



The Scottish  
Government

Consultation on  
“Forced Marriage: A Civil Remedy?”  
Analysis of Responses

Equalities



**CONSULTATION ON “FORCED MARRIAGE: A  
CIVIL REMEDY?”  
ANALYSIS OF RESPONSES**

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## **EXECUTIVE SUMMARY**

This report presents the findings of a consultation on “Forced Marriage: A Civil Remedy?”, through which the Scottish Government sought views on whether civil legislation on forced marriage should be introduced in Scotland, and a range of related issues. The consultation took place from December 2008 to the end of March 2009, and involved written submissions to 19 questions posed in the consultation document. The questions provided the opportunity to agree or disagree with a range of issues, and to provide further detailed information.

A total of 47 written responses were received. 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.

The material involved a combination of responses to the closed questions and a large amount of qualitative information relating to the key areas examined in the consultation: the sufficiency of civil remedies relating to forced marriage; and supporting actions and provisions. Respondents also made some additional comments on other issues.

Overall, there was a very high level of support for the introduction in Scotland of civil legislation on forced marriage. The more specific findings are discussed below.

### **Sufficiency of civil remedies relating to forced marriage**

The document explored views of: accessing and using existing civil remedies; third party involvement; the use of orders to require as well as to prohibit actions; orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator; the nature and use of powers of arrest and arrest warrants; the overall sufficiency of existing civil remedies and the need for specific civil remedies.

It was found that a large majority of respondents<sup>1</sup> 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

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<sup>1</sup> The use of the term “respondents” in the summary of findings refers to those who addressed the particular issue.

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**

The consultation document explored views of: the need for statutory guidance; protection for children and young people under 16; protection covering civil partnerships; access to legal aid; current work by respondents to address forced marriage; and views of other actions required.

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 were identified as including: 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.

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: the level of reporting and uptake of remedies; the intersection of issues; and issues relating to sexual orientation. A number of additional suggestions were also made, and the importance of multi-agency and / or partnership working was stressed.

### **Other comments**

Respondents were given the opportunity to make additional comments.

Some provided detailed information about specific aspects of the nature of forced marriage which they identified as being relevant to the consultation.

Some respondents identified their own experience of working with specific forced marriage cases and provided detailed examples in their responses, which can help to inform the way forward.

Issues were also identified which are seen to affect particular groups of victims of forced marriage. These included: victims with no access to public funding; people with learning disabilities; people with hearing impairments and people for whom English is not their first language; children; people with mental health problems; and men. It was also suggested that there are specific issues relating to sexual orientation. Some respondents provided detailed information about issues affecting these groups.

Some respondents identified additional issues for consideration relating particularly to general principles and ways of working in tackling forced marriage.

Some respondents identified the ways in which their response to the consultation had been generated. Examples included, for some respondents: discussion at a focus group or event; discussion with relevant individuals, organisations and parts of organisations; and consideration by a specific Committee or sub-Committee. Some respondents provided detailed information about the nature of their organisation and the coverage of their response.

A number of respondents 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.



## **SECTION 1: THE CONSULTATION**

1.1 This report presents the findings of a consultation on a document entitled “Forced Marriage: A Civil Remedy?”. The Scottish Government sought views on whether civil legislation on forced marriage should be introduced in Scotland, as well as exploring a number of related issues.

1.2 This section provides an introduction to the areas covered in the consultation document, as well as a brief outline of the consultation process, methods of analysis and details of respondents. Sections 2-4 provide an analysis of the responses in terms of: the sufficiency of civil remedies relating to forced marriage (Section 2); supporting actions and provisions (Section 3); and other comments (Section 4).

### **Background**

1.3 The decision to undertake this consultation reflected the Scottish Government’s recognition that forced marriage is unacceptable, and that it is important to address this issue. Forced marriage involves one or both parties being coerced into marriage against their will or under duress. It is not an arranged marriage (where the final decision to accept an arrangement made by families rests with the potential spouses). The Scottish Government states that forced marriage is a form of violence against women and a violation of human rights. It also recognises that forced marriage is part of the experience of some people in Scotland.

1.4 Against this 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 should be introduced. This followed a previous joint consultation which was carried out 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. Following that consultation, a decision was taken not to legislate for a specific criminal offence relating to forced marriage at that time. However, new civil legislation was subsequently introduced in England and Wales in 2007, in the form of the Forced Marriage (Civil Protection) Act 2007. The Act provides civil remedies to those at risk of forced marriage and those already forced into marriage. It contains provisions which currently have no equivalent in Scotland (although there are a number of civil and criminal remedies which may be relevant).

1.5 The Forced Marriage (Civil Protection) Act 2007 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. The Act also enables third parties to apply for a Forced Marriage Protection Order on behalf of the victim. A Forced Marriage Protection Order can both prohibit a person from doing something, and can 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 that the order has been breached. The Act also provides for statutory guidance on the roles of relevant agencies to be issued by the UK Government.

1.6 In the light of these changes, the Scottish Government decided to explore, via this consultation, whether Scotland should introduce legislation on forced marriage (as well as to examine other, related issues). A consultation process was launched on 4th December 2008 which ran until 27<sup>th</sup> March 2009. This centred on a consultation document entitled “Forced Marriage: A Civil Remedy?”. The document provided information about forced marriage and existing remedies, and sought views on 19 questions.

### **The consultation process**

1.7 The consultation document covered the following issues:

- Background to forced marriage (including, for example: the nature of forced marriage; prevalence; motives; and consequences).
- The reasons for consulting (covering the background to the consultation, as summarised above).
- Relevant law in Scotland and related issues (including, for example: existing legal protection for victims of forced marriage; issues affecting children and young people under 16; civil partnerships; accessing legal support; immigration issues; legal aid issues; and the Forced Marriage Network and service provision in Scotland).
- How to respond to the consultation.

1.8 The document also contained a number of annexes, providing: a list of consultees; useful links and contacts; relevant human rights provisions; the Scottish Government’s approach to tackling violence against women; current criminal legislative protection; a membership list for the Forced Marriage Network; and an aide for consultation events and workshops. A response form was also included. A full list of the questions is provided at Annex 1 of this report.

1.9 Written responses to the consultation document were sought on a response form (which could be submitted by post and e-mail). There were 19 specific questions, most of which enabled respondents to agree or disagree with an issue (or indicate “don’t know”). Each also enabled respondents to make detailed qualitative comments.

1.10 The questions covered views of: accessing and using existing civil remedies (Qs 1 and 2); third party involvement (Q3); the use of orders to require as well as to prohibit actions (Q4); orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator (Q5); the nature and use of power of arrest and arrest warrants (Qs 6-8); the overall sufficiency of existing civil remedies and the need for specific civil remedies (Qs 9 and 10); the need for statutory guidance (Q11); protection for children and young people under 16 (Q12); protection covering civil partnerships (Q13); access to legal aid (Qs 14 and 15); current work by respondents (Q16); other actions required (Qs 17 and 18) and additional comments (Q19). As the supplementary parts of the questions were open-ended, the written consultation generated wide-ranging and detailed information.

### **Submissions and respondents**

1.11 The consultation generated a total of 47 written responses. These were grouped into broad categories for the purpose of analysis. This provides a useful indication of the types of respondents for an overall summary of these, although it is acknowledged that this requires

some subjective judgement, and the limitations are acknowledged. Responses were received in the following categories<sup>2</sup>:

- Community Council.
- Domestic abuse (including service providers, forums and partnerships).
- Education.
- Faith.
- Individual (including any responses provided jointly by more than one individual).
- Other public sector (where it was not identified that the respondent had a specific focus on domestic abuse).
- Other voluntary sector (where it was not identified that the respondent had a specific focus on domestic abuse).
- Police and legal.

1.12 The most common type of respondents<sup>3</sup> were those working to address domestic abuse, including service providers, forums and partnerships. More than a quarter of responses (28%) were received from such respondents (in one case, along with a number of other organisations). A further 15% of responses came from other voluntary sector organisations (which included, 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 (which included, for example: police; statutory legal organisations; representative organisations; and law centre respondents). A further 13% of responses were received from other public sector respondents (which included, 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.

1.13 The pattern of responses by type is set out in the table below:

**Table 1. Pattern of responses by type of respondent**

<b>Type of respondent</b>	<b>Number</b>	<b>Percentage of total<sup>4</sup></b>
Community Council	2	4
Domestic abuse	13	28
Education	3	6
Faith	4	9
Individuals	5	11
Police and Legal	7	15
Other public sector	6	13
Other voluntary sector	7	15
	47	

***The form of the responses***

<sup>2</sup> Alphabetical order.

<sup>3</sup> Where the term “respondent” is used in the report, this refers to one response, even where this represents the views of more than one person or organisation.

<sup>4</sup> Does not sum to 100% due to rounding.

1.14 Among the 47 responses, a total of 36 were submitted electronically, with the remainder (11) being submitted on paper. The responses which were typed were scanned, and the handwritten responses (4) typed, before being analysed using the method described at 1.16 below.

1.15 Some of the respondents used the form which was provided, while others responded using different approaches. Some addressed the specific questions, or provided information relating directly to these, while others submitted a more general letter.

### **Analysis and presentation of the data**

1.16 The analysis of the data involved a number of stages:

- Design of an Access database by the main and supplementary questions in the consultation document.
- Input of the responses to the database.
- Analysis of the responses to the closed questions (“yes”, “no” and “don’t know”.
- Generation of a series of Word documents containing all of the responses to each of the qualitative questions.
- Identification of the key themes and sub-themes for each question, with the organisation of the detailed comments into a series of issue-based “books”.
- Preparation of the report.

### ***Presentation of the data***

1.17 The report presents the quantitative information for each question, in terms of the number who stated “yes”, “no” or “don’t know” in each case. This information includes only those who ticked the relevant box or who expressly stated “yes”, “no” or “don’t know” in their response. In some cases, however, the views of respondents who did not address the closed question directly could be inferred from their comments. These have been identified separately in those cases where their view was clear from their response. Where this was the case, these are discussed in the presentation of the material (although they are not included in the statistical information).

1.18 The main focus of the report, however, is on the qualitative analysis and presentation of the material in the detailed responses. This reflects the nature and purpose of the consultation and the responses received. The findings are presented to identify the range and depth of views, and to highlight key issues to inform deliberations, rather than primarily to determine the “weight” of views. For this reason, other than in the data relating to the “closed” questions, terminology such as “several”, “some”, “a small number” etc. is used, rather than specific proportions.

1.19 There are a number of additional reasons why a quantitative analysis and presentation would be less appropriate in a consultation such as this, including that:

- Not all of the respondents addressed the questions specifically, and not all of the respondents used the form provided.
- The range of issues explored, and the links between the issues considered, meant that different respondents sometimes raised a similar theme, but did so in their responses to different questions. Additionally, individual respondents

sometimes raised the same issue in their responses to more than one question, making a straightforward “count” of responses by theme impossible.

- Some responses represented the views of a number of participants, and it would be impossible to identify the actual number in each case.
- A consultation process involves “opting in”, where respondents identify (either by being sent the material directly or through other means) that views are being sought, and choose to participate. As such, it is not possible to infer the views of those who chose not to respond, nor to assume that the views expressed can be taken to be representative of all of those with an interest in the issue.

1.20 A report such as this cannot present all of the individual points made, and it is not intended to be a compendium of material. Instead, it gives a detailed overview of the themes and issues which emerged relating to each of the questions. Where views which are relevant to a particular question were provided at other points in a response, these have been presented in relation to the appropriate question, wherever possible.

1.21 Respondents were asked to indicate whether their responses could be made public, and most agreed. These full responses can be inspected on the Scottish Government website.

1.22 The presentation of the findings does not make reference to the type of respondent, other than in the use of quotes. The number of respondents in each category makes the identification of respondents by type inappropriate.

1.23 The presentation of the information sometimes uses the same wording as that in a response, even though it is not presented as a “quote”. This is considered appropriate in order to preserve the points made and the overall sense of the issue. Respondents to a consultation such as this will generally be clear that their comments will be analysed and will form the basis of a report. Illustrative quotes are also used.

1.24 Where respondents requested that their material remain confidential, the information has been analysed and the issues raised included, but there is no identification of the respondent, nor is the material presented in a way that would identify the respondent. Where respondents have provided case study examples and have requested that this material be treated confidentially, the information is not presented in a way that would identify the cases.

## **The way forward**

1.25 The report provides a summary of the range and depth of views expressed on “Forced Marriage: A Civil Remedy?” Following the preparation of the report, all of the views will be considered carefully by the Scottish Government and a decision reached regarding the introduction of civil legislation. The remainder of the report presents the findings, in the following sections:

- Section 2 covers issues relating to the sufficiency of civil remedies in Scotland relating to forced marriage (Questions 1-10).
- Section 3 covers issues relating to supporting actions and provisions (Questions 11-18).
- Section 4 covers any other issues raised.
- Annex 1 summarises the written consultation questions.
- Annex 2 provides a list of respondents.

