

Forced Marriage: **A Civil Remedy?**

Consultation Paper



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scotland
SCOTTISH GOVERNMENT

Forced Marriage: **A Civil Remedy?**

Consultation Paper

The Scottish Government, Edinburgh 2008

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1 Foreword

The Scottish Government recognises the right of every person to make vital life choices without fear of physical, emotional or psychological abuse. Forced marriage is where one or both parties are coerced into the marriage against their will and under duress. While arranged marriages are an established and accepted practice, forced marriage is a violation of internationally recognised human rights and a form of violence against women. It has no place in Scotland.

This consultation is an opportunity for us to consider what more we can do to help those affected by forced marriage in Scotland and to ensure our communities are safer, stronger and fairer places for all.

We seek your opinion as to whether the introduction of forced marriage civil legislation will help us achieve our aim of protecting those who may be subject to this unacceptable practice.

I would like to thank the Forced Marriage Network for their invaluable contribution to helping us address this issue in Scotland.

A handwritten signature in black ink, appearing to read 'S. Maxwell', with a horizontal line underneath it.

Minister for Communities and Sport

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Background to Forced Marriage

What is forced marriage?

A forced marriage is one where one or both parties are coerced into the marriage against their will and under duress. Duress includes both physical and emotional pressure, ranging from emotional pressure exerted on victims by family members, to more extreme cases involving assault, being held unlawfully captive, rape, and in some cases the threat of murder.

Forced marriage is a violation of internationally recognised human rights provisions (see Annex C) and a form of violence against women; it cannot be justified on any religious or cultural basis.

Differences between a forced marriage and an arranged marriage

A clear distinction must be made between a forced marriage and an arranged marriage. An arranged marriage is one in which the families of both spouses are primarily responsible for choosing a marriage partner for their child or relative, but the final decision as to whether or not to accept the arrangement lies with the potential spouses. Both spouses give their full and free consent. The tradition of arranged marriage has operated successfully within many communities for generations.

Prevalence

The total number of people forced into marriage in Scotland or indeed the UK is not known as cases are under reported, however, the UK Government's Forced Marriage Unit deals with approximately 300-400 cases a year, of which 15% involve male victims and 30% of all victims are minors. Limited information is available on how many of these cases involve Scots. In January this year the Forced Marriage Unit began to record the origin of reported incidences of forced marriage/potential forced marriage on a regional basis. During the period January to September 2008, 40 of these incidences came from Scotland.

Of these five were cases directly supported by the Forced Marriage Unit, nine were reluctant sponsor (immigration) cases and 26 were calls relating to a specific incident or suspicion (including referrals to other agencies).

Much of what we know today about forced marriage was first brought to light in the UK Working Group on Forced Marriage's report – *A Choice by Right* (1999), this consultation references that report.

We know that forced marriages take place both in the UK and abroad, and victims come from a range of communities; although many cases involve people of Pakistani, Bangladeshi and Indian origin, other cases involve people with origins in the Middle East, East Asia, Africa, South America and Eastern Europe.

Motives behind forced marriage

Some of the key motivations behind forced marriage include peer group or family pressure, the attempt to strengthen family links, protecting perceived cultural and religious ideals, preventing what were regarded as unsuitable relationships, family honour, long-standing family commitments and an attempt to control female behaviour and sexuality.

Parents who force their children to marry often justify their behaviour as building stronger families and protecting cultural or religious traditions – they do not see anything wrong with their actions. Family honour is a significant factor – motivating the behaviour of many parents. In some instances, agreements are made about marriage arrangements when the prospective spouses are very young, well below the age of consent.

Victims of forced marriage often describe the pressure from other family members, both on them and their parents. Many also describe how a relationship deemed ‘unsuitable’ by their parents has been the catalyst for marriage arrangements being made for them.

The consequences of forced marriage

The consequences of forced marriage can be devastating to the whole family. Young women forced into marriages often:

- become estranged from their families and wider communities;
- lose out on educational opportunities as they are taken prematurely from school;
- suffer domestic abuse;
- have a high rate of self-harm and suicide rates.

Scottish research

Over the last few years there have been two pieces of qualitative research undertaken looking at forced marriage in Scotland. These are:

- The Report of the Incompatible Marriages Project – Council of British Pakistanis (Scotland) (*Incompatible Marriages Project, 2004*);
- Right to Choose? Research into Domestic Abuse and Forced Marriages within Black and Minority Ethnic Communities in Glasgow (G. Avan, N. Bakshi F. Chaudhry & H. Ghatrae, 2005)

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Why We Are Consulting

Forced Marriage: A Wrong Not A Right Consultation

Between September and December 2005 the UK Government and the Scottish Executive conducted a joint consultation, *Forced Marriage: A Wrong Not a Right*. The consultation explored the advantages and disadvantages of introducing a specific criminal offence relating to forced marriage.

The consultation report was published in June 2006. A total of 157 responses were received from organisations and individuals across the UK, with the highest number of responses coming from London and Scotland. Most of the responses were from women's groups and domestic violence forums but responses were also received from children's and young people's services, health services, religious and minority ethnic groups and services, local government, solicitors and legal groups, the police and individuals.

The consultation yielded mixed results: 39.4% of Scottish respondents were against the creation of a new offence, while 36.4% were in favour. Overall, the majority of respondents felt that the disadvantages of creating new legislation to make forced marriage a criminal offence outweigh the advantages. It was feared that the creation of a specific criminal offence could be perceived as the development of a 'minority law', and could lead to racial segregation and tension.

It was also thought that the risk of prosecution could result in victims becoming isolated, and make it harder for them to eventually reconcile with their families. Furthermore, at that time only 18% of Scottish respondents felt that the cost of creating new legislation could be justified. Instead it was suggested that it would be more useful to spend money on non-legislative measures, such as better education and public awareness campaigns, as well as improving support services for victims.

As a result of the consultation responses both Scottish and UK Ministers decided not to legislate at that time.

Given this and the changes to civil law in England and Wales, the Scottish Government has decided to seek views on whether Scotland should introduce civil legislation on forced marriage.

The key question this consultation asks is whether current legislative protection in Scotland is sufficient, and to assist respondents the next sections detail the change in law in England and Wales and the law in Scotland as it currently stands.

The UK Government's Forced Marriage (Civil Protection) Act 2007

In March 2007 the UK Government decided to support a forced marriage Private Members Bill brought by Lord Lester of Herne Hill.

The Forced Marriage (Civil Protection) Act 2007 received royal assent on 26 July 2007. The aim of the legislation is to provide civil remedies to those at risk of forced marriage, as well as those who have already been forced into marriage. It is hoped that the approach of the Act, in using civil, rather than

criminal law provisions will encourage victims to seek protection because it will not involve reporting family members to the police.

Under the Act, a person who has been forced into marriage or is at risk of being forced into marriage may apply to the court for a Forced Marriage Protection Order. Through such an order, the court can require those responsible for forcing another person into marriage to stop or change their behaviour. An order can prohibit a person from doing something and may also positively require a person to do something. The courts have a wide discretion regarding the terms of the order, thus enabling them to respond flexibly and effectively to the circumstances of individual cases.

