

## **Introducing Civil Legislation on Forced Marriage**

### RESPONDENT INFORMATION DETAILS

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Responding as: On behalf of a group or organisation

Individual Permission: No, not at all

Confidentiality: N/A

Group or Organisation: Yes

Share Response Permission: Yes

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

As noted in the consultation paper itself the existing civil remedies are primarily prohibitive. The following case summary provides an example of the significant gap in the legislative provisions in respect of forced marriage where the unwilling 'spouse' is under the age of 16 years.

By letter dated 13<sup>th</sup> March 2008 East Ayrshire Council was advised by the Foreign and Commonwealth Office that a British Citizen, resident in Pakistan, was due to be forced into marriage on the 10<sup>th</sup> April 2008. The girl concerned was under sixteen years of age. Her half brother, who resides within the local authority area of East Ayrshire, contacted the forced marriage unit advising that the child was to be married to the brother of her sister's intended husband. The proposed groom was allegedly significantly older and an alcoholic. Staff from the Foreign and Commonwealth Office attempted to make contact with the child but were unsuccessful. However, she contacted the High Commissioner in Islamabad directly on 31<sup>st</sup> March 2008. The child confirmed that she was due to be forced into marriage and requested assistance to escape to the United Kingdom. The child does not speak English. She was interviewed by an Urdu speaking member of the Foreign and Commonwealth staff who confirmed that the child did not wish to be married and wanted assistance to escape to the United Kingdom where she intended to reside with her half brother, who confirmed that he wished to assume responsibility for her care.

The Foreign and Commonwealth Office were able to confirm that the only time the child was able to leave the house was to go to school. The forced Marriage Unit of the Foreign and Commonwealth Office requested that East Ayrshire Council make application for legal orders to enable the Foreign and Commonwealth Office to pick the child up from somewhere near her school and arrange her repatriation. The above mentioned letter was received by East Ayrshire Council on 2<sup>nd</sup> April 2008. Had this situation arisen for a local authority in England or

Wales Social Services may make an application to the courts for wardship. However, in Scotland where the child is physically outwith the jurisdiction of the Scottish Courts the only option would be to consider an application in terms of section 11 of the Children (Scotland) Act 1995 to obtain parental rights and responsibilities. This would then allow the Foreign and Commonwealth Office to justify repatriation. Despite efforts being made on 2<sup>nd</sup> April 2008 East Ayrshire Council's Legal Services were unable to find a firm of solicitors to take instructions to make any such application on behalf of the child's half brother. In any event there were doubts about effectiveness of such a course of action. A local authority is prohibited from making application in terms of section 11 of the Children (Scotland) Act 1995. Consequently, on the evening of the 2<sup>nd</sup> April 2008 the Forced Marriage Unit agreed to instruct their own solicitors in London to seek wardship. The High Court of Justice granted a wardship on Friday 4<sup>th</sup> April 2008. Strathclyde Police Family Protection Unit were advised accordingly and a copy of the order made available to them. The child's extended family composition was unknown and consequently it was not possible to quantify any risks to the girl from the wider community within the United Kingdom. Routine Police checks were carried out in respect of the child's half brother and his wife and no concerns were identified in relation to their involvement. Legal Services succeeded in instructing a firm of local solicitors to draft an interdict to prevent the girl's removal from her half brother's home and he was advised to make contact with said solicitors in order to formalise his instructions for the interdict and a subsequent section 11 application.

The child arrived at Glasgow airport on 9<sup>th</sup> April 2008 at 12.25 and the allocated social worker met with her and immigration officials. A copy of the wardship order was made available to immigration staff. The solicitors were advised of her arrival time so that their application for interdict to prevent her removal was heard the same day. The interdict