## **Summary of issues: The consultation**

1.26 In summary, the main points relating to the consultation are as follows:

- The written consultation on “Forced Marriage: A Civil Remedy?” took place from 4<sup>th</sup> December 2008 to 27<sup>th</sup> March 2009.
- A consultation document containing 19 main questions was circulated, with most asking respondents to indicate “yes”, “no” or “don’t know”, and providing the opportunity for qualitative responses to supplementary questions.
- 47 written responses were received. Most (28%) came from those working to address domestic abuse. Respondents also included other voluntary sector (15%), police and legal (15%) and other public sector respondents (13%). Small numbers of responses were also received from individuals, faith organisations, educational institutions and community councils. 7 (17%) of responses from organisations were from BME organisations.
- The analysis of the data involved: the design of an Access database and input of responses by question; analysis of closed questions; identification of the key themes and sub-themes in the qualitative material; and preparation of the report.
- The report presents the findings of the closed questions in each case, but the main focus is on qualitative analysis and presentation, highlighting the range and depth of views and themes.
- The full responses are available on the Scottish Government website, unless the respondent requested otherwise.
- The remaining sections of the report provide an analysis of the responses.

## SECTION 2: SUFFICIENCY OF CIVIL REMEDIES

2.1 This section presents the findings on the questions in the consultation document relating to the sufficiency of existing civil remedies (questions 1-10).

### Accessing and using existing civil remedies

2.2 Questions 1 and 2 sought respondents' views about:

- Whether there are difficulties in accessing and using existing civil remedies in forced marriage cases.
- What difficulties exist.
- Why respondents believe these difficulties exist.

2.3 Question 1 explored whether there are difficulties in accessing existing civil remedies in forced marriage cases, and around two thirds of all respondents (30) provided a clear "yes", "no" or "don't know". Of these, a large majority (87%) believed that there are difficulties in accessing civil remedies in forced marriage cases. The remainder stated that they did not know whether there are difficulties. In addition, a small number of those who did not specify "yes", "no" or "don't know" made comments which implied their view, most of whom suggested their agreement, either by endorsing the response of another organisation which stated "yes" or by giving examples of what some of these difficulties might be.

2.4 Similarly, Question 2 explored difficulties in using existing civil remedies in forced marriage cases, and a total of 26 respondents answered "yes", "no" or "don't know" directly. Of these, a large majority (85%) believed that there are difficulties. The remainder stated that they did not know. Again, a small number of respondents did not specify "yes", "no" or "don't know" but made comments which implied their view. Most of these implied their agreement that there are difficulties. No respondents answered "no" to either questions 1 or 2. Some respondents who believed that there are difficulties in accessing and / or using civil remedies cited evidence from their work as the basis of their view.

2.5 Most of the respondents<sup>5</sup> who addressed these questions provided views about the nature of the difficulties and constraints. Although separate questions were posed relating to difficulties in accessing and using existing civil remedies in forced marriage cases, there were many overlaps and similarities between the issues raised. Some respondents answered the two questions together, or cross-referred their answers, with similar difficulties seen to constrain both accessing and using existing civil remedies. One respondent stated that, while they could not offer a view on the difficulties or otherwise of "accessing" civil remedies, they would offer a view on their effectiveness.

2.6 There were not always clear distinctions made between the nature of the difficulties and why they were seen to arise, but the common themes which arose are discussed below. Some respondents also identified the actions required to address these issues, and these are discussed at relevant points later in the report.

### *Costs*

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<sup>5</sup> Where references are made to respondents in the presentation of the findings relating to specific questions, this refers to those who addressed the question, unless otherwise stated.

2.7 The importance of being able to fund legal advice and representation was identified by some respondents, and a common difficulty in accessing and using civil remedies was seen to be the cost involved for victims. It was suggested, for example, that:

*“Civil protection is only available to those who can afford it”. (Domestic abuse organisation)*

2.8 Respondents noted difficulties in funding a civil action, difficulties with legal aid and the costs of going to court to exercise their rights. Some respondents stated that the high cost can put victims off or make it difficult, particularly if they are not entitled to legal aid. Difficulties in accessing legal aid were seen to include: a lack of knowledge of this; difficulties accessing timely funding; and finding a family law solicitor providing civil legal aid. One respondent stated that this has been made worse by recent changes to the legal aid system, with experienced solicitors withdrawing from legal aid work. (Legal aid issues are discussed further at questions 14 and 15.) One respondent identified the cost of translation services, particularly for women who come to Scotland under the two year rule<sup>6</sup>. Some respondents identified the two year rule in itself as a difficulty, and some stated that women who have no recourse to public funds need additional support and face particular difficulties in accessing civil remedies<sup>7</sup>. Issues for those with no recourse to public funds were highlighted at a number of points in the consultation, and are discussed further later.

### ***Awareness and understanding***

2.9 A further common issue identified as making it difficult to both access and use civil remedies was a lack of awareness or understanding of such remedies amongst members of the public, victims and professionals. One respondent stated, for example, that:

*“There is a widespread lack of knowledge regarding what different levers in civil law can be used to remedy the problem of a forced marriage”. (Individual)*

2.10 Several respondents identified that individuals are often unaware of, or do not fully understand, the options available to them, or how and where to access them. One respondent suggested that protective orders are associated with protecting people from physical harm, with a lack of understanding that they can be used to regulate a third party’s behaviour where forced marriage may be a threat. It was also stated that many people in the community are unaware of the difference between civil and criminal law, the Scottish legal system overall, or the role of the solicitors, police and the courts. It was suggested that there is limited access to information about remedies and that this may not be provided in accessible formats or venues. It was also suggested that victims may not fully understand the consequences of using civil remedies, and one respondent suggested that people may think that civil remedies can only be accessed by approaching the police (which may deter them). A lack of awareness of the support available, victims’ rights, and the existence, role and services of support organisations was also highlighted.

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<sup>6</sup> A person can be granted 24 months stay (a “probationary period”) on the basis of a marriage with a person settled in the UK. If the marriage breaks down due to domestic abuse, an application can be made for indefinite leave to remain. There is a “no recourse to public funds” restriction on the leave to stay.

<sup>7</sup> The “no recourse to public funds” restriction means that those coming to the UK must be financially supported by their partner or must support themselves. They cannot access housing or benefits except contribution-based jobseekers' allowance.



2.11 It was also suggested that professionals in all sectors may lack specialist knowledge, or that people may not be signposted to those with specialist knowledge. One respondent noted specifically that forced marriage is often confused with arranged marriage, with a danger of misunderstanding the issues experienced by victims. Some respondents identified difficulties in accessing suitably skilled and experienced solicitors with a full understanding of the issues, particularly in rural areas. Others suggested a lack of awareness and understanding among professionals in other sectors of issues relating to forced marriage such as, for example, the nature and extent of forced marriage, the victims affected, and the role of the extended family, faith and culture in perpetuating these marriages. It was suggested that a lack of understanding amongst professionals can make it difficult for victims to seek and use civil remedies in forced marriage cases, and can lead to problems in using existing remedies appropriately. It was also suggested that it can lead to their ineffective enforcement.

### ***Requirements of the process, legal structure and the nature of the remedies***

2.12 Another set of issues raised frequently as causing difficulties in both accessing and using civil remedies related to the requirements of the process itself, the structure of the legal system, or the nature of these remedies. It was suggested, for example, in relation to the process, that going to court (particularly against family members), could be daunting, and may discourage victims. Other points made included that: civil courts can be remote and inaccessible to those seeking to use them; formal systems can be difficult to understand and victims can be reluctant to act through these; the language can be confusing and complex; and the duration of the process and the need for legal representation can cause difficulties (with some of the difficulties in accessing a solicitor already highlighted). One respondent suggested that issues relating to confidentiality can lead to difficulties in using existing civil remedies, while another suggested that a lack of recognition of cultural issues could cause barriers.

2.13 In terms of the nature of remedies available, some respondents suggested that there are gaps in existing provision or issues with the effectiveness of these<sup>8</sup>. The lack of a specific civil law against forced marriage was highlighted in this context by a number of respondents, and it was suggested that existing remedies were not designed to prevent forced marriage. One respondent stated, for example, that:

*“In the absence of a specific civil law against forced marriage professionals not familiar with dealing with forced marriage cases may not use existing civil remedies appropriately and would find it difficult to present evidence to justify the use of existing civil protection remedies”. (Domestic abuse organisation)*

2.14 One respondent made a distinction between remedies which may be sought prior to the ceremony taking place (which they identified as “ineffective”) and those which may be sought after the ceremony (which they identified as “difficult”).

2.15 Three respondents suggested that existing civil remedies are not sufficiently robust to deal with forced marriage cases, as they do not consider the role of extended family and community members in coercing victims, and do not provide enough protection from those not named on court orders.

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<sup>8</sup> Issues relating to the overall sufficiency and effectiveness of remedies are discussed further at question 9.

2.16 It was also identified that there can be difficulties with the enforceability abroad of civil remedies, particularly where the person who has obtained them is not a British national. Some respondents stated that about 90% of forced marriages that involve a UK citizen take place abroad. One respondent stated that, in the case of adults forced into marriage overseas, if they can show Scottish domicile, then Scots law may be applicable to a claim for declarator of nullity. They also stated, however, that this can be a costly and difficult process requiring skilled legal assistance.

2.17 A number of other issues were raised relating to the effectiveness of declarator of nullity, including the complexity of the requirements of this and difficulties in securing such a remedy (e.g. getting evidence of coercion and difficulties in the process for some victims). It was also stated that establishing jurisdiction is not always straightforward, and two respondents noted that a recent attempt in the Family Law (Scotland) Act 2006 to extend jurisdiction to the sheriff court had been unsuccessful (with one providing details of this). There were also seen to be issues relating to proving whether a person consented to a marriage, and to the choice of law.

2.18 In relation to children, while one respondent stated that there should not, in principle, be a difficulty in securing a declarator of nullity in respect of a young person domiciled in Scotland, two suggested that, if a child had a domicile of dependence in a country where marriage of under 16 year olds was permitted, the marriage may be valid. One stated that the choice of law rules could create specific problems for young people whose parents retained a non-Scottish domicile (and the respondent provided details of relevant legislation).

2.19 Some respondents raised issues with other specific civil remedies in forced marriage cases. One for example, questioned the effectiveness of interdicts and suggested that these are not likely to act as much of a deterrent. Another stated specifically that obtaining an Exclusion Order is very difficult and time consuming. A further respondent stated that, prior to the marriage ceremony, it would be difficult to obtain an interdict preventing the coercion of someone into marrying unless the method of coercion involved “the commission of a legal wrong”. The respondent suggested that one way of overcoming this would be to enact legislation making such coercion a legal wrong.

2.20 In terms of evidence requirements, a number of respondents suggested that securing and producing evidence to prove unlawful, abusive and threatening behaviour (as may be necessary under current provision), can also cause problems, given the isolation of victims of forced marriage and the lack of support they often encounter. One respondent stated that victims may fear that a lack of evidence means that nothing can be done to assist them, and several respondents identified generally that forced marriage cases may be difficult to prove.

2.21 A number of respondents identified problems with the need for victims themselves to seek civil remedies. It was suggested that the victim may not always be in a position to do so, and that they need to have the knowledge, resources, confidence and will for this. It was also suggested that the requirement to seek remedies themselves puts considerable pressure upon victims (particularly where they are facing pressure from family members).

2.22 Other aspects of the nature of existing civil remedies which were identified in the context of difficulties in accessing or using such remedies were that: they are specific in who they can be applied to within a relationship; they are primarily prohibitive; the civil law process is lengthy; and current civil remedies do not offer the preventive functions of the

Forced Marriage (Civil Protection) Act 2007. Some respondents suggested that declaring a marriage void after it has happened is inadequate.

2.23 Issues relating to the enforcement of existing remedies were also raised, with a lack of consistent enforcement identified. It was suggested that breaches of interdicts rarely reach criminal courts, giving the message that such orders are not important, and enabling perpetrators to continually breach them, as they do not see them as a deterrent. One respondent identified that successful prosecution of breaches of civil orders can be affected where interdicts or non-harassment orders have not been personally served on defenders (as this can affect the ability of the Procurator Fiscal to prove that there was an order in place which the defender was aware of).

### ***The nature of forced marriage***

2.24 Some respondents suggested that the specific nature of forced marriage, and the lack of recognition of this (e.g. the nature of abuse which can take place), can also contribute to the difficulties in accessing and using existing civil remedies. For example, it was suggested that:

*“By the very nature of forced marriage it is unlikely the forced spouse will be able to access civil remedies”. (Public sector organisation)*

2.25 One respondent stated that, as forced marriage is a form of domestic abuse, victims should have the same kind of protection and services as other victims of domestic abuse, making civil remedies alone insufficient, and requiring timely service provision.

2.26 More specifically, it was suggested that perpetrators may actively prevent victims from accessing legal protection, support organisations and / or solicitors. Some respondents also identified that those affected by forced marriage are likely to experience psychological and cultural pressure not to access civil remedies, involve courts or make the issues public. One respondent stated that many victims of forced marriage would not see divorce as an option. A number identified the impact of victims believing, or being told that they would bring shame or dishonour to families by pursuing civil remedies. Examples were also provided of some of the ways in which pressure could be exerted upon them by more than one perpetrator. It was suggested that the fact that the perpetrators are almost always family members could also make it emotionally and physically difficult to seek assistance.