The courts are also able to attach powers of arrest to orders, so that if someone breaches an order they can be arrested and brought before the court. A power of arrest may be attached where there has been violence or threats of violence, or where there is a risk of significant harm to the victim.

Failure to comply with an order may be punishable by imprisonment.

The Act 2007 also provides for the UK Government to issue statutory guidance setting out the responsibilities of all agencies dealing with forced marriage issues.

Third parties

One particularly significant feature of the Act is that it enables third parties to make an application for a Forced Marriage Protection Order on behalf of the victim. This recognises that victims may feel unwilling or unable to take action against perpetrators who may be members of their family.

There are two ways in which third parties can raise actions. First, anyone can act as a third party with the leave of the court, and the court takes into account factors such as their connection with and knowledge of the situation and the wishes and feelings of the victim. Secondly, "relevant third parties" specified by the Lord Chancellor can raise actions without the court having to consider other factors.

The UK Government's Ministry of Justice conducted a consultation between January and April 2008 focusing on the role of the relevant third party asking who should act and how best it should be implemented. A response to the consultation was published on 13 November 2008 and is available at: www.justice.gov.uk/publications/cp3107.htm

Features of the Forced Marriage (Civil Protection) Act 2007

The Forced Marriage (Civil Protection) Act 2007 introduces a number of unique features to England and Wales legislation on forced marriage which currently have no equivalent in Scotland. It does so by inserting various new sections into the Family Law Act 1996:

- Forced Marriage Protection Orders may positively require a person to do something (new section 63B (1) (a) of the 1996 Act), unlike Scottish common law interdicts, which can only be used to prohibit specific actions. The Explanatory Notes to the 2007 Act provide an example of someone being positively required to produce their passport.
- As detailed above a third party may apply for an order on behalf of the victim (section new 63C (2) and (3)).

- Orders can be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator (new section 63B (2) and (3)).
- A power of arrest can be used against anyone the police reasonably suspect is breaching the terms of the order, not just against the person against whom the order is primarily directed (new section 63I).
- Where no power of arrest is attached, either the person protected by the order, the person who applied for the order, or another person with the leave of the court, may apply to the court for an arrest warrant if they believe the order has been breached (new section 63J).
- Statutory guidance will be issued regarding the effect of the forced marriage legislation, and about forced marriage generally (new section 63Q). The UK Government has recently consulted on this guidance (the consultation ended on 15 October) seeking views on the statutory requirements that agencies must have regard to, building on their existing responsibilities to protect children and vulnerable adults.

All the civil remedies currently available in Scotland are primarily prohibitive and must be sought directly by the victim, whereas the English and Welsh legislation allows orders which positively require people to do things, as well as allowing third parties to apply for orders on the victim's behalf. Powers of arrest in Scotland are also more limited than those provided for under the new legislation in England and Wales because they can only be used against the person against whom an interdict is obtained, not against third parties as is possible with Forced Marriage Protection Orders in England.

Case study

A 17-year-old girl was taken to Pakistan for a family holiday. However, as soon as she arrived she was told that she was to be engaged to her cousin. She tried to reason with her parents as she didn't want to be engaged to someone she had never met and wanted to have a career first before thinking about marriage.

The engagement did take place but she was allowed to return to the UK to go to university. At the end of her degree, due to a family tragedy she had to go back to Pakistan with her parents. When she was there she was told that she was to be married at once to her fiancé and would not be allowed to come back to the UK until she had signed the marriage documents.

This emotional battle went on for five weeks and eventually, when the girl was exhausted and tired of being cursed by her family as a cause of dishonour and disgrace, she agreed to sign the marriage documents but only if she was allowed to go back to the UK. She thought that signing a document wouldn't mean anything; unfortunately her parents registered the marriage for the purpose of a spouse visa.

When she returned to the UK, she refused to apply for the spouse visa, left her family and started her career. Eventually after three years of emotional blackmail and threats her parents finally accepted that it had been wrong to force her to marry and said they would try to help her to get the marriage annulled.

At this point she contacted Hemat Gryffe Women's Aid in Glasgow to find out how to proceed with the annulment. They contacted the UK Government's Forced Marriage Unit, who confirmed that an annulment was possible and referred her to an immigration lawyer to start proceedings.

This was a painful process forcing her to revisit her parent's emotional blackmail, abduction abroad and forced marriage. In spite of their actions she was worried that her parents might go to jail if she went through with the annulment. She had to pay legal fees as she was working, however, while the case was in progress, she lost her job and had to apply for legal aid. In the meantime her "husband" moved from Pakistan to Dubai. She is trying to locate him and until she does the annulment cannot be finalised.

source: Hemat Gryffe Women's Aid

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The Law on Marriage in Scotland

In Scotland a couple cannot be legally married unless both parties are at least 16 years old on the day of the marriage, and both must be capable of understanding the nature of a marriage ceremony and of consenting to the marriage. Parental consent is not required.

Under section 20A of the Marriage (Scotland) Act 1977 a marriage is void if either party was forced to marry against their will, and therefore did not give their true consent. A void marriage is regarded as never having taken place. Parties to a forced marriage may apply for a court order declaring the marriage null and void (called a “declarator of nullity”). A forced marriage may also be dissolved by a decree of divorce, but nullity, is often the preferred option as it gives legal acknowledgement that the marriage was never valid.

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.

Existing legal protection in Scotland for victims of forced marriage

At present, there is no law expressly prohibiting forced marriage in Scotland and it is not a specific criminal offence. However, there is a range of current criminal offences and civil remedies which may be relevant in relation to forced marriage. The relevant criminal offences are listed in Annex E of this paper.

Given the outcome of the *A Wrong Not A Right* consultation, this consultation will focus on the civil remedies available in Scotland in relation to forced marriage, which are:

- A common law interdict with power of arrest under the Protection from Abuse (Scotland) Act 2001
- An interdict or non-harassment order under the Protection from Harassment Act 1997
- A matrimonial interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under the 2001 Act (available within marriage, against the spouse only)
- An exclusion order under the 1981 Act (available within marriage, against the spouse only)
- A declarator of nullity of marriage
- Divorce

Common law interdicts

An interdict is a judicial remedy forbidding an act or course of action. An interdict cannot be granted to prevent or put a stop to actions that are unwelcome or harmful, but otherwise legally permissible; there must be an actual or threatened legal wrong which infringes the complainant’s rights.

An interdict is always a prohibitory order, i.e. it can only be used to stop someone from doing something, not to make someone do something. Evidence must be presented to the court of a threatened or continuing infringement of the pursuer's rights and the pursuer must state precisely what it is the defender must stop doing.

Breach of interdict is enforced through the civil courts by the person on whose behalf the interdict was granted. Breach of interdict is treated as a failure to obey the court's legal instruction – a "contempt of court" – and may be punished by way of a fine or imprisonment.

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 a 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. There is no requirement for the applicant to be in any particular relationship to the abuser.

How can interdicts be used in cases of forced marriage?

– 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.

