



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 1 March 2011

Session 3

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EQUAL OPPORTUNITIES COMMITTEE

4th Meeting 2011, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Jamie Hepburn (Central Scotland) (SNP)

*Christina McKelvie (Central Scotland) (SNP)

*Stuart McMillan (West of Scotland) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Rhoda Grant (Highlands and Islands) (Lab)

Tricia Marwick (Central Fife) (SNP)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Neil (Minister for Housing and Communities)

CLERK TO THE COMMITTEE

David McLaren

LOCATION

Committee Room 6

Scottish Parliament

Equal Opportunities Committee

Tuesday 1 March 2011

[The Convener *opened the meeting at 10:06*]

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: Stage 2

The Convener (Margaret Mitchell): Good morning everyone, and welcome to the fourth meeting in 2011 of the Equal Opportunities Committee. I remind all those present that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system.

The first item on the agenda is consideration of amendments at stage 2 of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. There are 12 amendments, which have been organised into six groups.

I welcome Alex Neil MSP, Minister for Housing and Communities, and his officials: Lesley Irving, team leader, equality and communities division; Eileen Flanagan, policy manager, equality and communities division; David McLeish, assistant Scottish parliamentary counsel; and Mark Eggeling, solicitor for the Scottish Government.

We move to consideration of the bill.

Section 1—Forced marriage protection orders

The Convener: Amendment 10, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen (North East Scotland) (Lab): This issue was discussed quite widely in the committee's evidence sessions. I understand that, as the minister said in his response, there is an assumption in the bill that major force is included. However, our witnesses suggested strongly that the definition should be made explicit in the text of the bill, and amendment 10 attempts to do that.

I agree that it is essential to revise the explanatory notes to make that absolutely clear, and I would appreciate it if the notes also included mention of threat of blackmail and the use of deception. However, I would like members to consider amendment 10, to make it clear to everyone—not just legal experts—that physical force is indeed included in the bill. I agree with our witnesses that including it in the text of the bill would give a much clearer message.

I move amendment 10.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I support amendment 10. If Scottish Women's Aid and the Association of Chief Police Officers in Scotland have come together on an amendment, that creates quite a powerful coalition, and I cannot see that there is any argument against it in principle. Apart from anything else, it reads better: the phrase "threats or other psychological means" was always slightly ambiguous anyway. It is very important that it is explicit in the text of the bill.

The Minister for Housing and Communities (Alex Neil): I indicated at stage 1 that I would consider this issue further, since it was raised by witnesses including those from the Association of Chief Police Officers in Scotland and Scottish Women's Aid. After consideration, I decided not to lodge an amendment in this regard, on the basis that it was clear that the type of force that is used can be physical, verbal or psychological, as the ordinary meaning of the word "force" includes overpowering or compelling a person by physical means. Section 1(6) provides that it also includes coercion by verbal threats "or other psychological means".

However, I appreciate the sentiments behind the police and Scottish Women's Aid calling for an amendment such as amendment 10, to ensure that the bill sends out an unequivocal message, using unambiguous language, to those who might use it or who could be subject to it, that coercing someone to enter into a marriage by physical violence or any other means is unacceptable and will be punishable, alongside the other types of behaviour that can be used to force someone into a marriage.

I have noted the points that Marlyn Glen made as she spoke to her amendment, and I accept amendment 10 in her name. I furthermore take the points that she made about the explanatory notes, and I will amend them accordingly.

Marlyn Glen: I thank the minister for taking on board the points that have been made, and I am sure that the witnesses who were at the committee will take some reassurance from that.

Amendment 10 agreed to.

Section 1, as amended, agreed to.

Section 2—Contents of orders

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 1A and 2.

Alex Neil: As I indicated during the stage 1 debate, I have responded to members' concerns regarding the examples in section 2(3), paragraphs (f) and (g). Amendment 1 makes it clear that a forced marriage protection order may

prohibit a person from taking the victim away from a place specified by the courts, thus potentially preventing removal from Scotland or from a particular place in Scotland.