2.27 Some respondents stated that victims may also fear the repercussions of seeking help. These were identified as including, for example: threats to their physical safety; child abduction; alienation of their family and community; criminalising the perpetrators; issues with stigma; and the threat of deportation. Some respondents identified further risk to the victim as causing difficulties in using existing remedies, as well as a need for continuing protection and support. One stated, for example, that:

*“We were also left to wonder if there would be any protections put in place for the victim after he/she had exercised their rights”. (Police / legal organisation)*

### ***Issues for particular groups***

2.28 Some respondents identified that there can be particular difficulties in accessing and using civil remedies, or in their effectiveness, for particular groups, and in particular circumstances. These included: people with learning disabilities; people for whom English is not their first language; people with hearing impairments; and those in situations where children are concerned. A range of issues were raised affecting people with learning disabilities. Issues such as: the specific nature of their experiences of forced marriage; limited access to independent advocacy; lack of services to address their needs; and issues relating to capacity to consent were identified. A detailed account of these issues was provided within a small number of responses.

2.29 In cases where English is not a victim's first language, a number of respondents suggested that there are difficulties in accessing information on how to use the civil system, and in using the system. It was also suggested that language support services are difficult to access. For people with hearing impairments, it was noted specifically that there are currently no resources relating to this issue in British Sign Language. It was also stated that responsibility for arranging a Sign Language Interpreter to access services appears to lie with individuals themselves, as existing agencies who deal with civil remedies will not be aware, nor have the resources to provide BSL access to their services. The same respondent stated that there is a shortage of BSL Interpreters in Scotland and that these difficulties can lead to the provision of communication support by families of a deaf victim. The person providing this support may be a perpetrator, or may influence the victim against a remedy for forced marriage.

2.30 In relation to children, it was suggested that: there may be neither knowledge of, nor capacity to obtain existing civil remedies; reliance on existing law may not always be sufficient; there could be difficulties for home-schooled children in becoming aware of remedies; and there may be difficulties where a child is physically outwith the jurisdiction of the Scottish courts. Issues relating to the protection of children and young people are discussed further in relation to question 12.

### **Third party involvement**

2.31 Question 3 stated that all of 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. Respondents' views were sought about:

- Whether allowing third party involvement is a good idea.
- Why this is, or is not considered to be a good idea.

2.32 Almost two thirds of all respondents (30) answered the closed ("yes", "no" or "don't know") part of this question directly. A large majority (90%) believed that allowing third party involvement is a good idea. A small number (7%) answered "don't know", with these respondents stating that it would depend on who was deemed to be the third party. One respondent answered "yes" where the victim is a child, but "no" (except in very limited circumstances) where the victim is an adult. Some respondents provided general comments to affirm their support for this provision, or to identify that it would be beneficial to their own client group.

2.33 In addition to those who directly indicated agreement, some additional respondents provided comments, most of which implied support in principle. Most respondents provided

additional comments about the benefits of third party involvement and / or concerns and issues for consideration.

2.34 Some respondents made a direct link between third party involvement and overcoming some of the barriers highlighted earlier. The benefits identified most commonly related to addressing the difficulties which victims face in applying to the court themselves. Many suggested that third party involvement would allow others to progress issues on their behalf, providing an alternative option for victims who feel unwilling or unable to apply to the court for a range of reasons, such as: the overall nature of forced marriage; difficulties with disclosure; discomfort in approaching the police; uncertainty of the law; prevention from seeking remedies; family pressure; issues relating to stigma, shame and fear; being overseas or imprisoned; or facing additional issues (e.g. relating to learning disability, language barriers, lack of confidence etc.). Some stated that it would take the responsibility for taking action away from the victim and recognise the impact of victims' experiences.

2.35 A number of respondents suggested that such a measure would increase access to civil remedies and reporting. Additionally, some stated that it would increase victims' safety, prevent further exploitation, increase access to support, or empower them. As one respondent stated, for example:

*“Many victims are unable to directly seek legal help and we believe that third party involvement would empower victims and give them support”. (Voluntary sector organisation)*

2.36 Two respondents stated that third party reporting had worked well with other offences where it was difficult for victims to speak out (with examples including domestic abuse cases and Islamophobic crimes). Some suggested that this would make it easier to take action where the victim is a young person. Others stated that such an approach is consistent with existing child protection policies and procedures, as well as the existing provisions of the Children (Scotland) Act 1995 and the Adult Support and Protection (Scotland) Act 2007. A small number of respondents stated that it is important to mirror the situation in England and Wales and to ensure that victims in Scotland are no less protected. This issue was raised at other points in the consultation.

2.37 One respondent stated that, with appropriate training, third parties would have the skills and cultural sensitivity for such a role, and another stated that the provision would allow organisations to work together to address forced marriage issues. One example of this was that it could enable a project with communication support to work with agencies providing support to victims. One respondent identified a further benefit as being that third party organisations may be more able to commit time to promotional work than, for example, the police.

### ***Issues for consideration***

2.38 Although there was considerable agreement amongst most respondents to this question about the value of allowing third party involvement, many respondents identified the need for this to be used carefully and regulated strictly, or made suggestions about issues which need to be addressed or considered. The respondent who expressed the view that allowing third party involvement is not a good idea in relation to adults, except in very limited circumstances, suggested that legislation would be more likely to comply with the

European Convention on Human Rights<sup>9</sup> (ECHR) and would be less likely to be considered “disproportionate” if it could generally only be triggered by the victim. They did, however, identify some limited circumstances in which there maybe merit in third party involvement, dependent on protections being built into legislation (and the respondent gave an example of the “checks and balances” in the 2007 Act).

2.39 Some respondents identified the general importance of ensuring that there should be no negative consequences for the victim from third party involvement (e.g. inappropriate action, conflict, disempowerment or deterrence from seeking further help).

2.40 One of the issues raised most frequently in the context of issues to be addressed or considered was the need for clarity about: what should be the nature of the third party’s interest to make such an application; who would constitute an appropriate third party; when they could make an application; and whether this would be with or without the leave of the court. Suggestions made for potential third parties included staff of specific statutory services and experienced voluntary sector support organisations. Several respondents suggested that Scotland could follow the lead from England on Wales on who can be a third party. One respondent expressed the view that local authorities would be appropriate third parties because of their existing duties, skills and resources in safeguarding vulnerable adults and children. They also stressed the role of voluntary sector organisations, and advocated a multi-agency approach, with other organisations referring to the local authority and working to provide support to the victim. Another respondent stated that the third party would need to have some appropriate interest in the welfare of the victim and one suggested that, where a victim is a child, the Children’s Hearing System should be looked at for a solution which could allow, for example, the Reporter or a local authority appointee to instigate such actions.

2.41 A small number stressed specifically that they believed it would not be appropriate to allow any member of the public who becomes aware of a problem to make an application. One respondent also made specific suggestions about the circumstances in which third party applications would be appropriate, in the case of both adults and children.

2.42 One respondent identified a specific concern that making provision for relevant third parties to raise actions without the court having to consider other factors would enable them to apply for a Forced Marriage Protection Order without either the permission of the person at risk, or, in some cases, the prior approval of the court. This links to a further common concern about the importance of the wishes of the victim, and the need for action to be in the victim’s best interests. A number of respondents identified the need for the victim’s involvement in the decision to take action, or stressed the importance of their consent (although one respondent stated that the exception to this would be where there were child protection concerns, and another stated that there may be occasions where this may not be possible). One respondent, who specifically stated that third party involvement is a good idea where the victim is a child, suggested that there should be an avenue for the views of the child to be heard.

2.43 While one respondent expressed the view that third party involvement would remove the financial burden upon victims, a number stressed the need to identify how the costs of a legal action would be met (and whether, how and from whom expenses could be recovered). Some respondents suggested that it would not be appropriate for the third party to meet the

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<sup>9</sup> The Convention for Protection of Human Rights and Fundamental Freedoms, generally known as the European Convention on Human Rights.

costs without funding being provided, or stated that, without support with the costs, third parties could be deterred or prevented from being involved.

2.44 In the light of all of the concerns identified, a number of detailed suggestions were made about processes, procedures and requirements. These included that:

- There should be further discussion of how it is envisaged a third party applicant will identify the risk of forced marriage and the person's wishes.
- A third party must be able to satisfy the court as to why the person is unable to present the application themselves.
- All "third party" applications for adults and young people over 18 should require leave of the court, with the court obliged to make detailed inquiries about attempts made by the third party to seek the person at risk's consent.
- Anyone seeking to make a third party application in respect of a child must seek leave of the court to apply (with constraints about when this could be done).
- The judiciary must look for strong evidence that individuals making requests for civil orders on behalf of victims are truly representing them.
- The Scottish Government should await the evaluation of the legislation in England and Wales and take note of their experience before introducing third party intervention.
- The identity of the third party in Scotland should be a matter for consultation.
- There must be training for third parties and for the judiciary to ensure appropriate understanding of the issues and appropriate action, and the court could be required to sit with assessors, or could be advised on relevant cultural matters by an independent person.
- Support must be provided to third parties from the courts and relevant support agencies.
- Funding should be provided for dedicated workers and training.
- Rules of conduct, conditions and guidance should be provided.
- There must be appropriate procedures and safeguards (e.g. vetting of third parties; identification of a trained and named person in an organisation; thorough investigation; assurance of confidentiality).
- Partnership working, liaison with expert agencies and multi-agency discussion should be undertaken.

2.45 A number of respondents suggested that this aspect of the law should be phased in, in order to develop competence and awareness in dealing with forced marriage amongst potential third parties. One respondent stated that it is difficult to see how this could be introduced in respect of existing civil remedies in Scotland.

### **The use of orders to require as well as to prohibit actions**

2.46 Question 4 stated that, in Scotland, interdicts, and non-harassment orders can only be used to prohibit specific actions. Respondents' views were sought about:

- Whether the law should be able to positively require a person to do something.
- Why the law should, or should not be able to positively require a person to do something.

2.47 More than two thirds of all respondents (33) answered the closed question, with almost three quarters of these respondents (73%) stating “yes”, the law should be able to positively require a person to do something. Most of the remainder of respondents stated that they did not know (although some also suggested that they could envisage benefits). A small number of other respondents who did not answer the closed question made comments from which their views could be inferred, with most of these expressing their support. Only one respondent answered “no” to this question, with no further reasons given for this view. Another suggested that, while there are some limited situations in which the law could positively require a person to do something (e.g. produce passports or tickets on demand), wider or less prescriptive provision could be problematic and potentially intrusive. A small number of respondents stated that the law in Scotland can, at present, positively require action to be taken<sup>10</sup>. One added that, if these provisions were considered sufficient, then further provision of this type would not be required.

2.48 Just under half of those who addressed this question made comments on the benefits of such orders, or the reasons for their positive views. A very small number identified issues for further consideration.

### ***Benefits of orders to require a person to do something***

2.49 One of the most common reasons for agreement with this question was the view that, if the law was able to positively require a person to do something, this would have a role in the prevention of forced marriage and the protection of victims. One summarised this as follows:

*“If the law positively requires a person to do something, it may help to stop or change the perpetrator’s behaviour”. (Voluntary sector organisation)*

2.50 One respondent stated specifically that preventive action (provided by a positive requirement) could mean that the victim would avoid experiencing the distress or stigma which may be associated with divorce (which, they stated, is currently often the most practical solution). A number of respondents stated that prevention is preferable to having to remedy a situation later, or that the development of a preventive Act would require provision to make perpetrators do certain things. Some stressed the need for an order both prohibiting and requiring actions from various parties.

2.51 Some respondents focused on the benefits of some particular types of requirements that might be made. A number suggested, for example, that requiring a passport from the perpetrator would enable the prevention of forced marriage by preventing the victim being removed from the UK. Two respondents noted that most forced marriage cases have an overseas element to them, often involving forcing young women and children into marriages overseas by making them travel abroad on false pretexts. These respondents stated that, while current civil remedies can prohibit named individuals from taking people overseas for

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<sup>10</sup> Examples given were Section 46 of the Court of Session Act 1988, the use of a Decree for Specific Implement and the recently introduced Criminal Justice and Licensing (Scotland) Bill. In relation to children, one respondent stated that there is a wide power to make such orders as the court considers appropriate, and a Children’s Hearing may attach conditions to a supervision requirement.



marriage, they do not necessarily remove the means (e.g. by asking for passports and dual nationality documents to be handed over). Other suggestions included that:

- If a victim is known to have been removed from the country, an appointed person from the household could be required to provide an address for the victim and / or to attend with them at a specified place (e.g. the nearest high commission or passport office).
- The law could require a person to release another person's documents (e.g. a dependent's passport).
- Someone could be required to give an undertaking not to remove someone from the country for the purpose of forced marriage.

2.52 A number of respondents stated that the use of the law to positively require a person to do something would extend the means of protecting victims, lessen the risk of harm and increase their safety. Two suggested that the requirement to “produce” the forced spouse for the court could give the victim access to legal remedies. One stated that the law could be used to make perpetrators give young women a right to a free life where practical, without criminalising the perpetrator. Another suggested that there could be a commitment to training or self development to increase the understanding and awareness of why forced marriage is unacceptable. Several respondents also suggested that the provision could help to make families aware of their responsibilities, increase the deterrent effect and provide a clear message that forced marriage is unacceptable.

#### ***Further issues for consideration***

2.53 A very small number of respondents identified further issues for consideration with this measure (whilst not necessarily disagreeing with the provision per se). One stated that it is important not to instil a stereotype that all forced marriages relate to young women and are undertaken abroad. It was suggested that research should be carried out to determine the number of forced marriages likely to be conducted in the UK where both parties are British citizens.