A matrimonial interdict is very similar to a common law interdict but has a statutory basis and is only available within marriage. The distinction between matrimonial and common law interdicts is less significant now that powers of arrest can be attached to both and on the same basis under the Protection from Abuse (Scotland) Act 2001.

Non-harassment orders

The Protection from Harassment Act 1997 imposes an obligation on persons not to:

"pursue a course of conduct which amounts to harassment of another which is either intended to amount to harassment of that other or occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that other"

In the 1997 Act, 'harassment' includes causing a person alarm or distress. 'Conduct' includes speech, and a 'course of conduct' requires conduct on at least two occasions.

In an action raised under the 1997 Act, the court may award damages, grant interdict, or grant a non-harassment order. An interdict may have a power of arrest attached under the Protection from Abuse (Scotland) Act 2001. Breach of a non-harassment order is a criminal offence, punishable by up to 5 years' imprisonment, or an unlimited fine, or both.

Exclusion orders

Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, both spouses have the automatic right to live in the marital home even if they are not the legal owner or tenant of the property. Either spouse has the right to apply to the court for an exclusion order, which may be granted if the court considers it is necessary for the protection of the person who applied for it or any child of the family. An exclusion order means that the spouse against whom it is directed no longer has a right to occupy the family home – a warrant can be obtained for their ejection from the home and an interdict can be granted prohibiting them from entering the home or removing any property from it.

Declarator of nullity

Where a marriage has been entered into without true consent, either spouse may apply to the court for an order declaring the marriage void. The effect of this is that, for most purposes, the marriage is deemed never to have happened.

Divorce

Alternatively, either spouse may apply to the court for a divorce under the Family Law (Scotland) Act 1985.

Regardless of whether the marriage is brought to an end by annulment or divorce, the court may make an order for financial provision. In making financial awards, the courts seek to share matrimonial property fairly, taking account of such factors as each spouse's financial contribution to the marriage and the degree to which one is financially dependent on the other.

Question 1: Are there any difficulties in **accessing** existing civil remedies in forced marriage cases – YES, NO, or DON'T KNOW?

- (1a) What access difficulties exist AND why do you think these difficulties exist?

Question 2: Once accessed, are there any difficulties **using** existing civil remedies in forced marriage cases – YES, NO, or DON'T KNOW?

- (2a) What difficulties exist AND why do you think these difficulties exist?

Question 3: All the civil remedies currently available in Scotland must be sought directly by the victim, whereas English and Welsh legislation allows third parties to apply for orders on the victim's behalf. Do you think allowing third party involvement is a good idea – YES, NO, or DON'T KNOW?

- (3a) If YES, why do you think allowing third party involvement is a good idea?
- (3b) If NO, why do you think allowing third party involvement is not a good idea?

Question 4: In Scotland, interdicts, and non-harassment orders can only be used to prohibit specific actions. Do you think the law should be able to positively require a person to do something – YES, NO, or DON'T KNOW?

- (4a) If YES, with reference to examples, why do you think the law should positively require a person to do something?
- (4b) If NO, why do you think the law should not be able to positively require a person to do something?

Question 5: The UK Forced Marriage (Civil Protection) Act allows orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator, should this be introduced in Scotland – YES, NO, or DON'T KNOW?

- (5a) If YES – if introduced, what do you think the benefits would be?
- (5b) If NO, why do you think such orders should not be introduced?

Question 6: The UK Forced Marriage (Civil Protection) Act allows a power of arrest attached to an order to be used against anyone who seems to be breaching the terms of the order, not just the person against whom the order is primarily directed. Should this be introduced in Scotland – YES, NO, or DON'T KNOW?

- (6a) If YES – if introduced, what do you think the benefits would be?
- (6b) If NO, why do you think a power of arrest should not be introduced?

Question 7: Following on from Question 6, do you think a power of arrest should be used against someone who may be unaware of the existence of such an order or its contents – YES, NO, or DON'T KNOW?

- (7a) If YES, why do you think a power of arrest should be used?
- (7b) If NO, why do you think a power of arrest should not be used?

Question 8: Where no power of arrest is initially attached to an order, the UK Forced Marriage (Civil Protection) Act allows the person protected by the order to apply to the court for an arrest warrant if they believe the order has been breached. Should this be introduced in Scotland – YES, NO, or DON'T KNOW?

- (8a) If YES – if introduced, what do you think the benefits would be?
- (8b) If NO, why do you think such applications for an arrest warrant should not be introduced?

Question 9: On balance, in relation to forced marriage, do you think existing civil remedies are sufficient – YES, NO, or DON'T KNOW?

- (9a) If YES, why do you think existing civil remedies are sufficient?
- (9b) If NO, why do you think existing civil remedies are not sufficient?

Question 10: Do you think the Scottish Government should introduce specific civil remedies in relation to forced marriage – YES, NO, or DON'T KNOW?

- (10a) If YES, why do you think the Scottish Government should introduce specific civil remedies AND what specific civil remedies do you think the Scottish Government should introduce?
- (10b) If NO, why do you think the Scottish Government should not introduce specific remedies?

Question 11: Another feature of the Act 2007 is that it provides for the UK Government to issue statutory guidance to all agencies dealing with forced marriage issues, do you think there is a need for this in Scotland – YES, NO, or DON'T KNOW?

- (11a) If YES, why do you think there is a need for this in Scotland?
- (11b) If NO, why do you think there is not a need for this in Scotland?

Children and young people under 16

The existing legal framework affords protection to children at risk of being forced into marriage above and beyond the civil and criminal legal measures available to protect adults from a forced marriage.

Child protection service providers would be expected to respond to the needs of a child facing forced marriage, or who has already been forced into marriage in an appropriate and culturally sensitive way. The best interests of the child would always be the primary concern. Where a concern about a child comes to the attention of child protection services, they would carry out a risk assessment and if necessary put into place a care plan which includes removing the child from a dangerous family situation.

The Children (Scotland) Act 1995 provides a range of protection which could be used to prevent the removal and safeguard a child where there is concern that there is a risk of harm to the child (child being principally someone under 16).

Section 22 of the Children (Scotland) Act 1995 imposes a general duty on local authorities to safeguard and promote the welfare of children in their area. The Children's Hearings System, also specified in the Act above, is capable of being used to protect children where compulsory measures of supervision are required. Grounds such as either being "exposed to moral danger" or being "likely to suffer unnecessarily or be impaired seriously in their health or development, due to a lack of parental care" can result in referral to a children's hearing to determine whether and what compulsory measures could apply.

Temporary or emergency measures will sometimes be necessary such as warrants or child protection orders (under section 57 of the Children (Scotland) Act 1995) whereby a child could be removed from their home to a place of safety or the prevention of the removal of a child from a specified place. Supervision Requirements are the most common outcome of this process and place a duty on a parent to give notice to the Principal Reporter in the hearings system and the relevant local authority of any proposal to take the child to live out with Scotland not later than 28 days prior to doing so. This proposal would then be considered by a reconvened hearing.

