

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

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill introduced in the Scottish Parliament on 29 September 2010:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

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

EXPLANATORY NOTES

INTRODUCTION

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

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

SUMMARY AND BACKGROUND TO THE BILL

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

Overview of the Structure

5. The Bill is divided into three parts:

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

COMMENTARY ON SECTIONS

PART 1: FORCED MARRIAGE PROTECTION ORDERS

Section 1: Forced marriage protection orders

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

7. Subsections (2) and (3) set out the issues that the court must consider when deciding whether to make an order and the type of order that should be made.

8. Subsection (4) describes what a forced marriage means for the purposes of Part 1. Subsection (5) makes it clear that the conduct which forces a person into marriage does not have to be directed against that person and includes, for example, circumstances in which the perpetrator threatens to commit suicide if the person does not submit to the marriage.

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

Section 2: Contents of orders

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

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

Section 3: Applications for orders

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

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

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

Section 4: Power to make orders without application

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

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

Section 5: Interim orders

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

Section 6: Duration of orders

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

Section 7: Variation and recall of orders

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

Section 8: Extension of orders

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

Section 9: Offence of breaching order

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

Section 10: Power to apply Part to civil partnerships

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

Section 11: Guidance

23. This section enables the Scottish Ministers to issue guidance on any of the provisions in Part 1 or on other matters relating to forced marriage (such as practitioner guidance covering information sharing, data collection, risk assessment and safety planning that will assist those

working with victims of forced marriage to ensure their safety). A person exercising public functions to whom the guidance is given must have regard to it in exercising those functions.

Section 12: Other protection or assistance against forced marriage

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

Section 13: Interpretation of Part

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

PART 2: DECLARATORS OF NULLITY OF MARRIAGE IN SHERIFF COURT

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

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

PART 3: GENERAL

Section 15: Ancillary provision

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

Section 16: Subordinate legislation

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

Section 17: Crown application

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

Section 18: Short title and commencement

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

FINANCIAL MEMORANDUM

INTRODUCTION

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

Methodology

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

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

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

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

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

¹ The Business Regulatory Impact Assessment for the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill is available from the Scottish Parliament Information Centre (SPICe)

34. In total 86 FMPOs were granted between 25 November 2008 and 31 October 2009 in England. Although the legislation applies in Wales and Northern Ireland no applications for FMPOs were made².

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

36. The main support organisations in Scotland for female victims, who make up 85% of all cases⁴, are Shakti Women's Aid in Edinburgh and Hemat Gryffe Women's Aid in Glasgow. In 2009-10 Shakti Women's Aid supported 7 forced marriage cases and Hemat Gryffe Women's Aid 13 cases. There is no reliable source of information that captures the 15% of cases involving male victims of forced marriage. However since we know that 20 cases involving female victims make up 85% of all cases, we can estimate that there were at least 4 cases which involved male victims.

37. Although victims of forced marriage can come from a range of communities the majority of cases have involved people of Pakistani, Bangladeshi and Indian origin (74% of all cases dealt with in 2009 by the UK Government's Forced Marriage Unit⁵).

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

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

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

² Source: Ministry of Justice, One Year On: the initial impact of the Forced Marriage (Civil Protection) Act 2007, (2009), page 4

³ Source: Forced Marriage Unit annual statistics 2009

⁴ Ibid

⁵ Ibid

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

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

Projected increase in FMPOs

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

COSTS ON THE SCOTTISH ADMINISTRATION

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

Scottish Legal Aid Board

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

Criminal cases

44. However SLAB has also made the point that in addition to the cost of up to 10 civil cases per year, there might also be a cost for SLAB in relation to the possible applications on the criminal side related to the new criminal offence created. Although it is suggested that there would be a maximum of 10 cases per year, the calculation would not be the same for legal aid as

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

Interpretation costs

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

Declarators of nullity

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

Scottish Courts Service

Court costs

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

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

Translation costs

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

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

Court jurisdiction relating to declarators of nullity

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

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

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

Summary of court costs

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

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

Scottish Government

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

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

Estimated expenditure	2011-12	2012-13	2013-14
Monitoring and implementation report (including data collection)	-	£20,000	£10,000
Training/awareness raising	£20,000	£10,000	£5,000
Guidance	£25,000	-	-
Total	£45,000	£30,000	£15,000

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

COSTS ON LOCAL AUTHORITIES

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

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

59. The cost to a local authority, acting as a relevant third party to make an application for a FMPO has been estimated by the UK Government at £2,800 per case⁶ (based on assumptions of social work input over an average of 6 weeks per case and a legal expert for 4 days. If all FMPO cases were dealt with by local authorities, the total cost would be £28,000 in 2011-12 for 10 cases, £36,400 in 2012-13 for 13 FMPOs and £44,800 for 16 FMPOs in 2013-14.

