

Equalities

Consultation on “Forced Marriage: a Civil Remedy?”

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Between December 2008 and March 2009, the Scottish Government consulted on a document entitled “Forced Marriage: A Civil Remedy?” Views were sought on whether civil legislation on forced marriage should be introduced in Scotland, and a number of related issues. The consultation explored views of: the sufficiency of civil remedies relating to forced marriage; and supporting actions and provisions; as well as providing the opportunity for other comments. There were 47 written responses received to 19 questions.

Main Findings

- A number of respondents welcomed the consultation or the opportunity to comment, or stressed the importance of tackling forced marriage.
- Overall, there was a very high level of support for the introduction in Scotland of civil legislation on forced marriage, with a large majority of respondents believing that the Scottish Government should introduce specific civil remedies.
- A large majority did not consider existing civil remedies to be sufficient, and a large majority believed that there are difficulties in accessing and using these in forced marriage cases.
- A large majority of respondents believed that allowing third party involvement is a good idea.
- Almost three quarters believed that the law should be able to positively require a person to do something.
- Almost all agreed that orders should be allowed to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator.
- There was considerable support for power of arrest to be able to be used against those other than just the person against whom the order is primarily directed. Just under two thirds of respondents also believed that a power of arrest should be able to be used against someone who may be unaware of the existence or contents of an order, although some reservations were expressed.
- A large majority of respondents supported making provision to enable the person protected by an order to apply to the court for an arrest warrant if they believe the order has been breached. Some believed power of arrest should be attached from the start. A small number raised other issues.
- Almost all of the respondents believed that there is a need for statutory guidance in Scotland.
- Almost two thirds of respondents believed that there is not enough protection in Scotland for children and young people under 16 affected by forced marriage. Around a quarter stated there is.
- The vast majority of respondents believed that any legislation on forced marriage should be extended to cover forcing someone into a civil partnership.
- Around two thirds of respondents believed that there are difficulties in accessing civil legal aid for the current civil remedies. Just over half of the respondents believed that the same issues would arise in relation to any new statutory civil remedies that may be developed.
- A number of respondents were working to address forced marriage, most commonly through awareness raising and training, and through the inclusion of forced marriage issues in other work.
- A large majority of respondents believed that agencies in Scotland need to improve their response to cases of forced marriage. The most common type of non-legislative action identified as being required by the Scottish Government and others was awareness raising and training for members of the public, particular communities and service providers. Other forms of work were also identified, and some respondents suggested the need to address issues for particular groups.

Background

The Scottish Government identified a need to consider what action is required to address issues relating to forced marriage in Scotland, particularly whether current legislative protection is sufficient, or whether civil legislation on forced marriage should be introduced.

This followed a previous joint consultation by the UK Government and Scottish Executive in 2005, which explored the advantages and disadvantages of introducing a specific criminal offence relating to forced marriage. A decision was taken not to legislate for a specific criminal offence relating to forced marriage at that time. New civil legislation was subsequently introduced in England and Wales in 2007, in the form of the Forced Marriage (Civil Protection) Act 2007. This provides civil remedies to those at risk of forced marriage and those already forced into marriage and contains provisions which currently have no equivalent in Scotland.

The 2007 Act allows a person who has been forced into marriage, or is at risk of being forced into marriage, to apply to the court for a Forced Marriage Protection Order. It enables third parties to apply for an order on behalf of the victim. Such an order can prohibit a person from doing something and positively require a person to do something. Orders can be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator. A power of arrest can be attached to a Forced Marriage Protection Order. Where no power of arrest is attached, an application can be made to the court for an arrest warrant when the person protected by the order, the person who applied for it, or another person with the leave of the court believes it has been breached. The Act also provides for statutory guidance on the roles of relevant agencies to be issued by the UK Government.

The consultation

A consultation process to explore whether Scotland should introduce legislation on forced marriage was launched on 4th December 2008 and ran until 27th March 2009. This centred on a consultation document entitled “Forced Marriage: A Civil Remedy?”. The document provided background information and sought views on 19 questions.

The consultation generated a total of 47 written responses. The most common type of respondents were those working to address domestic abuse (service providers, forums and partnerships), with more than a quarter of responses (28%) from such respondents. A further 15% of responses were received from other voluntary sector organisations (for example, organisations with a focus on women and / or other equality issues, and those working with families and

children). The same proportion was received from police and legal respondents. A further 13% came from other public sector respondents (for example, local authorities, NHS respondents, and partnerships). Small numbers of responses were also received from individuals, faith organisations, educational institutions and community councils. Of the 42 responses from organisations, a total of 7 (17%) of these were from black and minority ethnic (BME) organisations.

A vast amount of largely qualitative information was provided relating to the key areas examined in the consultation: the sufficiency of civil remedies relating to forced marriage; and supporting actions and provisions. A summary of the responses is provided below.

Response analysis

Overall, there was a very high level of support for the introduction in Scotland of civil legislation on forced marriage.

Sufficiency of civil remedies relating to forced marriage

It was found that a large majority of respondents believed that there are difficulties in accessing and using existing civil remedies in forced marriage cases. Those identified were: the costs involved for victims, and difficulties in accessing legal aid; a lack of awareness and understanding of civil remedies amongst members of the public, victims and professionals; the requirements of the process, legal structure and the nature of the remedies; and the specific nature of forced marriage and a lack of recognition of this. Some issues were also identified as affecting particular groups.