There are alternative ways of safeguarding a child's safety, including an emergency protection order. If there is less urgency a child assessment order under section 55 of the Children's (Scotland) Act 1995 can be sought which can also provide for the removal of a child to a place of safety for a short time. 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. A child (in this case, someone under 18) could also under section 38 of the Act request that the local authority provide them with short-term refuge.

The Sexual Offences (Scotland) Bill, which was introduced in Parliament in June 2008, contains provisions which criminalise persons engaging in sexual activity with children under the age of 16, whether the conduct is apparently consensual or not. In contrast with existing legislation, it is not a defence to these offences that the accused was married to the child.

Missing schoolchildren and forced marriage

Child protection is everybody's responsibility and education staff clearly have a key role to play in identifying where children and young people may be at risk of harm and taking appropriate action. A child not attending school may be the result of illness or truancy, but it can also be an indicator of other serious problems. Children missing from education are children and young people who are not on a school roll and are not being educated otherwise (at home, privately or in an alternative provision). They have usually not attended school for a substantial period of time (usually agreed as 4 weeks, or considerably less for vulnerable children).

When it has been established that a child is missing from education and local searches have been exhausted, schools may take a formal referral to Children Missing from Education (Scotland), which supports local authorities in tracing missing children, and co-ordinates searches across Scotland and beyond where appropriate.

Where a member of school staff becomes aware of a child protection concern, including concerns around forced marriage or abduction, a referral must be made to social work through the school's Child Protection Co-ordinator.

The Scottish Government is taking forward work to improve protection of children who go missing. The HMIE-led joint inspection of child protection services in Scotland specifically monitors how well service providers share information and intervene to protect children at risk, including children who have gone missing. The Scottish Government has recently consulted on Safeguarding children in Scotland who may have been trafficked. The document provides guidance for Scottish agencies and staff in identifying and supporting the needs of children who may have been trafficked. The responses to the consultation are currently being analysed.

Question 12: Is there enough protection in Scotland for children and young people under 16 affected by forced marriage – YES, NO, or DON'T KNOW?

- (12a) If NO, what gaps do you think there are in protection AND how do you think these gaps could be filled?

Civil partnerships

The 2005 consultation, *Forced Marriage: A Wrong Not A Right* sought respondent's views on whether any new law on forced marriage should also apply to forcing a civil partnership.

We have no reason to believe that someone would be forced into a civil partnership for cultural reasons. However, it is possible that someone would force another person into a civil partnership for financial gain.

Question 13: If we introduce legislation on forced marriage, do you think we should also extend it to forcing someone into a civil partnership – YES, NO, or DON'T KNOW?

- (13a) If YES, why do you think legislation should be extended to cover civil partnership?
- (13b) If NO, why do you think legislation should not be extended to cover civil partnership?

Practical problems in accessing legal support

There are issues which victims of forced marriages face in accessing the available legal provisions, which have been previously identified in reports such as *A Choice by Right* (1999):

- Victims may not know of the legal provisions, or may be unable to use them.
- Family pressures may make it very difficult to challenge the situation.
- Women married abroad may face difficulties in financing proceedings, providing instructions and evidence, remaining protected during the proceedings, and enforcing a declarator of nullity in the country where they live.

Immigration issues

Many forced marriages do have an international dimension involving a spouse from overseas. A British national is either taken to live in their spouse's country (where they often have antecedents) or they are to act as a sponsor for their spouse's immigration to the UK. Women have described the fear that compelled them to support their spouse's immigration to the UK. Often family members have directly threatened them before their interview with an immigration officer. This fear prevented most women from putting on record that their marriage was forced.

The report of the UK Working Group on Forced Marriage – *A Choice by Right* (1999) identified that some women who had been brought to the UK for a forced marriage have spoken of the hardship they had suffered because of their unsound immigration status. Not being able to speak English and not having any family or friends to support them in the UK often added to these women's problems. In some cases young women have been taken (sometimes forcibly, sometimes through deception) overseas for the purposes of a forced marriage. Often these women reported having their documents, including passports, taken away from them on their arrival. In some cases, parents had taken the extreme action of drugging their daughter to ensure that she travelled overseas without complaint.

Legislation covering immigration and nationality, including asylum and issue of travel documents is reserved to the UK Government. In Scotland, there are very different economic, demographic and social issues relevant to population and immigration. Within the United Kingdom, it might be difficult to devolve responsibility for immigration and citizenship to Scotland, but for example, increased powers to attract new migrants could allow the Scottish Government to address Scotland's needs in an appropriate way.

The current Scottish Government believes that the best future for Scotland is as an independent, sovereign country. However, this is a decision that only the Scottish people can make for themselves. The Scottish Government has therefore begun a national conversation about Scotland's future, which will allow all the options for developing the governance of the country to be fully discussed by the people of Scotland before reaching a decision in a referendum to be held in 2010.

If you would like to contribute to the national conversation, specifically in relation to the issues surrounding immigration, or more generally, visit the national conversation website at www.anationalconversation.com or e-mail: joinin@anationalconversation.com. Responses can also be sent by post to:

A National Conversation
Constitution Unit
G-A North
Victoria Quay
Edinburgh
EH6 6QQ

Legal Aid

Applications for civil legal aid have to meet the statutory tests for eligibility of probable cause, reasonableness and financial qualification as set down in the Scottish Legal Aid Board's governing legislation unless special provisions apply either dispensing with some or all of these tests or excluding proceedings from civil legal aid. Where an application satisfies these tests civil legal aid will be made available irrespective of the nature of the case.

Question 14: Are there any difficulties, in accessing civil legal aid for the current civil remedies described in this consultation – YES, NO, or DON'T KNOW?

- (14a) If YES, what difficulties exist in accessing civil legal aid?

Question 15: Following on from Question 14, would the same issues arise in relation to any new statutory civil remedies that may be developed following this consultation – YES, NO, or DON'T KNOW?

- (15a) If YES, why do you think the same issues would arise?
- (15b) If NO, why do you think the same issues would not arise?
- (15c) Do you think different issues would arise (please explain why)?

The Forced Marriage Network and Service Provision for Victims of Forced Marriage

In 2005 the Scottish Executive established the Forced Marriage Network, which brought together statutory and voluntary practitioners to share knowledge and expertise and help to progress work to tackle forced marriage. The full list of Network members is available at Annex F.

The Network was instrumental in the 2005 consultation *Forced Marriage: A Wrong Not a Right*, undertaken jointly with the UK Government (see Section 3: Why We Are Consulting) and continues to play a key role to further the Scottish Government's work in this area.

Currently, the Scottish Government directly funds a range of organisations working to support those affected by forced marriage:

- Amina – The Muslim Women's Resource Centre's PPP Project provides support to women experiencing domestic abuse and increases their understanding of domestic abuse and knowledge and confidence in mainstream support systems. The Project also trains agencies that provide services to Muslim women.
- Hemat Gryffe Women's Aid is a Glasgow-based organisation which provides a range of refuge, advocacy and outreach services to Black and Minority Ethnic (BME) women and their children experiencing domestic abuse. The organisation also offers training and advice to a range of agencies to help build their capacity to meet the needs of BME communities. The Scottish Government previously funded Hemat Gryffe to deliver awareness raising work on forced marriage.
- Shakti Women's Aid is an Edinburgh-based organisation which provides a range of refuge, advocacy and outreach services to Black and Minority Ethnic (BME) women and their children experiencing domestic abuse. The organisation also offers training and advice to a range of agencies to help build their capacity to meet the needs of BME communities. Shakti was also funded by the Scottish Government to deliver awareness raising work on forced marriage.