was granted however, the terms of the interdict did not reflect the instructions and instead interdicted the defender (the child's mother) or anyone acting on her instructions from removing the child from the United Kingdom. East Ayrshire Council's Legal Services undertook to arrange service of the writ and interdict on the child's mother and on 6<sup>th</sup> June 2008 service was effected in Pakistan. Unfortunately, service of the paperwork led to a deterioration in the child's circumstances. She received several communications from family members advising that she had brought shame on the family, that her mother was suicidal and that she would be responsible should anything happen to her mother. The child was also subjected to increasing numbers of telephone calls from extended family members within the United Kingdom. On 11<sup>th</sup> June 2008 the child became very upset in school and advised her bi-lingual support worker that she no longer wished to reside with her half brother. She claimed that another arranged marriage was to be forced upon her by her half brother. It appears that this information was supplied to the child by extended family members. Her half brother denied any such arrangements were being made. The child indicated that she wished to stay with her sister and aunt in Manchester. The girl's half brother was concerned at her levels of distress. On or around 13<sup>th</sup> June 2008 the Foreign and Commonwealth Office received a referral from the NSPCC making allegations in relation to the girl's safety and wellbeing which were unfounded. Over the weekend of the 19<sup>th</sup>/20<sup>th</sup> June 2008 the girl was collected by relatives in England and removed. Enquiries were immediately made by East Ayrshire Council's Social Work Services and the child was traced to Oldham where social services monitored her welfare. On 22<sup>nd</sup> June the girl became 16 years of age and consequently the Section 11 application was no longer appropriate. The consultation does not make it clear that the Scottish legal system will afford a solution where the intended victim of a forced marriage is a UK citizen residing outwith the United Kingdom and where that individual is also a child emergency child protection measures cannot

	<p>be utilised. The crucial question of jurisdiction is not discussed in the consultation and while it would be possible for East Ayrshire Council to apply for an interdict to prevent the removal of a child currently resident in our Local Authority area there is still no solution where concerns are raised with us by family members in respect of a child residing abroad and consequently we would be in the same position of having to ask the Forced Marriage Unit to apply for an English wardship to enable repatriation to take place. Similarly, it is not clear from the consultation whether third parties can make application for orders under the proposed legislation where a child is not within the jurisdiction of the Sheriff Court.</p>
<p><b><i>Question 2: Once accessed, are there any difficulties using existing civil remedies in forced marriage cases?</i></b></p>	<p>East Ayrshire Child Protection Committee is unaware of any other difficulties as there is no experience of having used the existing civil remedy of interdict in a forced marriage case.</p>
<p><b><i>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?</i></b></p>	<p>Third party involvement would be extremely useful as it will allow the local authority to intervene on behalf of both children and vulnerable adults with their consent. It would be hoped that the rules in respect of jurisdiction enable third parties to act for victims unlawfully imprisoned or overseas. Provisions which enabled the local authority to act as a relevant third party would be consistent with the existing child protection policies and procedures together with the principles of the vulnerable adults procedures and the Adult Support and Protection (Scotland) Act 2007. Notwithstanding the above there would clearly need to be training for local authority/health/police personnel to ensure that they were fully aware of the risks surrounding forced marriage and that legal measures were not preceded with where there was a risk that such action might escalate rather than diminish risk. Clearly, some multi-disciplinary, multi-agency discussion would be an advantage prior to instructing court action. Allowing the local authority</p>

	<p>to make applications under the proposed forced marriage legislation recognises that the impact of any abuse the intended victim may have already suffered for example restrictions on freedom, constant supervision, threats and coercion. I would suggest that distancing the victim from the court process increases the potential for family relationships to be repaired in the long term. A further advantage of permitting the local authority to make applications under the proposed legislation is that they have a great deal of experience of emergency court applications. For example, it is not unusual for applications to be lodged for a Child Protection Order within an hour of instruction. Clearly however Protection Orders under the proposed forced marriage legislation must be accompanied by the immediate provision of safe housing and appropriate support.</p>
<p><b><i>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?</i></b></p>	<p>Yes. Clearly, requiring an individual to, for example, relinquish a passport may help to stabilise a situation by preventing a victim being removed from the UK.</p>
<p><b><i>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?</i></b></p>	<p>Yes. There are clear benefits to this proposal as it will prevent extended family or friends (or those instructed by family or friends) continuing the abuse.</p>
<p><b><i>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?</i></b></p>	<p>Yes. This provision again provides a deterrent to the victim's extended family/social network.</p>
<p><b><i>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</i></b></p>	<p>Yes. It would be useful to attach a power of arrest in such circumstances and place the onus on the individual to establish</p>