A large majority of respondents believed that allowing third party involvement is a good idea, with the reasons relating to overcoming some of the barriers in accessing and using civil remedies, particularly the need for victims to seek remedies directly themselves. Many identified the need for such a measure to be used carefully and regulated strictly, and some issues were raised which were seen to require consideration or clarification. A number of detailed suggestions were made about processes, procedures and requirements.

Almost three quarters of respondents believed that the law should be able to positively require a person to do something. Amongst the perceived benefits were that this could help to prevent forced marriage, and extend the means of protecting victims. Almost all of the respondents agreed that orders should be allowed to be directed against anyone aiding, abetting, encouraging or conspiring with the principal

perpetrator. The main reasons given for such a view were that this may provide a means of addressing issues relating to the nature of forced marriage, and the frequent involvement, collusion and conspiracy by various family and community members.

There was considerable support amongst respondents for power of arrest to be able to be used against those other than just the person against whom the order is primarily directed. The most common benefits were seen to relate to addressing problems arising from the likely involvement of those other than the principal perpetrator. Some issues for consideration were also raised in relation to procedures, or the nature of potential provision. Just under two thirds of respondents also believed that a power of arrest should be able to be used against someone who may be unaware of the existence or contents of an order, although some reservations were expressed and issues raised. The most common reason in favour of this was that not knowing about the law, or an order, was not seen to be a legitimate defence. A large majority of respondents supported making provision to enable the person protected by an order to apply to the court for an arrest warrant if they believe the order has been breached, although some believed that the power of arrest should be attached from the start, and a small number of other issues were raised. Amongst the perceived benefits were that this would offer additional options for the victim, increase their protection and safety and give them control, as well as emphasising the seriousness of forced marriage, enabling an appropriate response, reducing costs and providing parity across the UK.

A large majority of respondents stated that they did not consider existing civil remedies to be sufficient. Similarly, a large majority believed that the Scottish Government should introduce specific civil remedies in relation to forced marriage. Some respondents made further comments on the nature of the remedies, or issues which they believed should be taken into account.

Supporting actions and provisions

Almost all of the respondents believed that there is a need for statutory guidance in Scotland, with the most common themes relating to: the need for awareness of forced marriage issues and appropriate responses; the need for clarity of roles; and the need to ensure that appropriate action is taken. Suggestions were made about issues which should be included in such guidance.

Almost two thirds of respondents believed that there is not enough protection in Scotland for children and young people under 16 affected by forced marriage, although around a quarter stated that there is sufficient protection. A common issue raised was a lack of awareness of forced marriage issues rather than gaps in the actual provision of measures,

although a small number of gaps in measures themselves were also suggested. A number of suggestions for possible actions were made.

The vast majority of respondents believed that any legislation on forced marriage should be extended to cover forcing someone into a civil partnership, although several suggested that such a situation would be less common. The main reason given for the perceived need for the inclusion of civil partnerships related to the importance of equality and the provision of the same level of protection for everyone.

Around two thirds of respondents believed that there are difficulties in accessing civil legal aid for the current civil remedies. These included: increasing difficulties with this; difficulties in finding a solicitor accepting civil legal aid; a lack of knowledge of legal aid and entitlements; issues with timing and qualifying criteria; the need for a “legal basis” for a case; general access difficulties; and specific difficulties for victims with no recourse to public funds. Just over half of the respondents believed that the same issues would arise in relation to any new statutory civil remedies that may be developed, while over a third indicated that they did not know.

A number of respondents identified that they or their organisation were currently working to address forced marriage. The most common types of work identified were awareness raising and training, and the general inclusion of forced marriage issues in other work. Other forms of work were also highlighted. Respondents made a range of suggestions for other action considered to be required by the Scottish Government and others. A large majority of respondents believed that agencies in Scotland (both statutory and voluntary) need to improve their response to cases of forced marriage. The most common type of non-legislative action identified as being required by the Scottish Government and others was awareness raising and training (with members of the public, particular communities and service providers).

Additional forms of work suggested included: provision of information and guidance; provision of funding and resources; development of support to victims; and the improvement of the evidence base. A number of respondents suggested the need to address issues for particular groups, or to tackle specific issues. Groups included: victims with no recourse to public funds; children missing from education; people with learning disabilities; and people in other specific groups. Issues included those relating to: the level of reporting and uptake of remedies; the intersection of issues; and sexual orientation. A number of additional suggestions were also made, and the importance of multi-agency and / or partnership working was stressed.

Other comments

Amongst other comments made, some respondents provided detailed information about specific aspects of the nature of forced marriage. Some identified their own experience of working with forced marriage cases. Information was provided about issues affecting particular groups of victims, while some respondents identified general principles and ways of working in tackling forced marriage. Some identified the ways in which their response to the consultation had been generated or provided detailed information about the nature of their organisation or coverage of their response.

A number made positive comments about the consultation, including commending the Scottish Government for addressing the issue, and welcoming the consultation and the opportunity to comment. Some stressed the importance of the issue. A small number of comments were made about the scope of the consultation or the issues included.

This document, along with “Consultation on “Forced Marriage: A Civil Remedy? Analysis of Responses” the full research report of the project and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Social Research website at: www.scotland.gov.uk/socialresearch. If you have any further queries about social research,, please contact us at socialresearch@scotland.gsi.gov.uk or telephone 0131 244 7573



Social Science in Government

ISBN 978-0-7559-7555-6