2.54 The same respondent raised a question about an example given in the consultation document of the law being able to positively require a person to do something (where someone could be positively required to produce their passport)<sup>11</sup>. The respondent stated that they were uncertain whether it would be the victim or the facilitator who would be required to hand over their passport. They expressed concerns about the impact on the victim's rights of the former, and the effectiveness of the latter.

2.55 Two respondents suggested that, if provision for the law to be able to positively require a person to do something did not apply to only limited and proscribed situations, it could potentially be problematic and intrusive. Another stressed that there may be a case for a more positive form of non-harassment order, but such a measure should not be seen as a way of “closing the door” on specific legislation on forced marriages. One respondent stated that they had less difficulty with the concept of the use of the law to positively require action where this related to securing children's welfare.

#### **The use of orders against those other than the principal perpetrator**

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<sup>11</sup> The consultation document states that the Explanatory Notes to the 2007 Act provide this example.

2.56 Question 5 stated that the UK Forced Marriage (Civil Protection) Act allows orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator. Respondents' views were sought about:

- Whether this should be introduced in Scotland.
- If so, what the benefits would be.
- If not, why such orders should not be introduced.

2.57 Around two thirds of all respondents (31) answered the closed question, of which almost all (97%) stated "yes", agreeing that this should be introduced in Scotland. One respondent answered "don't know". None answered "no". A small number of other respondents made comments which implied their views, which were generally supportive, although sometimes subject to caveats.

2.58 Most of the respondents to question 5 made additional comments, and these generally focused on the benefits of allowing orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator, and respondents' reasons for supporting this. A small number of respondents identified caveats or issues for further consideration.

### ***Benefits of the use of orders against those other than the principal perpetrator***

2.59 The main reasons given for positive views of this provision focused on issues relating to the nature of forced marriage, particularly the frequent involvement of various family and community members, and often their collusion and conspiracy. The impact of this on the victim (in terms, for example, of their fear, isolation and unwillingness to report incidents) and the potential for protection of the principal perpetrator by the family / community were also identified by some respondents. Two stated that the apparent perpetrator may also be a victim of abuse and pressure from other family members.

2.60 It was suggested that this provision would enable the recognition of these issues, and would allow orders to apply to a range of people who may be involved in perpetrating a forced marriage. As one summarised, for example:

*“Although the process may be led by a principal perpetrator there is often a network of individuals who would aid, abet, encourage and conspire with this principal perpetrator to ensure that a young woman/child (or man) is forced into marriage. If the forced marriage civil protection act is meant to successfully prevent and remedy forced marriages then all people involved in organizing this marriage should be held liable. (Domestic abuse organisation)*

2.61 Another respondent referred specifically to the potential applicability of orders to a "network" beyond the immediate family, and to the benefits of the inclusion of these individuals. Some identified examples of additional people who could be covered by such orders, including not only family and extended family, but also, for example: an individual officiating on the marriage; church elders and religious leaders; religious groups; friends; and culture based organisations.

2.62 A number of respondents stated that the use of orders against those other than the principal perpetrator would act as a deterrent to those who may be involved, and to those who

may not want to be involved, but who are subject to family pressure. Two respondents suggested that it could also increase the likelihood of their supporting a relative's story, potentially strengthening the credibility of their evidence.

2.63 Some also suggested that the provision would make those aiding, abetting, encouraging or conspiring with the principal perpetrator more isolated and / or responsible and accountable for their actions, reinforcing their culpability. One respondent noted that, while those trying to force someone into marriage may have committed other criminal offences, they may not have. It was suggested that a civil measure could prevent activity relating to a forced marriage which may not directly be a criminal offence. It was also suggested that it could increase a victim's self-esteem and confidence in challenging forced marriage and increase their safety and protection.

2.64 A number of respondents suggested that the provision could also have a role in sending a wider message not only to those who may be involved, but to wider community members and community leaders. This could include, for example: promoting the message that it is illegal and unacceptable to force someone into marriage; raising awareness that the Scottish Government is taking action; providing a clear message of support to victims; and identifying what people can do about forced marriage.

#### ***Caveats and issues for further consideration***

2.65 A small number of respondents identified issues for consideration or raised issues about how this provision would work in practice. One respondent, who stated that they saw no difficulty in principle in directing orders against anyone acting to coerce a person into marriage, stressed the importance of bearing in mind that the primary aim of such legislation is to protect vulnerable individuals from being forced into marriage.

2.66 Another respondent, while supporting the idea in principle, stated that a person has the right to defend any application to the courts seeking the making of an order against them, so the defender has to be identified in order to enable the service of relevant papers. This was seen to raise the question of whether the courts would be able, or willing, to issue "blanket" orders against essentially unknown persons, particularly if a breach of the order could result in a criminal penalty. The same respondent stated that, given that this type of order can only be activated once served on the identified parties by Sheriff Officers, it would be difficult to see how a person could be in breach of an order against them that they did not know existed, and how it would be enforced in terms of an alleged breach.

2.67 One respondent stated that there could be difficulties if the law were to require a principal perpetrator to be identified in order to be effective. It was suggested that it could be difficult to distinguish between a principal perpetrator and others whose actions were intended to coerce a person into marriage.

2.68 A further respondent expressed uncertainty about how the courts would exercise the discretion to make such an order if it was couched in very broad, undefined terms. Two respondents stated that there is a need for safeguards to ensure that the person against whom the order was made was aware of the circumstances of the forced marriage.

2.69 A small number of respondents made suggestions about additional actions which might be required to support this provision, particularly the need for publicity and awareness

raising. These, and other suggestions relating to actions required are considered later in the report.

### **The nature and use of power of arrest and arrest warrants**

2.70 Questions 6-8 explored issues relating to the nature and use of power of arrest and arrest warrants.

#### ***Power of arrest against those other than the person in respect of whom the order was made***

2.71 Question 6 stated that 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. Respondents' views were sought about:

- Whether this should be introduced in Scotland.
- If so, what the benefits would be.
- If not, why such a power of arrest should not be introduced.

2.72 Around two thirds of all respondents (30) answered the closed question. All of these respondents (100%) answered "yes", agreeing that it should be possible for a power of arrest attached to an order to be used against those other than just the person against whom the order is primarily directed. A small number of others, while not answering the closed question, provided an indication of their views, and most indicated their broad support for this provision (although some also commented on specific aspects of this). One respondent stated that this question could not be answered with a straightforward "yes" or "no" but required consideration of the purpose of attaching a power of arrest.

2.73 More than half of those who supported this provision identified particular benefits. Some comments related generally to ensuring that the legislation is effective through the provision of a power of arrest. For example:

*"Without a power of arrest the legislation would be ineffective as it could not be used for anything". (Public sector organisation)*

2.74 One respondent stated that, if it would be a criminal offence to breach an order, then provision of a power of arrest would be an important means of facilitating enforcement.

2.75 Most comments, however, focused specifically on addressing issues relating specifically to the use of such a power of arrest against those other than the person against whom the order is primarily directed. The most common benefits related to addressing problems arising from the nature of forced marriage and the likely involvement of those other than the principal perpetrator (as discussed previously). Many of the benefits cited were similar to those given at question 5. Respondents suggested, for example, that the provision would: recognise these issues; discourage wider family and third party involvement; increase accountability; strengthen the message that forced marriage will not be tolerated; make a perpetrator take the issue more seriously; and provide greater protection and safety for victims (including, as one respondent stated, deaf victims). As another respondent stated:

*"The benefits of such an arrest will be that it will stop others from intervening and harassing the victim further, which quite commonly happens in BME*

*communities. Examples being extended family members, family friends, community leaders or even neighbours”. (Voluntary sector organisation)*

2.76 One respondent stated that there can still be an acceptability of forced marriage in families and communities who conspire to prevent action against perpetrators. It was suggested that a measure enabling action against anyone participating in the unacceptable behaviour detailed in the legal order would provide a way of tackling this. One respondent identified a need for parity of access to protection across the UK (an issue which was raised by other respondents at other points in the consultation).

2.77 A small number of respondents made additional comments or suggestions or identified some issues for consideration. One of these respondents noted that, while there were benefits to this provision, there may be procedural problems which would make it unworkable. Their concern focused on the issue raised in the previous question about the courts being unwilling, or procedurally unable to issue “blanket” powers of arrest against unidentified persons, and difficulties of enforcing this. They also noted that the power of arrest facility in Scotland operates differently to that in England and Wales and does not automatically lead to the initiation of criminal proceedings. It was suggested that it should be explored whether a forced marriage order could be framed in a similar way to a Non-Harassment Order (NHO), in terms of breach and subsequent proceedings on breach. Breach of an NHO granted in civil proceedings is automatically a criminal offence, and it was suggested that this would give the police the power to arrest without warrant on suspicion of breach.

2.78 Two respondents raised issues about the nature of the potential provision. One respondent disagreed with the use of this against a person who was not committing a criminal offence (for which they could be arrested anyway) and who was unaware of a court order prohibiting their actions. They identified that this would offend against Article 5 of the ECHR (the terms of which were provided in detail). The respondent noted the terms of the 2007 Act, and suggested that this may offer a means of considering how to incorporate powers of arrest into Scottish legislation.

2.79 Another also made reference to the provision in the 2007 Act, stating that they did not believe that this empowered a constable to use the power of arrest “against anyone who seems to be breaching the terms of the order” where that person is not the person in respect of whom the order was made. The respondent suggested that this was a reference to section 63I of the 2007 Act, which empowers a constable to arrest without warrant a person whom the constable has reasonable cause to suspect of being in breach of a Forced Marriage Protection Order or “otherwise in contempt of court in relation to the order.” This respondent suggested that, while it would be contrary to principle to authorise the arrest of a person for breach of an order which was not directed towards them, the 2007 Act appears to give the constable power to arrest someone other than the subject of the order if they have reason to suspect that person is in contempt of court. The respondent identified that this type of contempt of court could apply where a person is aware of the terms of an order, but assists the subject of the order to breach it, and noted that there may be merit in including such a power in similar Scottish legislation.

2.80 More generally, some respondents suggested that an automatic power of arrest should be attached to all orders relating to those at risk of forced marriage. As one stated, for example:

*“We would be greatly concerned about the relevance and use of the legislation if it was to be passed without including an automatic power of arrest”. (Public sector organisation)*

2.81 Two respondents raised questions about how a court would be able to prove that another individual “seems to be breaching” an order. One questioned how effective arrest might be, and considered that an alternative punishment may be more appropriate, suggesting that each case should be assessed individually. Another respondent believed that there is a need for more clarity about how the provision would work in practice, and whether the judiciary would recognise clearly when a victim was at risk of significant harm for a power of arrest to be enforced. Two respondents stated that the risk of significant harm to victims can be quite high, stating that:

*“The judiciary must be aware of these risks and be willing to enforce the power of arrest, if the victim is willing, at even the slightest breach of order”. (Voluntary sector organisation)*

2.82 Two stated that there should be safeguards in place to ensure that the person against whom the order was made was aware of the circumstances of the forced marriage. A small number of others also raised issues with the use of this provision against those unaware of the order, and this links to question 7 below.

#### ***Use of power of arrest against someone unaware of the existence of the order or contents***

2.83 Question 7 sought respondents’ views about:

- Whether a power of arrest should be used against someone who may be unaware of the existence of such an order or its contents.
- Why a power of arrest should, or should not be used in this way.

2.84 Just under two thirds of all respondents addressed the closed question, of which just under two thirds (62%) stated “yes”, agreeing that a power of arrest should be used against someone who may be unaware of the existence of such an order or its contents. Slightly over a fifth (21%) answered “don’t know” and 5 respondents (17%) answered “no”. A small number of other respondents provided comments from which their views could be inferred, and while some were in favour of this use of power of arrest, some were not, or expressed reservations.

2.85 Where respondents provided reasons in favour of the use of a power of arrest in this way, the most common view expressed was that not knowing about the law, or not knowing about an order, is not a legitimate defence. A number added that the behaviour can still be unlawful. As one respondent stated, for example:

*“Ignorance of the order’s existence and its contents should not be a defence to the engagement in and execution of unlawful behaviour”. (Police / legal organisation)*

2.86 One respondent stated that this would bring the law into line with other laws where perpetrators do not always know the consequences of their actions within the legal system in Scotland. A small number identified that this would offer further protection to potential victims. One stated that it is important to have the threat of arrest.

2.87 A small number of respondents suggested that some people may not want to be made aware of orders, or made similar points (suggesting, for example, that it would often be obvious that the behaviour they were engaging in was inappropriate, or that they might be aware, but would plead ignorance). One suggested that individuals themselves should be made responsible for finding out whether an order is in place before they act. Two respondents stated that, as with the use of orders, this provision should cover those officiating on a marriage.

2.88 One respondent also stated, however, that there is an issue about the right of everyone to have full access to information about the law, and a small number of others stressed the need to ensure that sufficient attempts have been made to let all of those concerned know of the order. One suggested that the person should be warned, if possible. Another suggested that it may be appropriate to allow discretion on a case by case basis, while one stated that there should be full investigation of the circumstances before proceeding to charge. Two respondents indicated that the power of arrest should be used as a last resort, when other measures have been unsuccessful.