<p><i>existence of such an order or of its contents?</i></p>	<p>whether or not Protective Orders are in force before they act. For example, it is difficult to anticipate circumstances where an individual would consider it appropriate to transport another person against their expressed wish on the direction of another person. Failure to report concerns relating to the abuse of women is a matter of ongoing public education and awareness raising and the issues around forced marriage are closely related.</p>
<p><b><i>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?</i></b></p>	<p>Yes. The advantage of this is that it allows the victim to act independently of the third party applicant. Empowering the victim in this way respects their autonomy.</p>
<p><b><i>Question 9: On balance, in relation to forced marriage do you think existing civil remedies are sufficient?</i></b></p>	<p>No. As noted above the case in which East Ayrshire were involved in March 2008 did not permit any satisfactory intervention by the local authority.</p>
<p><b><i>Question 10: Do you think the Scottish Government should introduce specific civil remedies in relation to forced marriage?</i></b></p>	<p>Yes. The proposal provides additional civil remedies which significantly reduces the gap in the existing legal provisions.</p>
<p><b><i>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?</i></b></p>	<p>Yes. Clearly guidance would be essential given the need for multi disciplinary working including co-operation between local authorities.</p>
<p><b><i>Question 12: Is there enough protection in Scotland for children and young people under 16 affected by forced marriage?</i></b></p>	<p>No. At present no child protection measures can be initiated where the child is out with the jurisdiction of the Sheriffdom and accordingly where a child is already abroad there is nothing a local authority in Scotland can do to provide protection. However, where the child is</p>

	<p>within the jurisdiction of the Scottish courts the grounds for referral in respect of compulsory measures would appear to be adequate given that forced marriage is an issue of domestic abuse including the sexual abuse of the victim.</p>
<p><b><i>Question 13: If we introduce legislation on forced marriage, do you think we should also extend it to forcing someone into a civil partnership?</i></b></p>	<p>Don't know. While there is no reason to believe that an individual would be forced in to civil partnership for cultural reasons it is not likely that an individual could be forced into a civil partnership, or indeed any other relationship, for controlling and abusive reasons. However such individuals are likely to have been "groomed" in advance and are consequently likely to consent to the civil partnership and refuse to consent to any measures in terms of the proposed legislation. As marriage/civil partnership is viewed, in legal terms, as a simple contract there are concerns about the ability of a vulnerable adult to be unduly influenced by others. Evidencing 'undue influence' can be difficult and there are related concerns in relation to capacity. As capacity must be assessed in relation to each and every decision that an adult makes it is possible to imagine situations where an individual lacks capacity to take decisions to safeguard their own welfare and is subject to a welfare guardianship which imposes a care plan but may be deemed capable of entering a marriage/civil partnership. The result may be that, in practice, the local authority can take protective action once there is clear evidence of abuse but not to prevent the marriage/civil partnership/abuse itself.</p>
<p><b><i>Question 14: Are there any difficulties in accessing civil legal aid for the current civil remedies described in this consultation?</i></b></p>	<p>Don't know</p>
<p><b><i>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?</i></b></p>	<p>Don't know.</p>

<p><b><i>Question 16: Are you/your organisation currently working to address forced marriage?</i></b></p>	<p>A report to the Child Protection Committee highlighting the current gaps in the legislation was considered on 27<sup>th</sup> November 2008. This response has also been agreed and submitted on a multi agency basis via the Child Protection Committee.</p>
<p><b><i>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?</i></b></p>	<p>Yes. Public education and awareness raising. The proposed legislation could be regarded as an attack on the tradition of arranged marriage however forced marriage is domestic abuse and as such there is an ongoing need to address the widespread acceptance of domestic abuse and forced sex within Scottish society.</p>
<p><b><i>Question 18: Do you think there is a need for agencies in Scotland to improve their response to cases of forced marriage?</i></b></p>	<p>Yes – as detailed above.</p>
<p><b><i>Question 19: Please use this space below to provide any additional comments on any aspects of this consultation</i></b></p>	