Marlyn Glen's amendment 1A adjusts amendment 1 to make it clear that the order can also prohibit someone from taking the victim to, not just from, a specified place.

Amendment 2 makes it clear that the order may require a person to facilitate or enable another person, including the victim, to return to or go to any place, whether in Scotland or elsewhere.

I ask the committee to support amendments 1 and 2 in my name, and amendment 1A in Marlyn Glen's name.

I move amendment 1.

Marlyn Glen: It is important to have clarity so that the protected person has the full protection of the courts and so that the court is empowered, regarding all sorts of details, when it is determining the terms of the order. I am glad that the minister has accepted my amendment, which I think adds clarity to the bill.

I move amendment 1A.

Amendment 1A agreed to.

Amendment 1, as amended, agreed to.

Amendment 2 moved—[Alex Neil]—and agreed to.

Section 2, as amended, agreed to.

Sections 3 to 8 agreed to.

Section 9—Offence of breaching order

The Convener: Amendment 3, in the name of the minister, is grouped with amendment 4.

Alex Neil: I lodged amendment 3 in light of the evidence that the committee received from ACPOS and Scottish Women's Aid, which both identified the benefits of having an explicit power of arrest included in the bill.

Although I do not feel that it is necessary to include an express general power of arrest—as the police already have common-law powers for that—amendment 3 gives a specific power for a constable to arrest without warrant any person who is reasonably believed to be committing, or to have committed, a breach of a forced marriage protection order.

Amendment 4 is consequential on amendment 3. It makes it clear that the reference to an offence in section 9(2) refers to an offence under section 9(1). I ask the committee to support amendments 3 and 4 in my name.

I move amendment 3.

10:15

Marlyn Glen: I appreciate the fact that the minister lodged amendment 3 in response to the concerns that were expressed.

Amendment 3 agreed to.

Amendment 4 moved—[Alex Neil]—and agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Section 11—Guidance

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 6 to 8.

Alex Neil: Guidance has been identified by the majority of those who gave evidence on the bill, as well as by committee members, as essential for the purposes of informing practitioners and others of the effect of part 1, so that they are clear about how its provisions can be used to tackle forced marriage in Scotland. I agree. Therefore, at the earliest stage of the bill's scrutiny, I identified that we would strengthen that commitment by amending the wording of section 11 to state that the Government must, rather than may, introduce guidance on the effect of part 1.

I have listened to the committee's views on the timing of the dissemination of guidance, and we have amended the bill to require ministers to provide guidance on part 1 before it is commenced, to reflect the committee's wish to ensure that guidance is available early.

Amendment 6 restates, in consequence of amendment 5, the power in section 11(1)(b), as a separate paragraph, to make it clear that guidance on other matters relating to forced marriages will remain at the discretion of Scottish ministers.

Amendment 7 is consequential on amendments 5 and 6. It makes it clear that the duty in section 11(2) to have regard to guidance applies to both mandatory guidance and discretionary guidance, as provided for under section 11.

Amendment 8 makes it clear, in consequence of amendments 5 and 6, that the Scottish ministers may not give guidance, whether it is required or not under section 11, to a court or tribunal.

I move amendment 5.

Amendment 5 agreed to.

Amendments 6 to 8 moved—[Alex Neil]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Other protection or assistance against forced marriage

The Convener: Amendment 11, in the name of Elaine Smith, is in a group on its own.

Elaine Smith (Coatbridge and Chryston) (Lab): Amendment 11 replaces the term “equitable jurisdiction” with “nobile officium”. The suggestion comes from the Law Society of Scotland, which gave evidence to the committee on section 12 in particular. The reason for replacing the term “equitable jurisdiction” is that it is not a recognised term in Scots law.

I will explain the background. Equity, as a feature of English law, was developed in response to the inflexibility of early common law, and a practice developed of petitioning the king for a remedy where none existed at common law. The king delegated disposal of the petitions to the chancellor, as keeper of the king’s conscience, which—due to the number of petitions that were sent to the chancellor to dispose of—gave rise to the creation of the Court of Chancery, which, in turn, gave rise to the creation of a separate body of rules, the rules of equity, for dealing consistently with the petitions that were received.