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

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Association of Chief Police Officers (Scotland)

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

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

⁶ Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party consultation document, Ministry of Justice, December 2007

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

63. However although the police may become involved in criminal incidents relating to cases of forced marriage, the cost of their involvement would not necessarily be costs which would arise from this Bill. The only relevant costs are those associated with a FMPO which is breached as that constitutes a criminal offence and where there is no other criminal behaviour involved. Based on the statistical information⁷ gathered by the UK Government that showed that only 3 FMPOs were breached in the first 12 months of the Act being in force, it is likely that not all of the FMPOs granted in Scotland will be breached.

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

- Guidance – ACPOS was clear that in order to maximise the effectiveness of legislation, it is essential to have multi-agency guidance that provides clear pathways and a process which includes access to financial support both for supporting agencies/organisations and victims.
- Training – ACPOS felt that to accompany the introduction of guidance there should be a structured training programme to raise awareness about the new legislation and related process of implementation. Multi-agency training may be appropriate alongside the publication of multi-agency guidance and would lessen the financial impact on relative agencies/organisations in devising and delivering requisite training. It is still likely that the current training provision, specific to police investigation of reported forced marriage incidents, would require expansion to enable a consistent and effective police response. The development of a national training strategy for investigating reported incidents of honour-based violence including forced marriage is currently an objective of the ACPOS honour-based violence working group. The impact of new legislation and associated guidance could be included within the group's ongoing work, thereby sharing the financial impact across the forces nationally and providing a national consistency and perspective.
- Personnel – ACPOS identified that incidents of forced marriage are being reported with increasing regularity across Scotland. Although reliable statistics and baseline data were still difficult to retrieve, where forces had introduced a method of identifying and recording reported incidents there had been a noticeable increase. However not all forces had this in place so it is not possible to give the number of incidents the police are dealing with in Scotland. To date incidents of forced marriage reported to the police have been managed by Public Protection Units, many of whom have issues with capacity in relation to staffing. Public Protection Units offer investigative provision for issues commonly linked to forced marriage and vulnerable groups such as child protection and adult protection. Therefore they can provide much of the expertise and knowledge required for effective investigation. In acknowledging the believed under-reporting of forced marriage, they feel that the introduction of a civil remedy, raising awareness and improving response is likely to lead to a financial impact relating to the provision of adequate resources required to

⁷ Ministry of Justice

respond to an anticipated increase of reporting. However ACPOS were unable to quantify this potential financial impact.

Third sector support organisations

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

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

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

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

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

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

No recourse to public funds

71. The issue of "no recourse to public funds" affects women who have entered the country on their spouse's visa and left the marriage as a result of domestic abuse within the first 2 years of their stay in the UK. This is known as the "2 year rule". As a result of the immigration legislation that is place, they are not entitled to access public funds (for example housing benefit and benefits covering living costs) to support them while they apply for leave to remain in their

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

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

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

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

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

OVERALL SUMMARY OF COSTS

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

Organisation	Financial year					
	2011-12		2012-13		2013-14	
	Estimates based on a range between 1 and 10 forced marriage protection orders		Estimates based on a range between 1 and 13 forced marriage protection orders		Estimates based on a 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
Scottish Government (paragraphs 54 to 56)	£45,000	£45,000	£30,000	£30,000	£15,000	£15,000
Scottish Courts Service (paragraph 47 to 53)	£508	£187,590	£508	£236,906	£508	£291,577
Scottish Legal Aid Board (paragraphs 43 to 46)	£1,000	£54,000	£1,000	£70,200	£1,000	£86,000
Local authorities (paragraphs 57 to 60)	£2,800	£28,000	£2,800	£36,400	£2,800	£44,800
Police (paragraphs 61 to 64)	ACPOS is unable to supply an estimate of expected costs.					
TOTAL	£49,308	£314,590	£34,308	£373,506	£19,308	£437,377

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

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

“In my view, the provisions of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

78. On 21 September 2010, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill
(SP Bill 53) as introduced in the Scottish Parliament on 29 September 2010*

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

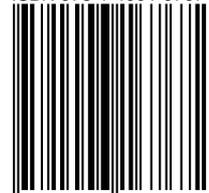
EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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