In addition to the above specialist BME organisations, support to victims of forced marriage is currently offered through mainstream providers such as the police, legal services and local authorities. The broader network of Women's Aid organisations, including Scottish Women's Aid, also work with women who may be affected by this issue. For a number of years education work with young people in schools has been undertaken in some local authority areas, using locally developed tools such as *No Dowry No Date*¹ in Glasgow.

The Council for British Pakistanis (Scotland) have also previously been funded to carry out awareness raising work on forced marriage by conducting a series of meetings and seminars throughout Scotland on the issue. The Council also provide direct support to victims of Forced Marriage.

Awareness raising work and training around issues affecting BME women and children is also been carried out via Scotland's Violence Against Women Training Consortia who have responsibility for implementing the Scottish Government's Preventing Domestic Abuse: A Training Strategy (2003).

¹ Culture and Leisure Department, Glasgow City Council in conjunction with Govanhill Youth Project (2005)

Question 16: Are you/your organisation currently working to address forced marriage – YES or NO?

- (16a): If YES, what work are you/your organisation undertaking?

Question 17: The Scottish Government funds a range of organisations working to support those affected by forced marriage, what other non-legislative action do you think the Scottish Government should take to tackle forced marriage in Scotland?

Question 18: Do you think there is a need for agencies in Scotland to improve their response to cases of forced marriage – YES, NO, or DON'T KNOW?

- (18a) If YES, which agencies need to improve their response AND how do you think these agencies could improve?

Question 19: Please provide any additional comments on any aspects of this consultation.

5

How to Respond

Please post your written responses to our questions in the Questionnaire along with the Respondent Information Form at Annex H by 28 March 2009 to:

Eileen Flanagan
Violence Against Women Team
Scottish Government
Area 2-G
Victoria Quay
Edinburgh
EH6 6QQ

Or

E-mail your response to: vawt@scotland.gsi.gov.uk

If emailing, please also include the **Respondent Information Form**, which can be accessed on-line at www.scotland.gov.uk/consultations (look for the consultation title among the list of 'current' consultations. The Respondent Information Form to be used for e-mail responses is located at the top of the contents page).

Or

Fill in an on-line response form on the Scottish Government website at www.scotland.gov.uk/consultations (look for the consultation title among the list of 'current' consultations. The on-line form is located at the top of the contents page).

This consultation, and all other Scottish Government consultation exercises, can be viewed on-line on the consultation web pages of the Scottish Government website at www.scotland.gov.uk/consultations. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (SEconsult: www.scotland.gov.uk/consultations/seconsult.aspx). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SG consult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. As mentioned above, please complete and return the **Respondent Information Form** (see Annex H) with your response as this will ensure that we treat

your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached **Respondent Information Form – Annex H**), these will be made available to the public in the Scottish Government Library by 1 May 2009 and on the Scottish Government consultation web pages by 8 May 2009. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the close of the consultation we will examine all the views submitted carefully. We will then produce a report on the views expressed in the consultation and our decision regarding the introduction of civil legislation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Yvonne Strachan
Head of the Equality Unit
Scottish Government
2-G (South)
Victoria Quay
Edinburgh
EH6 6QQ

Or e-mail them, marked for Yvonne Strachan's attention, to: vawt@scotland.gsi.gov.uk

Alternative copies

Copies of this document are available on request, in audio, large print formats and in community languages; please contact: vawt@scotland.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from Eileen Flanagan at the above address or telephone 0131-244 5209 and it is also available online at www.scotland.gov.uk/consultations

Annex A

List of Consultees

Police and Law

Aberdeen Bar Association
Association of Chief Police Officers in Scotland
Association of Scottish Police Superintendents
Central Scotland Police
Chief/Senior Registrars
Civil Justice Network
Crown Office and Procurator Fiscal Service
District Court Service
Dumfries & Galloway Constabulary
Edinburgh Bar Association
Erskine MacAskill & Co. Solicitors
Ethnic Minority Law Centre
Family Law Association
Fife Constabulary
Fleming & Reid, Solicitors
Glasgow Sheriff Courthouse
Grampian Police
Gulay Mehmet, Solicitors
HMIC Superintendent Graeme Dobbie
Judicial Studies Committee
Legal Services Agency
Livingstone Brown, Solicitors
Lothian & Borders Police
Northern Constabulary
Private Secretary to the Lord President
Private Secretary to the Lord Advocate
Scottish Child Law Centre
Scottish Court Service
Scottish Law Commission
Scottish Legal Action Group
Scottish Legal Aid Board
Scottish Police College
Scottish Police Federation
Scottish Prison Service
Sheriff's Association, Sheriff Court
Society of Solicitor Advocates
Solicitor General, Crown Office
Strathclyde Police
Tayside Police

The Association of Registrars of Scotland
The Clerk to the Faculty of Advocates
The Glasgow Bar Association
The Law Society of Scotland
The Society of Advocates in Aberdeen

Women's Organisations

Breakthrough for Women
Engender
Glasgow Women's Library
Scottish Women's Convention
Wise Women

Faith

Action of Churches Together in Scotland
Al-Maktoum Institute for Arabic and Islamic Studies
Al-Mizan Baptist Union of Scotland
Bishops Conference Scotland
Central Gurdwara Singh Sabha
Christian Action Research & Education (CARE)
Church of Scotland
Council of Christian and Jews
Dawat-ul-Islam Mosque, Glasgow
Dundee Islamic Centre & Hilltown Mosque
Dunfermline Mosque and Islamic Centre
Edinburgh Hebrew Congregation
Evangelical Alliance Scotland
Falkirk Islamic Centre
Federation of Student Islamic Societies
Free Church of Scotland
Free Church of Scotland (continuing)
Free Presbyterian Church of Scotland
Glasgow Jewish Representative Council
Guru Nanak Gurdwara, Dundee
Hindu Mandir, Glasgow
Hindu Temple and Cultural Centre, Edinburgh
Idara Taleem-ul-Quran, Edinburgh
International Society for Krishna Consciousness