Scots law, based as it is on Roman law, did not create a distinction between rules of law and rules of equity; instead, it is a mixed body of rules of strict law and of principles founded on equity. As such, the ordinary equitable jurisdiction of Scotland is not exclusive to the higher courts but may be exercised by all courts.

What is meant by equitable jurisdiction in the context of the bill is the extraordinary equitable power to do justice where ordinary procedure would provide no remedy, which in Scotland is called the nobile officium of the higher courts. The Law Society is therefore of the view that the term “equitable jurisdiction” should be replaced by the Scots law term “nobile officium” as it more accurately reflects the intention behind the provision.

I move amendment 11.

The Convener: Do members have any comments on amendment 11?

Hugh O’Donnell (Central Scotland) (LD): I simply want to acknowledge Elaine Smith’s knowledge of Scots law and history and use of Latin.

Alex Neil: The expression “equitable jurisdiction” in section 12(2)(a) includes the nobile officium; however, it is important to point out that it also ensures that part 1 affects no other aspect of the equitable jurisdiction of the Court of Session and High Court, regardless of whether a distinction is drawn between the ordinary form of this jurisdiction and the extraordinary or ultimate form, namely the nobile officium. As agreeing to amendment 11 would actually dilute section 12

and the remedies available, I strongly suggest that Elaine Smith withdraw the amendment.

Elaine Smith: I am happy to withdraw the amendment at this stage, with the proviso that I might bring it back at stage 3 after considering further information on the matter.

Amendment 11, by agreement, withdrawn.

Section 12 agreed to.

After section 12

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

Alex Neil: I made a commitment to Parliament to ensure best fit between this bill and the Children’s Hearings (Scotland) Act 2011, and amendment 9 does so by adding proceedings under part 1 to the list of relevant proceedings included in section 62(5) of the 2011 act. Moreover, new paragraph (q) is added to section 67(2) of the act to create a further ground in respect of a child forced into a marriage, with the term “force” being given the same definition used in section 1.

In consequence, amendment 9 adjusts the ground in section 67(2)(p) of the 2011 act to remove the reference to marriage so that it applies only to civil partnerships. That will help to ensure a coherent relationship between the courts and the hearings system with regard to the handling of forced marriage cases and the decisions made to protect these very vulnerable children.

I move amendment 9.

Christina McKelvie (Central Scotland) (SNP): I thank the minister for lodging amendment 9. As a member of the committee that oversaw the passage of the 2011 act, I remember that we were concerned about the grounds with regard to forced marriage, particularly because of the lack of any definition at the time. Indeed, I opposed the measure because I felt that we would need to come back at some point and tidy things up. I think that amendment 9 does that tidying up very well and ties together the two pieces of legislation. First and foremost, it protects children at or around the age of 16, who might find themselves getting forced into a situation that they do not want to be in.

I welcome amendment 9 and commend the minister on lodging it.

The Convener: Do you wish to make any final comments, minister?

Alex Neil: I simply endorse Christina McKelvie’s remarks. I hope that this very sensible amendment will have the full committee’s support.

Amendment 9 agreed to.

Sections 13 to 18 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister for his very positive response to the committee's comments, as reflected in the amendments that we have just agreed to.

I suspend the meeting for a few moments to allow for a changeover of officials.

10:24

Meeting suspended.

10:26

On resuming—

Subordinate Legislation

Equality Act 2010 (Statutory Duties) (Scotland) Regulations 2011

Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2011

The Convener: Items 2 and 3 are consideration of affirmative Scottish statutory instruments. In view of the correspondence that the committee has received on these SSIs, it has been proposed that we defer these items to next week. Are members agreed?

Members *indicated agreement.*

Jamie Hepburn (Central Scotland) (SNP): Not happily, but.

The Convener: I have to apologise to the minister, but representations that we have received have raised some concerns and we would like to take further evidence from those who submitted them. We would be very pleased if you could come back next week and speak to the SSIs.

Alex Neil: Thank you, convener.

The Convener: That concludes the meeting.

Meeting closed at 10:27.

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