2.89 Where respondents expressed other reservations about the use of power of arrest against someone unaware of the existence of the order or its contents (whether or not they actually disagreed with the provision), a number of issues were raised. Three expressed the view that the power of arrest should be used:

*“Only if once made aware they continue to breach the order”. (Public sector organisation)*

2.90 A small number of respondents raised issues relating to the nature of the law. These included the views that:

- As the law currently stands, this would be an improper use of the power of arrest, as a person cannot be in contempt of court if he or she is unaware that an action is in breach of an order of the court.
- If breach of an order were to constitute a criminal offence, it would be necessary to prove that the accused knew about the order. If this was not required, the crime would be one of strict liability. Consideration would require to be given to whether this was compatible with the ECHR.
- An order and power of arrest are only activated once served on the identified party and powers of arrest attached to an interdict are currently specific to the named person.
- It may be difficult to prosecute those unaware of an order.
- It is unclear how a power of arrest could be used against someone who did not know it existed.

2.91 One respondent noted that, if a perpetrator has come to the police’s attention in relation to their involvement in a forced marriage, it is likely that they may be prosecuted for other offences. Another stated, however, that, without the power of arrest, a group of people could still force a marriage without consequences.

2.92 A small number of other points were made relating to this provision. It was suggested, for example, that it would be unfair to use a power of arrest where someone was genuinely unaware of the existence of an order (although it was also suggested that this is unlikely). It was also suggested that there is a need for caution where it can be proved that someone

participated in the arrangement of a marriage because they have been lied to, or force has been used against them. One respondent also stated that, to be charged with an offence, a facilitator would require the mens rea or intention of committing a crime, whereas community groups are sometimes unclear as to what a forced marriage entails and may think that they are doing the best thing for the victims involved. One respondent stated that a forced marriage order of which a person was unaware would not have a deterrent effect.

2.93 Some additional suggestions were made about supporting actions, such as the need for the provision of clarity about how this would work, and guidance about issues such as what constitutes sufficient efforts to notify, and who should be notified routinely about an order (while balancing confidentiality and safety considerations). It was also suggested that there would be a need for publicity about the legislation (including, more specifically, about the types of behaviour likely to result in an order). One respondent suggested that education may be more effective than arrest. As noted, issues relating to supporting actions will be discussed further later.

### *Application for arrest warrants*

2.94 Question 8 stated that 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. Respondents' views were sought about:

- Whether this should be introduced in Scotland.
- If so, what the benefits would be.
- If not, why such applications for an arrest warrant should not be introduced.

2.95 Around two thirds of all respondents (30) answered the closed question, and a large majority (90%) stated "yes", agreeing that there should be provision for the person protected to be able to apply to the court for an arrest warrant if they believe the order has been breached. A small number also added, however, that they believed that a power of arrest should be attached to the order from the start. Some further respondents who did not address the closed question made comments which indicated their agreement with the suggested provision. One stated that their response would depend on the circumstances.

2.96 The remaining 3 respondents who addressed the closed question answered "no". In all cases, these respondents stated that a power of arrest should automatically be attached to the order from the start, with no need to apply to the court. An additional respondent stated that a person should not have to apply for an arrest warrant, as the police should arrest automatically if there is a breach.

2.97 The benefits of making provision for the person protected by an order to be able to apply to the court for an arrest warrant if they believe the order has been breached were identified as including to:

- Give the victim another option (e.g. where they believe a warning is insufficient; if the action taken has been ineffective; or if they want to pursue this at a later date).
- Offer more protection and safety to victims (and, for example, enable early intervention and provide a means of removing the perpetrator).



- Force people to observe the order and take it more seriously (even where there is no power of arrest attached).
- Highlight the potential severity of the actions.
- Allow the continual assessment of risk and appropriate response (including combating any escalation).
- Reduce the cost.
- Improve the outcome for the victim, provide them with control and allow a person-centred approach.
- Provide parity across the UK.

2.98 A small number of respondents raised additional issues in relation to the use of such a measure. One noted that, if the behaviour in question constituted a criminal offence, then a discrete power to issue a warrant would not be necessary. They also stated, however, that if it is not a crime, the person should only be arrested if there is reasonable cause to believe that the behaviour constitutes a contempt of court. A similar point was made by another respondent, who stated that, if the behaviour which is allegedly in breach of the order is not a criminal offence, but may constitute contempt of court, there may be scope to justify a warrant, provided practical arrangements are in place for the person concerned to be brought before a civil court and appropriately represented. Another respondent suggested framing a forced marriage order to be similar to a Non-Harassment Order (as noted earlier, with breach automatically a criminal offence, which would give the police the power to arrest without warrant on suspicion of breach).

2.99 Two respondents suggested that it would be important to have a straightforward process for granting the provision, to recognise the cultural and emotional barriers which the victim would have gone through.

### **Overall sufficiency of civil remedies and the need for specific civil remedies**

2.100 Questions 9 and 10 explored respondents' views of the overall sufficiency of existing civil remedies in relation to forced marriage, and whether the Scottish Government should introduce specific civil remedies. These issues are closely linked<sup>12</sup> and are considered below.

#### ***The sufficiency of existing civil remedies***

2.101 Question 9 sought respondents' views about:

- Whether, on balance, in relation to forced marriage, existing civil remedies are sufficient.
- Why this is, or is not, considered to be the case.

2.102 A high number of all respondents (33) addressed the closed question, with a large majority (91%) stating that they did not consider existing civil remedies to be sufficient in relation to forced marriage. Only one respondent answered "yes", while two stated that they did not know. Some additional respondents gave their views in their comments, with most of these respondents also indicating that they did not consider existing civil remedies to be sufficient.

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<sup>12</sup> Some respondents made comments relevant to both issues in their answers to one or other of the questions, or addressed them together.

2.103 Where reasons were given about why existing civil remedies are not considered sufficient, some of these related to issues which have been raised previously, and some respondents referred directly to their previous responses. While these will not be reiterated in detail here, the relevance of the points made previously should be borne in mind. As noted, for example, some of the responses to questions 1 and 2 focused on perceived problems with the nature of existing remedies (including perceived gaps in existing provision or issues with their effectiveness). These issues were reiterated.

2.104 A number of respondents expressed the view that the existing provision is not sufficiently strong, nor robust, to address forced marriage. Some also expressed the view that existing remedies are neither extensive enough, nor have far enough reaching powers, to deal with the issues relating to forced marriage. Aspects of the specific nature of forced marriage were highlighted again by some respondents, with a perceived failure of existing civil remedies to consider the role of extended family and community members in forced marriage. One respondent identified that existing remedies are not sufficiently specialised to take account of “BME cultural sensitivities”. Potential problems in legislation impacting upon immigration were also highlighted by one respondent, as were potential gaps in legislation affecting people with learning disabilities.

2.105 Issues relating to the perceived effectiveness of existing provision were also raised. It was suggested, for example, that a lack of action when an order is breached, or a lack of imposition of heavy penalties on perpetrators, fails to provide a deterrent and does not give the message that forced marriage is a serious issue. One respondent stated that forced marriage situations are increasing, and a number of others stated that existing remedies are not preventing forced marriage, or are proving insufficient. One suggested, more generally, that civil remedies relating to domestic abuse are themselves insufficient, as well as being difficult and expensive to pursue. Additionally, there were some concerns with the effectiveness of specific remedies.

2.106 The lack of a specific civil law against forced marriage was also highlighted again, with the point raised that remedies rely on other aspects of the victim’s circumstances (e.g. domestic abuse etc.). One respondent stated that the variety of remedies (some civil, some criminal) and the difficulty of understanding these, is problematic. Another, while identifying ways in which existing provision (common law interdicts and non-harassment orders) can have a role in offering protection, noted that:

*“ ... neither of these remedies is actually designed for this particular problem and we can see that subject specific legislation empowering the court to grant orders directed towards preventing this particular conduct is desirable”.*  
*(Police / legal organisation)*

2.107 A small number of respondents identified specific gaps in provision. One suggested, for example, that:

*“If a forced marriage has taken place abroad and the victim returns to Scotland not necessarily suffering physical abuse then there is little existing common law can do for that individual”.* *(Individual)*

2.108 A number of respondents identified that provision in Scotland does not offer the same protection as is provided in England and Wales.

2.109 Some issues relating to the accessibility of existing remedies (which have been noted previously) were also raised here. These included, for example, the lack of awareness of existing remedies and specific aspects of accessibility such as the lack of language provision.

2.110 Some of the issues identified in responses to questions 3-8 in terms of particular aspects of the nature of existing remedies were also reiterated, and the responses to these questions are also relevant. For example, several respondents identified a lack of preventive provision and the perceived need for this. One, while identifying that, in their view, the remedy of obtaining a declarator of nullity in respect of a forced marriage (where this has taken place) appears appropriate, also stated that it is preferable that this is prevented. Another respondent stated specifically that none of the existing civil remedies both prohibit and positively require a specific action.

2.111 The need for the victim to be the applicant and to provide evidence that they have been the subject of a forced marriage was also mentioned again here, as were the lack of protection from those not named on a court order and the limited powers of arrest.

2.112 In the one case where the respondent indicated in the closed question that existing civil remedies are sufficient, they stated that the need is to ensure awareness of the issues and the remedies, and to make sure that there are no difficulties in accessing them. Another respondent, who made comments suggesting that existing legislation is sufficient, stressed the importance of measures to educate and support victims. A further respondent stated that the relevant question is not whether existing remedies are sufficient, but whether those affected can access them. They stated that this involves wider considerations of issues relating to access to justice, cultural sensitivity, education and support. In this context, this respondent stated that:

*“It is not realistic to legislate in the hope of addressing the failings in other parts of society that make forced marriage an issue in Scotland”. (Police / legal organisation)*

2.113 The majority of respondents believed that there is a need for specific civil remedies in relation to forced marriage, and some stressed this in their response to question 9. These issues are considered in more detail in relation to question 10 below. A number of respondents also identified other actions which they considered necessary (including the need for information and publicity, which was a recurrent theme) and these issues are considered later in the report.

### ***The need to introduce specific civil remedies in relation to forced marriage***

2.114 Question 10 sought respondents’ views about:

- Whether the Scottish Government should introduce specific civil remedies in relation to forced marriage.
- If so, why the Scottish Government should introduce specific civil remedies, and what specific civil remedies should be introduced.
- If not, why specific civil remedies should not be introduced.

2.115 Over two thirds of respondents (32) addressed the closed question at question 10 and a large majority (88%) answered “yes”, agreeing that the Scottish Government should introduce specific civil remedies in relation to forced marriage. Most of these respondents

were the same as those who stated that they did not consider the existing civil remedies to be sufficient. Three respondents answered “don’t know”. Only one respondent answered “no”, stating that the Scottish Government should not introduce specific civil remedies.

2.116 Additional respondents indicated their views in their comments, of whom almost all either stated or implied their support for legislation, while one stated their opposition to this and another noted that the key issue was one of ensuring access to existing provision. Overall, however, there was a very high level of support for the introduction of specific civil remedies in relation to forced marriage.

2.117 Many of the reasons given for this view reflected issues which have been raised throughout this section. While these issues will not be reiterated in detail here, the reasons for, and perceived benefits of introducing specific civil remedies included that this would help to:

- Address issues relating to the specific nature of forced marriage.
- Emphasise and address the seriousness of the issue.
- Address gaps and limitations in existing remedies.
- Develop awareness of relevant issues.
- Send a clear message that forced marriage is unacceptable, unlawful and will not be tolerated.
- Provide additional options and support for victims, make it clear that there is protection available to them, empower them, and make it easier to get help.
- Provide a remedy with a focus on the safety of the person at risk, not upon criminalizing (or simply criminally penalising) those involved.
- Remove the pressure from the victim to report matters.
- Encourage more victims to come forward.
- Act as a deterrent / preventive measure and reduce the number of forced marriages in Scotland.
- Encourage statutory and voluntary services to take active steps to deal with forced marriage.
- Provide a consistent approach across the UK, mirror what are perceived to have been positive steps in England and Wales, and ensure that there is similar legal protection in Scotland.

2.118 A small number of respondents made further comments on the nature of the remedies, and these were largely general comments. A number of respondents suggested that the legislation should make the same provision as in England and Wales. A further issue raised was that the remedies should have a preventive purpose. Some focused on particular aspects of remedies, such as the need to be specific to forced marriage, or the need to enable third party involvement and the use of arrest warrants.

2.119 Some respondents identified particular issues that they believed should be taken into account in the nature of the civil remedies. One, for example, stated that there is a need to ensure that problems with the use of existing protective orders are not replicated. A particular issue was raised with the need for a person holding an order under the Matrimonial Homes Act or the Protection from Abuse Act to themselves initiate proceedings for contempt against a person in breach of this. It was suggested that such an approach would present problems in cases of forced marriage, and that either the court itself should deal with the contempt, or the

order should be framed like a Non-Harassment Order (as discussed earlier), with breach automatically a criminal offence.

2.120 One respondent, while noting the benefits of civil remedies, and supporting the need for specific civil remedies, also highlighted in their response that some of the issues in forced marriage are linked to others such as abduction, coercion and financial abuse, and suggested that it is important to consider that a lack of scrutiny could lead to crimes and abuses going unreported.