Jamia Masjid Tajdare – Madina, Dundee
 Kizra Central Mosque, Glasgow
 Langside Mosque & Madrassah, Glasgow
 Livingston Mosque & Community Centre
 Masjid al Furqan, Glasgow
 Masjid Holytown
 Masjid Noor, Glasgow
 Masjid-e-Khizra, Glasgow
 Methodist Church, Scotland District
 Mosque & Islamic Centre, Aberdeen
 Mosque & Islamic Centre, Edinburgh
 Mosque & Islamic Centre, Glasgow
 Mosque Anwar-e-Madina & Community Centre,
 Edinburgh
 Radio Ramadhan
 Roman Catholic Church
 Salvation Army
 Samye Ling Monastery & Tibetan Centre
 Scottish Catholic Media Office
 Scottish Council of Jewish Communities
 Scottish Churches Community Trust
 Scottish Churches Parliamentary Office
 Scottish Congregational Church
 Scottish Episcopal Church
 Scottish Inter Faith Council
 Scottish Inter Faith Council Youth
 Scottish Islamic Foundation
 Sikh Temple, Edinburgh
 Singh Sabha Gurdwara, Glasgow
 Sri Lankan Buddhist Centre, Glasgow
 Tanzeem Tableeg-ul-Islam, Glasgow
 Tayside Hindu Temple, Dundee
 The Muslim Council of Scotland
 The Young Muslim Brothers
 The Young Muslim Sisters
 United Free Church of Scotland
 Victoria Road Mosque, Dundee
 West Lothian Mosque & Community Centre

Support for Victims

Age Concern Scotland, Elder Abuse Project
 Justice for Victims
 Kingdom Abuse Survivors Project
 Open Secret
 People Experiencing Trauma & Loss
 Rape Crisis Scotland

The Moira Anderson Foundation
 Victim Information and Advice
 Victim Support Scotland

Domestic Abuse

Aberdeen Domestic Abuse Forum
 Aberdeenshire Multi Agency Group on Domestic
 Abuse
 Action For Change, Clackmannanshire Council
 Action for Change, Stirling Council
 Angus Partnership on Domestic Abuse
 Argyll & Bute Against Domestic Abuse
 Dumfries & Galloway Domestic Abuse Strategy
 Group
 Dundee Domestic Abuse Forum
 East Ayrshire Domestic Abuse Forum
 East Dunbartonshire Domestic Abuse Forum
 East Lothian Domestic Abuse Forum
 East Renfrewshire Domestic Abuse Forum
 Edinburgh VAW Partnership
 Falkirk Domestic Abuse Multi-Agency Forum
 Fife Domestic and Sexual Abuse Partnership
 Highland Wellbeing Alliance
 Inverclyde Zero Tolerance Working Group
 Glasgow Violence Against Women Partnership
 Men Against Sexual Abuse
 Midlothian Domestic Abuse Forum
 Moray Domestic Abuse Forum
 North Ayrshire Domestic Abuse Multi-Agency
 Forum
 North Lanarkshire Violence Against Women
 Working Group
 Orkney Domestic Abuse Forum
 Perth and Kinross Domestic Abuse Forum
 Promoting Women’s Safety Working Group
 Scottish Borders Forum on Domestic Abuse
 Scottish Women’s Aid
 Shetland Partnership On Domestic Abuse
 South Ayrshire Partnership To Tackle Violence
 Against Women & Children
 South Lanarkshire Multi-Agency Partnership on
 Domestic Abuse (Doorway)
 Strategy Group Tackling Violence Against
 Women, Renfrewshire Council
 West Dunbartonshire Domestic Abuse
 Partnership

West Lothian Multi Agency Domestic Abuse
Group
Western Isles Domestic Abuse Forum

BME Groups

Africa Centre, Scotland
African & Caribbean Network
BEMIS
Central Scotland Racial Equality Council
Edinburgh Racial Equality Council
Grampian Racial Equality Council
Pakistani Women's Welfare Association
Taleem Trust
West of Scotland Racial Equality Council

Health

NHS Ayrshire & Arran
Body Positive Strathclyde
NHS Dumfries & Galloway
NHS Greater Glasgow and Clyde
NHS Highland
NHS Borders
NHS Fife
NHS Forth Valley
NHS Grampian
NHS Lanarkshire
NHS Lothian
NHS Orkney
NHS Shetland
NHS Tayside
NHS Western Isles
Alzheimer Scotland, Edinburgh
ENABLE Scotland
Scottish Association for Mental Health

Political parties

Scottish Conservative and Unionist Party
Scottish Green Party
Scottish Labour Party
Scottish Liberal Democrats
Scottish National Party
Scottish Senior Citizens Party
Scottish Socialist Party

Forced Marriage Network

Amina The Muslim Women's Resource Centre
Association of Directors of Social Work
British Red Cross
Citizens Advice Scotland
City of Edinburgh Council
COSLA Strategic Migration Partnership
Council of British Pakistanis (Scotland)
Dundee City Council
The Edinburgh Muslim Community Association
General Register Office for Scotland
Glasgow City Council
Hemat Gryffe Women's Aid
Napier University School of Community Health
Nasra Bibi Consultancy
Rape Crisis Centre, Glasgow
Renfrewshire Council
Saheliya
Scottish Refugee Council
Shakti Women's Aid
Women and Children First
Women's Support Project

Children and Young People

Barnardos Scotland
Children 1st
Children in Scotland
Children's Commissioner
Further Education Colleges
Save the Children UK
Scottish Children's Reporter Administration
Scottish Youth Parliament
Universities of Scotland

Counselling and Mediation Organisations

Family Mediation Scotland
Relate
Scottish Marriage Care

Other Organisations

Chief Executives Local Authorities
Equality and Human Rights Commission
Equality Network
Forced Marriage Unit
Home Office
LGBT Youth
Outright Scotland
Positive Action in Housing
Scottish Civic Forum
Scottish Council for Voluntary Organisations
Stepfamily Scotland
Stonewall Scotland
Wellbeing Alliance Community Safety Steering
Group

Annex B

Useful Links and Contacts

Amina Muslim Women's Resource Centre

Helpline 0808 801 0301
(Mon-Fri 9.30-5.00)

Forced Marriage Unit

Website address: <http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit/>
Telephone: 020 7008 0151
Email: fmu@fco.gov.uk
Email for outreach work: fmuoutreach@fco.gov.uk

Hemat Gryffe Women's Aid

Website address: <http://www.hematgryffe.org.uk/>
Telephone: 0141 353 0859
Email: hemat.gryffe@ntlbusiness.com

Scottish Women's Aid

Website address: <http://www.scottishwomensaid.org.uk/>
Telephone: 0131 226 6606
email info@scottishwomensaid.org.uk

Shakti Women's Aid

Website address: <http://www.shaktiedinburgh.co.uk/>
Telephone: 0131 475 2399
Email: info@shaktiedinburgh.co.uk

Annex C

Relevant Human Rights Provisions

“Marriage shall be entered into only with the free and full consent of the intending spouses.”
(Universal Declaration of Human Rights, Article 16 (2))

“State parties shall ensure on a basis of equality of men and women... the same right to choose a spouse and to enter into marriage only with their full and free consent.” (Convention to Eliminate All Forms of Discrimination Against Women – CEDAW, Article 16 (1) (b))

“A woman’s right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being.” (General Recommendation No 21, UN Committee on the Elimination of All Forms of Discrimination Against Women)

“Everyone has the right to liberty and security of person.” (Article 5 of the Human Rights Act 1998)

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.” (Article 12 of the Human Rights Act 1998)

“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, Article 1).

