the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill*. Edinburgh. Scottish Parliament. Available at: <http://www.scottish.parliament.uk/s3/committees/equal/reports-11/eor11-01.htm>. [Accessed 1 March 2011].

Scottish Parliament (2011a) *Subordinate Legislation Committee 67th Report on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill*. Edinburgh. Scottish Parliament. Available at: <http://www.scottish.parliament.uk/s3/committees/subleg/reports-10/sur10-67.htm>. [Accessed 1 March 2011].

Scottish Parliament (2011b) *Official Report 2 February 2011*. Edinburgh. Scottish Parliament. Available at: <http://www.scottish.parliament.uk/apps2/business/orsearch/ReportView.aspx?r=6074&mode=html>. [Accessed 1 March 2011].

Scottish Parliament (2011c) *Equal Opportunities Committee Official Report 1 March 2011: Session 3*. Edinburgh. Scottish Parliament. Available at: <http://www.scottish.parliament.uk/Apps2/Business/ORSearch/ReportView.aspx?r=6142&mode=pdf>. [Accessed 1 March 2011].

Taylor, L (2010) *Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill*. SPICe Briefing SP10/79. Edinburgh. Scottish Parliament. Available at: <http://www.scottish.parliament.uk/business/research/briefings-10/SB10-79.pdf> [Accessed 1 March 2011].

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