2.121 Other respondents identified additional issues which they suggested should be taken into account. These included the perceived need to:

- Include an “extra-territorial” element, and ensure the enforceability of orders abroad (particularly for those who are not UK citizens).
- Recognise that forced marriage may already have taken place, and provide powers to help victims in that situation.
- Ensure that the remedies protect everyone, regardless of their status (e.g. including asylum seekers, refugees and those with leave to remain).
- Ensure that the remedies take account of the issues affecting particular groups (e.g. people with learning disabilities, people with additional support and communication needs) and that they are cohesive with existing provisions.
- Include an ability for interim orders to be granted.
- Ensure that there is no presumption of mediation having first taken place before an order is granted, and that mediation is not proposed as a viable alternative.
- Take account of other concerns and issues for consideration (identified previously and detailed in specific responses) in developing any remedies.
- Undertake supporting actions (discussed later).

2.122 In the one case where the respondent stated specifically in the closed question that the Scottish Government should not introduce specific civil remedies, three issues were raised. Firstly, it was suggested that difficulties would arise in prescribing the circumstances in which the remedies could be invoked. Secondly, they suggested that specific remedies could stigmatise forced marriage, which may deter people from accessing the remedies. Thirdly, the respondent suggested that civil remedies would still rely heavily on victims having the knowledge, support and the will to take action. The respondent suggested that, rather than specific civil remedies, there may be merit in the introduction of a specific criminal offence for those entering into a forced marriage<sup>13</sup>. They also suggested instead that more work should be undertaken to improve non-legislative ways of reducing and preventing forced marriage.

2.123 Similar suggestions were made by a respondent who indicated their opposition to the introduction of specific civil remedies in their comments, and by one of the respondents who had answered “don’t know” to the closed question. It was also suggested that existing remedies should be made more accessible (e.g. by permitting them to be granted in a less formal setting).

### **Summary of issues: Sufficiency of civil remedies**

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<sup>13</sup> They stated that Section 58 of the draft code of criminal conduct, published in 2003, sought to create a specific offence for those knowingly or recklessly entering into a forced marriage with someone whose consent to the marriage has been induced by force and fear.

2.124 In summary, the main findings relating to the sufficiency of civil remedies were as follows:

- In relation to questions 1 and 2, which explored whether there are difficulties in accessing and using existing civil remedies in forced marriage cases, a large majority of respondents believed that there are such difficulties.
- The difficulties 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.
- In relation to question 3, which explored whether allowing third party involvement is a good idea, a large majority of respondents believed this to be the case. The reasons for this related to overcoming some of the barriers in accessing and using civil remedies, particularly the need for victims to seek remedies directly themselves.
- Many respondents 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.
- In relation to question 4, which explored whether the law should be able to positively require a person to do something, almost three quarters of the respondents believed this to be the case. Amongst the perceived benefits of this were that it could help to prevent forced marriage, and extend the means of protecting victims.
- In relation to question 5, which explored whether orders should be allowed to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator, almost all of the respondents agreed with this. The main reasons given for positive views of such provision focused on this as providing 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.
- In relation to questions 6, 7 and 8, which explored issues relating to the nature and use of power of arrest and arrest warrants, 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 raised about procedures, or the nature of potential provision.
- Just under two thirds of respondents agreed 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 also 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 stated that they believed the power of arrest should be attached from the start and a small number of

other issues were raised. Amongst the perceived benefits were: offering additional options for the victim; increasing their protection and safety and giving them control; emphasising the seriousness of forced marriage; enabling an appropriate response; reducing costs; and providing parity across the UK.

- In relation to questions 9 and 10, which explored the overall sufficiency of existing civil remedies in relation to forced marriage, 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. The reasons given for these views reflected the types of issues raised previously. Some respondents made further comments on the nature of the remedies, or issues which they believed should be taken into account.

## SECTION 3: SUPPORTING ACTIONS AND PROVISIONS

3.1 This section presents the findings on the questions in the consultation document relating to supporting actions and provisions (questions 11-18).

### The need for statutory guidance

3.2 Question 11 stated that 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. Respondents' views were sought about:

- Whether there is a need for this in Scotland.
- If so, why there is a need for this in Scotland.
- If not, why is there not a need for this in Scotland.

3.3 A high number of respondents (33) addressed the closed question, almost all of whom (97%) stated "yes", agreeing that there is a need for statutory guidance in Scotland. One added that it should be recognised that this is not a substitute for statutory interpretation by the courts. A small number of other respondents, while not addressing the closed question, indicated their agreement with this in their comments, or recognised that there could be benefits. One suggested that the need for such guidance would depend on the level of understanding amongst those concerned. Another suggested that, even if specific legislation was not introduced, there would still be scope for the Scottish Government to issue guidance. Only one respondent indicated in their comments that they did not see a need for this. (This respondent answered "don't know" to the closed question.)

3.4 A number of respondents provided comments on the reasons for their view of the need for statutory guidance, or focused upon the benefits of statutory guidance. The most common themes related to: the need to ensure an appropriate level of awareness of forced marriage issues and appropriate responses from organisations involved; the need for clarity of roles for all of those involved; and the need to ensure that appropriate action is taken. Some respondents focused on the importance of the response, and the duty and responsibilities of those involved. One stated, for example, that organisations may be the first point of contact for victims of forced marriage. Another stated that the sensitive nature of cases and the confidential nature of information made it essential to regulate the agencies involved.

3.5 Some respondents identified problems with, or inconsistency in, the current level of knowledge, awareness and understanding of forced marriage, or in current practice. As one stated, for example:

*" ... consultations with women in Scotland have confirmed that, at best, awareness of forced marriage issues is patchy and there is insufficient knowledge of best practice among workers to deal with a forced marriage concern". (Voluntary sector organisation)*

3.6 A closely linked issue was that some respondents suggested that there could also be problems with the approach of some organisations, or that they could be reluctant to deal with forced marriage issues. It was also suggested that a lack of awareness amongst organisations, or an inappropriate response, may discourage victims from coming forward, or may limit the level of service and support made available to them.



3.7 Some respondents stated generally that statutory guidance should accompany a specific law on forced marriage. Others identified that it would be useful to them, or that it would enhance existing guidance on violence against women from the Scottish Government. Some respondents suggested that without guidance on dealing with forced marriage cases the civil remedies could be ineffective, and would not protect victims. A small number also highlighted a current lack of guidance in Scotland.

3.8 A number of respondents suggested that statutory guidance is needed, in order to:

- Develop awareness and understanding of forced marriage issues and any new legislative provision.
- Enable organisations and staff to understand their own roles, remit, responsibilities and powers.
- Enable organisations and staff to recognise, identify and deal with forced marriage issues in appropriate ways.
- Reinforce the measures available.
- Highlight the importance of the issue.
- Provide clarity of the processes and / or policies which need to be in place and the steps to follow.
- Enable a multi-agency response.
- Make a distinction between Scots and English law.
- Promote consistency in dealing with forced marriage issues.
- Identify forced marriage as a problem which the whole of Scotland needs to tackle.
- Improve support to victims.

3.9 Some respondents made suggestions about which agencies should be included in the provision of statutory guidance, and these covered a range of statutory and voluntary sector organisations (and not only those with a specific remit to assist victims of forced marriage). Some stressed the need to provide guidance to “non-BME agencies” with no knowledge of forced marriage issues and one suggested, for example, the inclusion of Citizens’ Advice Bureaux and organisations working with children, such as Childline. Another suggested that Registrars and others involved in conducting a marriage ceremony; as well as the Judicial Studies Committee, should be given guidance.

3.10 The comments identified at 3.8 above suggest some of the issues which respondents believed should be covered in guidance. Some specific additional issues were highlighted which it was suggested should be included, which were:

- The interface with other provisions.
- Where, when and how intervention could help.
- Risk factors and safety planning.
- Agencies and support available in each region.
- The multiple equality strands, and the importance of a human rights-based approach.
- Issues relating to immigration status and “no recourse to public funds”.
- Any support and protection measures for children and young people under 16.
- The powers and potential of the Adult Support and Protection Act to support and protect individuals who lack capacity but may be at risk of being forced or duped into marriage.

3.11 Some respondents suggested the provision of guidance similar to the guidance in England and Wales. The need to provide training alongside the guidance was also suggested by some. (This issue arose at a range of points in the consultation and is discussed further later.) One respondent stated that guidance should also be part of “mainstream” guidance on child and adult protection, and should be included in forthcoming guidance on responding to gender-based violence (rather than being “stand alone” and, in the respondent’s view, in danger of being invisible).

3.12 In the one case where the respondent stated that they did not know whether there is a need for statutory guidance, they stated that the law should be clear, and that:

*“Agencies should then have the flexibility to do their work without being inhibited by limitations placed upon them”. (Voluntary sector organisation)*

### **Protection for children and young people under 16**

3.13 Question 12 sought respondents’ views about:

- Whether there is enough protection in Scotland for children and young people under 16 affected by forced marriage.
- If not, what the gaps in protection are, and how they could be filled.

3.14 A total of 29 respondents addressed the closed question in this case. Of these, 62% answered “no”, believing that there is not enough protection in Scotland for children and young people under 16 affected by forced marriage. Just under a quarter of those who responded (24%) believed that there is sufficient protection. A total of 4 respondents stated that they did not know, of whom 2 also suggested potential improvements, with one stating that:

*“It was generally felt that protection is far better than that offered to women over the age of 16”. (Domestic abuse organisation)*

3.15 A small number of other respondents implied their views in their comments although they did not address the closed question. Some suggested that they did not believe current protection to be sufficient. A similar number suggested that the issues do not relate to whether there is enough protection, but rather to how it is used. One stated that they were not aware of any particular gaps in the law for children and young people affected by forced marriage.

3.16 Where respondents believed that there is sufficient protection and gave reasons for this, child protection provisions were generally cited. Specific mention was made of the Scottish Government’s “Getting it Right for Every Child” agenda, as well as the Children’s Hearing System and existing legislation (the Children Scotland Act, 1995 and the Children and Young Persons Act, 1937). One respondent, for example, suggested that existing provisions are well-known and utilised. The same respondent stated that partnership working is common (while identifying their view that there are areas that still require improvement).

3.17 Where respondents identified possible gaps in current protection for children and young people under 16 affected by forced marriage, the issues raised most frequently did not relate to gaps in the actual provision of measures, but to a lack of awareness of forced marriage issues (with school and child protection staff identified particularly in this context).

Some identified specific issues about which there was seen to be a lack of awareness. One respondent identified, for example, that stereotyping still takes place, while another identified Islamophobic attitudes. Another stated that staff require to recognise forced marriage as a child protection issue.

3.18 One respondent suggested that measures which should protect children and young people at risk from forced marriage may be failing because of the lack of awareness, while others suggested that workers either are not, or do not feel that they are equipped to address and challenge the actions of parents, nor to offer support to children and young people. A small number of respondents also stated that, despite the legislative options, they are aware of young people who have been concerned about forced marriage but have been unable to raise the issue with an adult who can help. The issues of perceived “shame” and “dishonour” were also seen to impact upon young people, and one respondent highlighted the lack of power and control they have over the choices and actions of their parents.

3.19 One of the respondents who stated that the issues relate to how measures are used, rather than whether there is sufficient protection, expressed a concern about whether child protection orders are being used efficiently and timeously. The same respondent raised the question of whether, when it has come to the attention of a local authority that a child who was under 16 at the time was forced into marriage, they are then supporting the child to have that marriage declared void.

3.20 Some respondents identified potential gaps in measures for protection. One respondent noted that, while there may at first sight appear to be ample mechanisms for the protection of children and young people, there are issues in relation to the Children’s Hearing System (e.g. the possible need for a specific ground of referral; and the fact that a hearing cannot order passport surrender) that merit further consideration. Another identified that the relevant grounds of referral to a Children’s Hearing may not always protect a child from forced marriage. A further respondent, while stating that legislation banning marriage for minors exists, also expressed uncertainty about whether other “religious marriage ceremonies” could be banned for those under 16, and suggested that, if not, this should be considered.

3.21 A small number of respondents stated that there may be specific issues which should be addressed for particular groups of children and young people. Some, for example, identified issues relating to vulnerable or disabled children and young people, where there may be an attempt to marry them to people who will then act as their carers. This, the respondent suggested, can involve forced marriage and can create two victims: the child or young person themselves, and the person who is expected to become their carer. Another respondent suggested that children are sometimes left behind when a parent is forced to leave. A further gap in legislative provision was identified for children and young people outwith the jurisdiction of the Scottish courts. Potential problems for young people whose parents retain a non-Scottish domicile were also highlighted.

3.22 A number of respondents made suggestions for possible actions. The most common suggestions, reflecting perceptions of the perceived problems, focused on improving awareness and practice relating to existing provisions, in order to protect children and young people. A common suggestion was the need for training and awareness raising in schools (including for staff and for children and young people), as well as in other statutory and voluntary organisations that may have contact with children and young people at risk of forced marriage. It was also suggested that truancy legislation could be used to ensure that

children and young people are not deprived of an education, as well as to monitor the home situation and prevent forced marriage.

3.23 The relevance to tackling forced marriage of children missing from education was identified by a number of respondents. One noted that there is a lack of statistical information about children missing from education who are from BME communities, particularly South-Asian communities. The same respondent stated that the “Review of Children Missing from Education (Scotland) Service: September 2006-April 2007” failed to identify this, and failed to consider groups such as the FCO Forced Marriage Unit or Reunite as possible future Steering Group members.