“The UN recognises forced marriage as a form of contemporary slavery, trafficking and sexual exploitation.” (UN working group on contemporary forms of slavery 28th Session Geneva June 2003)¹³

Annex D

The Scottish Government's Approach to Tackling Violence Against Women

Work to Address Domestic Abuse in Scotland

The National Strategy to Address Domestic Abuse in Scotland (2000) includes the following definition of domestic abuse used by the Scottish Government:

"Domestic abuse (as gender-based abuse), can be perpetrated by partners or ex-partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family or friends)."

The Strategy recognises that:

"Domestic abuse is most commonly perpetrated by men against women... and requires a response which takes account of the gender specific elements and the broader gender inequalities which women face."

It goes on to state that:

"...in accepting this definition, it must be recognised and taken into account that, particularly among black and minority ethnic communities, other family members connected to a woman through marriage may be involved in, or may participate in the abuse of the woman. In certain cases, abuse is perpetrated by other family members, even without the knowledge of the partner. In addition, there is abuse of women by members of their own families in the context of forced, as opposed to arranged, marriages or as a result of their failed marriages or divorce."

As identified earlier in this paper, men can be the victims of forced marriage and suffer the devastating effect on their lives, however, the statistical information available shows that the majority of those affected are women.

Links to the broader Violence Against Women agenda

The National Strategy to Address Domestic Abuse in Scotland (2000) will be taken forward in the context of a Strategic Framework for addressing violence against women in Scotland (forthcoming).

Violence against women is widespread, and can affect women of any backgrounds. Across all forms of violence and abuse, women are most at risk from men they know.

The elimination of violence against women requires as its starting point a shared understanding of the causes and nature of this violence. The aim of Scotland's Strategic Framework on Violence Against Women is to:

- provide a framework within which current and future work can be taken forward;
- actively promote the development of existing measures and the adoption of new measures, at a local and national level, to address violence against women;
- encourage links to be made between different forms of violence against women;
- ensure greater commonality across local and national work on violence against women;
- raise awareness of the impacts of violence against women on children and young people;
- ensure that work on violence against women is carried out across the 3 P's – Prevention, Protection and Provision.

In addition, participation, that is the involvement of women, children and young people, should be considered as appropriate in developing services responses and policies.

Annex E

Current Criminal Legislative Protection

Although there is currently no specific criminal offence of 'forcing someone to marry' within Scotland, the law does provide protection from the crimes that might be committed when forcing someone into a marriage. Depending on the circumstances, perpetrators – usually parents or family members – could be prosecuted for a range of offences. These include:

Abduction. This is a common law crime. Abduction for any purpose, including marriage, is criminal. 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. There is no maximum penalty.

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. There is no maximum penalty.

Breach of the peace. This is a very flexible common law offence with no maximum penalty. A breach of the peace may be generally described as conduct causing or likely to cause alarm or annoyance and so lead to a disturbance of the person alarmed or annoyed. The type of conduct covered by this offence might include behaviour associated with stalking and harassment.

Breach of a Non-Harassment Order granted under the Protection from Harassment Act 1997 is a criminal offence. The maximum penalty available for conviction on indictment is imprisonment for five years and a fine. The police have the power of arrest where there is breach of a Non-Harassment Order. A power of arrest allows the police to arrest without warrant, a person who appears to be in breach of the terms of an order or interdict.

In the civil court it is open to someone to ask the court to grant an "interdict" to prohibit another person from taking a particular course of action. If someone is at risk of physical or mental abuse then it may be possible to obtain an interdict to protect against this. The Protection from Abuse (Scotland) Act 2001 allows a court to attach a power of arrest to any interdict granted for the purpose of protecting against abuse.

Child cruelty. Where the victim is under 16, the offence under section 12 of the Children and Young Persons (Scotland) Act 1937 may be committed by a person with parental responsibilities (in relation to the victim) who wilfully assaults or ill-treats them or exposes them to assault or ill-treatment so as to cause unnecessary suffering or injury to health. The maximum penalty available for conviction on indictment is imprisonment for five years and a fine.

Rape. Sexual intercourse by a man with a woman without the woman's consent constitutes the crime of rape. There is no maximum penalty.

Sexual offences. Depending on the circumstances of a particular case and the age of the victim, various offences under the Criminal Law (Consolidation) (Scotland) Act 1995 may be established. For example, it is an offence to detain any female against her will with the intent that she may engage in unlawful sexual intercourse with men or with a particular man.

Sexual activity with children. The Sexual Offences (Scotland) Bill, which was introduced in Parliament in June 2008, contains provisions which criminalise adults engaging in sexual activity with children under the age of 16. In contrast with existing legislation in this area, it is not a defence that the accused was married to the child in a country which allows marriage under the age of 16.

Annex F

Forced Marriage Network Membership List

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

Annex G

Aide for Consultation Events/Workshops

The questions below are a simplified version of some of those included in the consultation questionnaire and are designed to cover the key areas of the consultation in more accessible language. These may be useful to facilitate discussion with a range of people who have views on, or are affected by forced marriage. We have also included a user-friendly description of civil law.

We are a happy to receive the responses to these questions in the most convenient format to your organisation.

What is civil law?

Civil law covers many areas of life including family law. Family law includes the rules about marriage and divorce, and other things such as the legal relationship between parents and children.

If someone has a problem they can ask a court to help. For instance, if a woman says she was forced into a marriage, the court can listen to evidence from both sides and make a decision about whether the marriage was valid. The court can make an order to say that the marriage is not valid in law. Civil law can also protect people in other ways, such as providing an interdict. An interdict is an order from the court telling someone to stop doing something or to ban them from a certain place.

Question: Are there any difficulties in using civil law in Scotland to help resolve cases of forced marriage? – YES, NO or DON'T KNOW?

- (a) If YES – What are these difficulties?
- (b) Why do you think these difficulties exist?

Question: Do you think that existing civil laws in Scotland are enough to protect people from being forced into a marriage? – YES, NO or DON'T KNOW?

- (a) If YES – Why do you think existing laws are enough?
- (b) If NO – Why do you think existing laws are not enough?

Question: The forced civil marriage law in England and Wales can be used against anyone else encouraging, helping or plotting with the main person who is forcing a marriage, should this be introduced in Scotland? – YES, NO, or DON'T KNOW?

- (a) If YES – if this was introduced what do you think the benefits would be?
- (b) If NO, why do you think this should not be introduced in Scotland?

Question: As part of the forced civil marriage law in England and Wales the UK Government is going to issue guidance to organisations on how to help people who are affected by forced marriage, do you think the Scottish Government should issue its own guidance? – YES, NO, or DON'T KNOW?

- (a) If YES, why do you think the Scottish Government should issue guidance?
- (b) If NO, why do you think the Scottish Government should not issue guidance?

Question: Is there enough protection in Scotland for children and young people under 16 affected by forced marriage? – YES, NO, DON'T KNOW?

- (a) If NO, what do you think is missing from the protection available?
- (b) How do you think these gaps in protection can be filled?

Question: If Scotland introduces a civil law on forced marriage, do you think it should cover forcing someone into a same sex civil partnership – YES, NO or DON'T KNOW?

- (a) If YES, why do you think legislation should cover civil partnerships?
- (b) If NO, why do you think legislation should not cover civil partnerships?

Question: On balance, do you think the Scottish Government should introduce new protection for people who might be forced into marriage – YES, NO, or DON'T KNOW?

- (a) If YES, why do you think that the Scottish Government should introduce more protection AND what type of protection do you think they should introduce?
- (b) If NO, why do you not think the Scottish Government should not introduce more protection?

Question: Are you/your organisation currently working to address forced marriage?

Question: Other than legal protection, what other help could the Scottish Government put in place to support people affected by forced marriage?

Question: Do you think organisations in Scotland need to improve the way they deal with cases of forced marriage? – YES, NO or DON'T KNOW?

- (a) If YES, who needs to improve?
- (b) How do you think these organisations you included in answer (a) could improve?

Question: Do you want to tell us anything else about the issues raised in the consultation?

Annex H Response Form and Questionnaire

Forced Marriage: **A Civil Remedy?**

If you intend to e-mail your consultation response to us, please complete the form below and send as an attachment (accompanying your response) to the following address: vawt@scotland.gsi.gov.uk. The form below will help ensure we handle your response appropriately. Thank you for your help.

Name: _____

Postal Address: _____

1. Are you responding as: (please tick one box)

- an individual (go to 2a/b)
 on behalf of a group or organisation (go to 2c)

2a. **INDIVIDUALS**

Do you agree to your response being made available to the public (in the Scottish Government library and/or on the Scottish Government website)?

- Yes (go to 2b below)
 No, not at all

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**Please tick one** of the following boxes)

- Yes, make my response, name and address all available
 Yes, make my response available, but not my name or address
 Yes, make my response and name available, but not my address

2c. **ON BEHALF OF GROUPS OR ORGANISATIONS:**

Your name and address as respondees **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you content for your response to be made available also?

- Yes
 No

3. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in future, but will require your permission to do so.

Are you content for the Scottish Government to contact you again in the future for consultation or research purposes?

- Yes
 No

Consultation Questionnaire

Introducing Civil Legislation on Forced Marriage

Given the outcome of the previous criminal law consultation “*A Wrong Not a Right*” and the changes to civil law in England and Wales, the Scottish Government has decided to seek your views, through the consultation questions below, on whether Scotland should introduce civil legislation on forced marriage.

Consultation Questions

Question 1: Are there any difficulties in accessing existing civil remedies forced marriage cases?

YES NO DON'T KNOW

Please provide any additional comments. For example, what access difficulties exist AND why do you think these exist?

Question 2: Once accessed, are there any difficulties using existing civil remedies in forced marriage cases?

YES NO DON'T KNOW

Please provide any additional comments. For example, what difficulties exist AND why do you think these difficulties exist?

Question 3: All the civil remedies currently available in Scotland must be sought directly by the victim, whereas the English and Welsh legislation allows third parties to apply for orders on the victim's behalf. Do you think allowing third party involvement is a good idea?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think third party involvement is a good idea? Or, why do you think third party involvement is not a good idea?

Question 4: In Scotland, interdicts, and non-harassment orders can only be used to prohibit specific actions. Do you think the law should be able to positively require a person to do something?

YES NO DON'T KNOW

Please provide any additional comments. For example, with reference to examples, why do you think the law should positively require a person to do something? Or, why do you think the law should not be able to positively require a person to do something?

Question 5: The UK Forced Marriage (Civil Protection) Act allows orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator, should such orders be introduced in Scotland?

YES NO DON'T KNOW

Please provide any additional comments. For example, if introduced what do you think the benefits would be? Or, why do you think such orders should not be introduced?

Question 6: The UK Forced Marriage (Civil Protection) Act allows a power of arrest attached to an order to be used against anyone who seems to be breaching the terms of the order, not just the person against whom the order is primarily directed. Should this be introduced in Scotland?

YES NO DON'T KNOW

Please provide any additional comments. For example, if introduced what do you think the benefits would be? Or, why do you think a power of arrest should not be introduced?

Question 7: Following on from Question 6, do you think a power of arrest should be used against someone who may be unaware of the existence of such an order or of its contents?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think a power of arrest should be used? Or, why do you think a power of arrest should not be used?

Question 8: Where no power of arrest is initially attached to an order, the UK Forced Marriage (Civil Protection) Act allows the person protected by the order to apply to the court for an arrest warrant if they believe the order has been breached. Should this be introduced in Scotland?

YES NO DON'T KNOW

Please provide any additional comments. For example, if introduced what do you think the benefits would be? Or, why do you think such applications for an arrest warrant should not be introduced?

Question 9: On balance, in relation to forced marriage do you think existing civil remedies are sufficient?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think existing civil remedies are sufficient? Or, why do you think existing civil remedies are not sufficient?

Question 10: Do you think the Scottish Government should introduce specific civil remedies in relation to forced marriage?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think the Scottish Government should introduce specific civil remedies AND what specific civil remedies do you think the Scottish Government should introduce? Or, why do you think the Scottish Government should not introduce specific civil remedies?

Question 11: Another feature of the Act 2007 is that it provides for the UK Government to issue statutory guidance to all agencies dealing with forced marriage issues, do you think there is a need for this in Scotland?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think there is a need for this in Scotland? Or, why do you think there is not a need for this in Scotland?

Question 12: Is there enough protection in Scotland for children and young people under 16 affected by forced marriage?

YES NO DON'T KNOW

Please provide any additional comments. For example, what gaps do you think there are in protection AND how do you think these gaps could be filled?

Question 13: If we introduce legislation on forced marriage, do you think we should also extend it to forcing someone into a civil partnership?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think legislation should be extended to cover civil partnership? Or, why do you think legislation should not be extended to cover civil partnership?

Question 14: Are there any difficulties in accessing civil legal aid for the current civil remedies described in this consultation?

YES NO DON'T KNOW

Please provide any additional comments. For example, what difficulties exist in accessing civil legal aid?

Question 15: Following on from Question 14, would the same issues arise in relation to any new statutory civil remedies that may be developed following this consultation?

YES NO DON'T KNOW

Please provide any additional comments. For example, why do you think the same issues would arise? Or, why do you think the same issues would not arise? Or, do you think different issues would arise (please explain why)?

Question 16: Are you/your organisation currently working to address forced marriage?

YES NO

Please provide any additional comments on the work your organisation undertakes.

Question 17: The Scottish Government funds a range of organisations working to support those affected by forced marriage, what other non-legislative action do you think the Scottish Government should take to tackle forced marriage in Scotland?

YES NO DON'T KNOW

Please provide comments on action(s) you feel the Scottish Government should take.

Question 18: Do you think there is a need for agencies in Scotland to improve their response to cases of forced marriage?

YES NO DON'T KNOW

Please provide any additional comments. For example, which agencies need to improve their response AND how do you think these agencies could improve?

Question 19: Please use this space below to provide any additional comments on any aspects of this consultation.

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