3.24 Suggestions relating to children missing from education included to have: more action to ensure that the absence is legitimate, lawful and not detrimental to the child’s welfare; effective monitoring and follow up; an increased role for schools in identifying the signs of forced marriage; inclusion of the forced marriage context in child protection training; increased dialogue with groups who may be more at risk of forced marriage; and robust guidance to support multi-agency working.

3.25 Other suggestions relating to children and young people included:

- Specific legislative provision to protect against forced marriage (discussed previously).
- Consideration of whether an additional ground for referral to a children’s hearing is required (with one respondent stating that any provision for this age group should focus on protection through this system).
- Consideration of making forcing a child to enter into marriage an offence.
- Consideration of provision to require action such as passport surrender (discussed at question 4).
- Provision of support to those at the upper end of the age band.
- Provision of a free confidential helpline.
- Consideration, if Scottish legislation is modelled on the 2007 Act, of key aspects of Scottish law (i.e. existing child protection provisions and the fact that young people in Scotland attain full legal capacity at age 16).

### **Civil partnerships**

3.26 Question 13 sought respondents’ views about:

- If legislation on forced marriage is introduced, whether it should be extended to cover forcing someone into a civil partnership.
- If so, why legislation should be extended to cover civil partnership.
- If not, why legislation should not be extended to cover civil partnership.

3.27 Over two thirds of all respondents (33) addressed the closed question, and the vast majority (91%) answered “yes”, agreeing that, if legislation on forced marriage is introduced, it should be extended to cover forcing someone into a civil partnership. Two respondents answered “don’t know” (with one identifying the complexity of the issues). Only one stated “no” (and did not give any reasons for this view). A small number of other respondents who did not address the closed question indicated their views in their comments, and all but one implied or stated that they agreed with this. One stated that the Scottish Government should

be satisfied first that there is an existing problem (and noted that they were not aware of any instance or attempt at forced civil partnership).

3.28 While several respondents to this question stated that forcing someone into a civil partnership was less likely than forcing someone into a marriage, almost all considered it necessary that the legislation should cover both marriage and civil partnerships. A small number of respondents identified that, while they saw it as unlikely that someone would be forced into a civil partnership for cultural reasons, the issue might arise for other reasons, such as for financial gain or to make it possible for partners to migrate to the UK.

3.29 The main reason given for the perceived need for the inclusion of civil partnership in any legislation related to the need for equality, and the provision of the same level of protection for everyone. As one respondent stated, for example:

*“We recognise that our communities are diverse and seek to provide services and practices that are free from unfair and unlawful discrimination. The introduction of any new legislation should reflect the principles of equality and diversity and include forcing someone into a civil partnership”. (Police / legal organisation)*

3.30 Some respondents also stressed that abuse would still be involved in forcing someone into a civil partnership. A small number stressed the need for “safeguards” as the reason for inclusion of civil partnerships. Another suggested that civil partnerships should be included for the sake of completeness and consistency. One respondent suggested that a failure to include civil partnerships might open a legal loophole.

3.31 Again, the need for awareness raising was also identified, and is discussed further later.

### **Difficulties in accessing civil legal aid**

3.32 Questions 14 and 15 sought respondents’ views about:

- Whether there are any difficulties in accessing civil legal aid for the current civil remedies, and if so, what sort.
- Whether the same issues (or different issues) would arise in relation to any new statutory civil remedies that may be developed following this consultation, and the perceived reasons for this.

3.33 Again, over two thirds of all respondents (33) addressed the closed question. Of these, around two thirds (67%) stated “yes”, believing that there are difficulties in accessing civil legal aid for the current civil remedies. The remainder who addressed this question answered “don’t know”. No respondents answered “no”. A small number of respondents did not answer the closed question, but indicated their agreement in their comments.

3.34 Most of those who addressed this question provided additional comments about the nature of the difficulties. Most covered the same types of issues as were identified previously with legal aid in responses to questions 1 and 2. Some respondents referred to their previous responses in addressing this question, or reiterated some of these issues.

3.35 The main difficulties identified included:

- Increasing difficulties in accessing civil legal aid over the last few years, with the suggestion that family law has been one of the hardest hit areas.
- Related difficulties in finding a solicitor accepting civil legal aid to use current civil remedies, with a perceived withdrawal of many experienced and sympathetic solicitors from legal aid work.
- A lack of knowledge or awareness of civil legal aid and entitlements among victims.
- Difficulties in accessing timely funding, with the suggestion that the legal aid board is not always sure how to respond to a forced marriage case (e.g. in the absence of a named law and guidelines).
- The strict qualifying criteria before legal aid is granted.
- Problems with financial eligibility, which may automatically disqualify some victims of forced marriage who may earn above the income threshold or perhaps own their own home<sup>14</sup>.
- The need for a “legal basis for the case” which can create evidence and witness problems, given the nature of forced marriage and make it unlikely that the legal aid board will decide that the victim should receive legal aid.
- More general access difficulties as a result of other constraints such as: language barriers; the family response to the victim taking civil action; threats and prevention; issues with confidence; and anonymity.

3.36 Particular difficulties were identified for victims with no recourse to public funds, and it was suggested that they find it very difficult to access good quality legal advice to pursue existing legal remedies. One respondent suggested that, where people cannot afford to pursue civil protection measures, they may seek protection via Sharia Law, which, in the respondent’s view, “discriminates against women”. Another suggested that the need to access civil legal aid can discourage some solicitors from taking on a forced marriage claim. Two respondents stated that, if the victim does manage to access legal aid, and the case reaches court, the court may, in theory, order the victim to pay some or all of their opponent’s costs, as these may not be covered.

3.37 A slightly smaller number of respondents (29) addressed the closed question about whether they believed that the same issues would arise in relation to any new statutory civil remedies that may be developed following this consultation (question 15). Of these, just over half (55%) answered “yes” and agreed that this was the case. Over a third of respondents (38%) answered “don’t know” while 2 respondents stated “no”. Amongst those who did not address the closed question, but whose views could be inferred from their comments, a small number of respondents implied their agreement, while a similar number believed that the same issues should not arise.

3.38 A small number of respondents identified why the same issues might arise, including that:

- If the venue for enforcing the new legislation is the court, the same legal tests will be needed.
- The victim will still need the help of a solicitor, and funds to pay for this.
- Without other action, there will remain a lack of awareness of legal aid.

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<sup>14</sup> It was noted that the upper disposable income threshold and the limit on the amount of disposable capital increased in April 2009.

- The costs of pursuing civil remedies could still be prohibitive (e.g. for women who are working, or women with no recourse to public funds).

3.39 A small number of respondents provided comments on why, in their view, the same issues, or some of the issues may not arise. Two suggested that this should not be the case if new civil remedies are sufficiently robust. Two stated that it would be easier for the legal aid board to grant legal aid, as it would be clear to them that forced marriage is unlawful. One respondent, while stating that some of the same issues may arise (relating to the financial implications of pursuing civil remedies), also noted that the provision of statutory guidance may make application for a remedy more accessible.

3.40 Some respondents made additional comments, such as, for example, stressing the importance of funding, or suggesting that the benefits of new civil remedies could be lost or could remain out of the reach of some victims without addressing the barriers to accessing civil legal aid. Another stated that the barriers should not be a justification for not introducing legislation. Two respondents stated that they believed that any new legislation should make provision for entitlement to legal aid. Three suggested that there is an additional issue for consideration in terms of how legal aid will be made available to third parties acting on behalf of the victim. One respondent noted that litigants in forced marriage cases are often young, making it important that funding is readily available to them. Another respondent stressed that it is important that legislation is:

*“ ... mindful of the difficulties victims experience currently and seeks to address this”. (Police / legal organisation)*

3.41 One respondent stressed the complexity of forced marriage issues and the importance of the availability of qualified family lawyers who are willing and able to take on legally aided work. This respondent stated that they recognised that this issue could not be addressed in the proposed legislation.

3.42 One respondent emphasised in their response to question 14 that problems with access to justice do not relate only to funding, suggesting some additional constraints of the kind identified at questions 1 and 2 (e.g. for victims for whom English is not their first language, or where the family group exerts control). The respondent emphasised the importance of providing support beyond legislation. A small number of other respondents also identified supporting actions needed (including, for example awareness raising and publicity, and training for legal professionals). A range of suggestions for non-legislative action, identified at various points in the consultation, are discussed at question 17 below.

### **Developing other action**

3.43 Questions 16-18 explored other work taking place amongst respondents to address forced marriage, and other action seen to be required by the Scottish Government and others to tackle forced marriage in Scotland. Question 16 asked respondents to identify whether they are currently working to address forced marriage, and what work they are undertaking. Question 17 noted that the Scottish Government funds a range of organisations working to support those affected by forced marriage, and asked what other non-legislative action the Scottish Government should take to tackle forced marriage in Scotland. Question 18 sought respondents’ views about:

- Whether there is a need for agencies in Scotland to improve their response to cases of forced marriage.
- Which agencies need to improve their response, and how they could do this.

3.44 More than half of all of the respondents to the consultation (26) identified (either in the closed question or in comments) that they or their organisation were currently working to address forced marriage (although a small number stated that this was in a limited way). The forms of work which were identified most commonly were: awareness raising and training; and the general inclusion of forced marriage issues in other work.

3.45 In terms of awareness raising and training, around half of those respondents undertaking work to address forced marriage identified awareness raising and training as forming part of their current or planned work. Some identified that this involved work with people in particular communities or groups (with examples of work in the Muslim community; with deaf BME people; and with school students or other groups of young people). Some identified undertaking work with service providers (with examples of the provision of information and training to social workers, school and other education staff and others, sometimes as part of wider training in relation to violence against women). Some identified work in the wider community (e.g. with community groups and in society more generally).

3.46 A small number of respondents identified raising awareness through particular media (with examples including participation in a TV programme; the planned development of a BSL resource on an organisation's website; and the use of leaflets). A small number of respondents identified the provision of guidance to staff (and one, for example, identifying that they were looking at giving forced marriage visibility as an issue within adult support and protection guidance). Two conferences on forced marriage, held in late 2008, were also highlighted. One respondent also identified that a group of young people had produced a film entitled "No Dowry, No Date", which they considered to be a resource suitable for S3 or S4 students.

3.47 The other type of work identified commonly as being carried out (again by just under half of those who indicated that they were undertaking work to address forced marriage) was the general inclusion of forced marriage issues in other work. This included work being undertaken, for example, through: some multi-agency partnerships and working groups (with examples including those focusing on violence against women, community safety, diversity and child protection issues); specific project work; and particular services and organisations (with examples including reflecting forced marriage issues in other work to address gender-based violence, inclusion in the work of housing and social work services, and a general recognition of forced marriage issues in other types of work).

3.48 Other forms of work highlighted included:

- Signposting, support and referral for victims.
- The inclusion of forced marriage issues in one to one work (e.g. casework; helpline provision; refuge or emergency accommodation; information; advocacy work; practical and emotional support provision).
- Partnership working (particularly amongst specialist organisations, or between specialist organisations and others).
- Contribution to the work of the Forced Marriage Network.



- Development of information gathering (e.g. the development, in one partnership, of tools to improve data collection, and a small number of other examples of work in local areas to determine the scale and nature of forced marriage).
- A role in the prosecution of those who commit criminal offences arising out of conduct of forcing someone into marriage (one respondent).
- Employment of a Female Support Worker and staff trained in dealing with forced marriage issues (one respondent).
- The establishment of a specific working group to consider forced marriage issues (one respondent).
- Provision of funding to relevant organisations supporting women at risk of, or experiencing forced marriage (one respondent).
- Involvement in launching a service to look at family and marriage issues amongst the Muslim community, and continuing support (one respondent).

3.49 Additionally, amongst those who stated that they were not currently undertaking work to address forced marriage, one respondent noted that they took a strategic overview of the issue. Another stated that they generally promoted and supported the active recognition of children's rights (in this and other respects) and a third identified that they supported women's organisations across Scotland on issues of equality and human rights.

3.50 A small number of respondents (at different points in the consultation) suggested that they might have a role in third party reporting in relation to forced marriage in the future. One suggested that they might have a role in supporting the local implementation of new legislation and guidance, as well as raising awareness of new provision and organising staff development activities. Many respondents also made additional comments on other forms of work which they considered to be required. As noted earlier, such suggestions were also made in responses to other questions, and are considered in detail below.

### ***Suggestions for other action***

3.51 Respondents made a range of suggestions, at various stages in their responses, about other actions considered to be required, both by the Scottish Government and others. Question 17 asked specifically about other non-legislative action that the Scottish Government should take, while Question 18 explored improvements required by agencies in Scotland. There was, however, considerable overlap between the forms of work identified, with a perceived need for action by a range of organisations. Some respondents, in addressing question 18, referred to their previous points. For that reason, the issues raised in responses to these questions are considered together.

3.52 The majority of respondents (31) provided suggestions about other, non-legislative action that they believed the Scottish Government should take. Additionally, 30 respondents provided specific views of whether agencies in Scotland need to improve their response to cases of forced marriage, and a large majority of these respondents (90%) believed this to be the case. The remainder answered "don't know", although 2 of these respondents added that they assumed this to be the case. A small number of other respondents, while not addressing the closed question, indicated their view that agencies should continually seek to improve their responses to forced marriage.

3.53 Only a small number of respondents indicated the types of agencies which required to improve their response, and this was seen to include a range of statutory and voluntary sector services. It included both mainstream organisations and some organisations with a focus on specific issues (any of which may encounter cases of forced marriage in the course of their work).

3.54 A small number of respondents suggested the nature of some of the problems with agencies' responses currently, and the main issues identified were: the lack of recognition of forced marriage issues; a lack of knowledge and awareness of forced marriage and related issues; a lack of knowledge of how to deal with these matters effectively; the lack of an appropriate response; inconsistency in responses; and a reluctance to intervene (including in relation to particular groups, such as those with no recourse to public funds).

3.55 More generally, some respondents identified the reasons why additional action is seen to be needed by the Scottish Government, with some emphasising, for example, the need to: send a clear message that forced marriage will not be tolerated in Scotland; highlight responsibilities in tackling this; and empower victims and young people. The perceived need to support any legislation with a range of other actions has also been identified earlier in this report.

3.56 The most common type of non-legislative action identified as being required by the Scottish Government was awareness raising and training, and this was also identified as a means of improving the response of agencies in Scotland to cases of forced marriage. Some respondents suggested that this should underpin any new legislation which is introduced.

3.57 A number of respondents made general points about the need for the Scottish Government to promote better public awareness of the issue of forced marriage and the remedies and services available. One suggested that this should take place whether or not new legislation is introduced. The preventive role of public awareness raising was also highlighted, and additional specific points made included that public awareness might encourage victims to report forced marriage and promote a clear message that forced marriage is not acceptable. One respondent summarised the view that:

*“This is the only way people are going to understand it and know how to deal with issues as they come up in their lives from a position of knowledge”.*  
(Domestic abuse organisation)

3.58 As well as general public awareness raising, some respondents suggested the need for the Scottish Government to undertake awareness raising in particular communities. As one suggested, for example:

*“A proactive approach of educating communities where this problem occurs is crucial in efforts to eradicate forced marriage”.* (Police / legal organisation)

3.59 Some respondents, however, stated specifically that awareness raising should not be confined to BME communities, but should be carried out more widely (with more than one respondent suggesting, for example, that this might alienate BME communities, discourage people from accessing services and / or lead to the feeling that this is a “minority law”).

3.60 Some identified particular issues which should be addressed. These included, for example to: challenge the notion that religion condones the practice of forced marriage; challenge other attitudes that condone forced marriage; define the nature of forced marriage; state that it is unlawful; highlight the nature of the issue as constituting domestic abuse; and emphasise the importance of respect and equality. It was also suggested that there should be a focus on raising victims' awareness of their rights, remedies, protection and support.

3.61 The need for awareness raising and training work with service providers was also highlighted by many respondents (at various points in the consultation). It was identified amongst actions for the Scottish Government and as a means of improving agencies' responses. Respondents focused on the need for awareness raising and training with a range of statutory and voluntary sector service providers who might encounter forced marriage issues in their work. There was seen to be a need to address a wide range of issues, including (as has emerged at other points) the nature and identification of forced marriage and related issues (including issues for particular groups); challenging stereotypes and inappropriate assumptions; and the means of providing an appropriate response. Some identified the importance of including the judiciary and other legal staff amongst those receiving training. As one respondent summarised, it was suggested that there should be:

*“appropriate training for all relevant agencies who may be called upon to support those at risk of forced marriage”. (Domestic abuse organisation)*

3.62 Some respondents provided examples of the types of work that could be undertaken with the public, specific communities or service providers, and a common suggestion was the use of a publicity, or media campaign. Some respondents stated, for example, that this could be similar to those undertaken in relation to domestic abuse or mental health, and could involve national and local work. Suggestions included the use of TV commercials and media debates as well as the use of other materials. It was also suggested that such a campaign should include foreign language TV and radio channels.

3.63 Other means of awareness raising and training identified included the use of:

- Leaflets, literature and posters (including culturally sensitive material and provision in appropriate and accessible formats / languages, made available at a wide range of outlets).
- Seminars.
- Drama, TV and theatre.
- Roadshows.
- Work in schools and further education establishments, and the inclusion of the issue in the school curriculum.
- Work with, and through, community groups, community centres and places of worship.
- Work with specific groups (e.g. young people; school guidance staff; child protection staff; agencies; religious leaders).
- Specific staff training, awareness raising, education and staff development.
- Inclusion of forced marriage issues (and issues for specific groups) in other relevant training and procedures.

3.64 Closely related to the perceived need for awareness raising and training, a number of respondents identified the importance of the provision of information and guidance by the

Scottish Government. Respondents' views of the need for statutory guidance detailing a wide range of issues was discussed previously at question 11, and a number of the topics for inclusion were reiterated here. It was also suggested by some respondents that general good practice guidance would be helpful. One respondent suggested that the Scottish Government should work with the Forced Marriage Network to produce the guidance.

3.65 A number of respondents also suggested the need for the Scottish Government to provide funding and resources to organisations undertaking particular forms of work relating to forced marriage issues. Suggestions included ensuring that future funding is available to enable existing organisations to continue to undertake their work. It was also suggested that funding should be provided to: law centre work; advocacy and casework; specialist support services (not only in Edinburgh and Glasgow, but in other areas); new projects aiming to empower people in relation to forced marriage; and support to those with no access to public funds. Two respondents suggested that it would be useful to have national resources in local areas (e.g. for services working with victims and perpetrators, or to help raise awareness of forced marriage and signpost victims to agencies for support and information).

3.66 Linked to this, the development of support to victims was also identified as a further form of non-legislative action which the Scottish Government should take. It also arose in suggestions about how agencies should improve their responses (at question 18 and at other points in the consultation). Suggestions included:

- A national helpline (which it was suggested could be coordinated by the Government and supported by a range of BME organisations).
- General development of the provision of information and support to victims.
- Support to existing provision.
- Provision of sufficient access to solicitors and legal aid, refuge accommodation, and specialist BME services and support workers.
- Provision of the types of protection and services available to others who experience domestic abuse.
- Investment in specialist support services outside the major cities of Edinburgh and Glasgow.
- Action to ensure that victims who have to flee their homes have access to safe housing, money, education and other support.
- Investment in providing services to young boys and men who are affected by forced marriage.

3.67 A further area identified by some respondents was the need for Scottish Government action to develop the evidence base in relation to forced marriage and to assist in understanding the extent and nature of this. It was also suggested that statistical information should be published. Additionally, one respondent suggested that work could be undertaken with schools to gather information about those from more vulnerable groups who go missing from education, to help to understand the scale of issues for this age group.

3.68 A number of respondents identified that both the Scottish Government and agencies should address specific issues relating to forced marriage. The issue raised most frequently was that of victims with no recourse to public funds. Some provided detailed information about this (discussed further in Section 4), or stressed the general need to tackle this. Some made suggestions about particular action they considered to be required, including to: review legislation and support for those with no recourse to public funds; lobby the UK Government

to exempt women fleeing violence from the no recourse to public funds requirement; provide full protection and support (including financial) to women with uncertain immigration status fleeing violence; provide guidance to enable a more effective response; revoke the rule (Scottish and UK Governments); provide funding for support and safe accommodation for this group; and recognise the existence of the issue outside Edinburgh and Glasgow, developing appropriate responses. One respondent stated that the current situation is a breach of international human rights treaties, and suggested that:

*“Until effective provision is made for women with no recourse to public funds they will continue to face often insurmountable difficulties in accessing existing civil remedies”. (Voluntary sector organisation)*

3.69 Another respondent stated specifically that they did not believe that the National Conversation would impact on, or enhance the situation for those at risk of forced marriage.

3.70 Further specific issues which it was suggested that the Scottish Government (and others) should tackle or highlight included: children missing from education; issues for people with learning disabilities (including tackling forced marriage through existing provisions); specific issues affecting other groups; the need to increase reporting and uptake of remedies; the intersection of issues such as violence against women and race / culture / religion; institutional discrimination; and issues relating to sexual orientation (with one respondent stating that forced marriage can be used to deny a person a right to choose their sexuality). One respondent, in identifying actions for agencies, also stated that they should report their concerns.

3.71 A small number of respondents made additional suggestions. Two, for example, stated that a response similar to the pilot specialist forced marriage courts in England and Wales to deal with cases under the Act should be considered by the Scottish Government. One suggested a general need to make the court process more accessible to victims of forced marriage (suggesting, for example: female only court staff; increased security measures; and interpreting provision). One respondent identified the need for a clear strategic focus on all aspects of violence against women (e.g. with suggested local action points) and another reiterated the importance of an overall culture which condemns forced marriage. One respondent suggested that there had been a number of helpful suggestions made during the Scottish Parliamentary debate of 4<sup>th</sup> December 2008. Another suggested that measures taken should be monitored and evaluated, so that best practice can be learned from and replicated. One also noted that all public services should address communication support and language issues at all stages in service planning and delivery.

3.72 Some respondents suggested ways of developing and undertaking the types of work detailed. A number stated that there should be partnership or coalition approaches between the Scottish Government and others, or that there should be multi-agency working and stronger links between services. One respondent suggested that each agency, organisation or educational institution should have a known contact. Some stressed the need for the involvement of, or links to, specialist BME and faith-based organisations / religious leaders and scholars in particular types of work. Some stressed the need for the involvement of particular sectors such as education and / or the police, or of community groups. It was also suggested that the Scottish Government could work with the Forced Marriage Network.

3.73 One respondent identified a particular suggestion made in the Scottish Parliamentary Debate of 4<sup>th</sup> December 2008, that the role of the National Group to Address Violence

against Women should involve discussing local outcomes on violence against women, children and young people, including forced marriage, with the Scottish Government, CoSLA and community planning partnerships, taking into account the need for resources to support that work and the obligations on these parties in respect of the equality aspects of single outcome agreements.

3.74 Some respondents suggested that the development of a new legislative framework, involving new civil remedies of the type discussed in the consultation, might itself help to improve agencies' responses. One stated that a professional commitment to continuous improvement provides a culture that should promote corporate responsibility.

### **Summary of issues: Supporting actions and provisions**

3.75 In summary, the main findings relating to supporting actions and provisions were as follows:

- In relation to question 11, which explored whether there is a need for statutory guidance in Scotland, almost all of the respondents to this question believed this to be the case. The most common themes related 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.
- In relation to question 12, which explored whether there is enough protection in Scotland for children and young people under 16 affected by forced marriage, almost two thirds believed that this is not the case, although around a quarter of those who responded stated that there is sufficient protection. Respondents often identified a lack of awareness of forced marriage issues rather than gaps in the actual provision of measures, but a small number of gaps in measures themselves were also suggested. A number made suggestions for possible actions.
- In relation to question 13, which sought views of whether any legislation on forced marriage should be extended to cover forcing someone into a civil partnership, the vast majority of respondents to this question agreed with this. While several suggested that such a situation would be less common, the main reason 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.
- In relation to questions 14 and 15, which explored difficulties in accessing civil legal aid for the current civil remedies and potential difficulties with new civil remedies, around two thirds of respondents to question 14 believed that there are difficulties currently. These included: increasing difficulties in accessing civil legal aid; 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 those who addressed question 15 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.

- In relation to questions 16-18, which explored work taking place and other action seen to be required, 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: the level of reporting and uptake of remedies; the intersection of issues and issues relating to sexual orientation. A number of additional suggestions were also made, and the importance of multi-agency and / or partnership working was stressed.





## **SECTION 4: OTHER ISSUES**

4.1 This short section presents the findings relating to other issues raised in the consultation, or those which did not address a specific question directly. Some of these issues were identified at question 19, which invited respondents to provide any additional comments on any aspects of the consultation. Others were identified at different points in the material provided by respondents (e.g. in a covering letter etc.).

### **The nature of forced marriage**

4.2 Some respondents, at various points in their responses, provided additional detailed information about various aspects of the nature of forced marriage. While full details are available in the relevant responses, and some of the points have been made earlier in the report, the points raised included that:

- Forced marriage is a form of domestic abuse and a violation of human rights.
- It is often the case that family members and others (in addition to the main perpetrator) are involved in forced marriage.
- There is a distinction between arranged marriage (which involves free and full consent) and forced marriage (where this is absent).
- Forced marriage exists in Scotland (although the extent of this is unknown).
- Forced marriage takes place (and has taken place historically) in groups other than in BME communities alone.
- Victims of forced marriage are predominantly, although not exclusively, women.
- There can be specific issues for some victims in particular groups, such as people with learning disabilities, deaf people and others.
- Forced marriage has a major impact on the lives of those affected.
- The issue of forced marriage needs to be recognised, and an appropriate response provided.

### **Experiences and examples**

4.3 Some respondents provided case examples, or made references to their organisation's experience of tackling forced marriage as a means of illustrating issues relating to the consultation. While the points made have been included at the relevant stages in the report, the specific examples themselves have not been used. These are, however, available to the Scottish Government in full and will help to provide illustrative material in considering the way forward.

### **Issues for specific groups**

4.4 A number of respondents raised issues affecting particular groups of victims of forced marriage, some of which have been discussed previously. Detailed accounts of some of these issues were provided, and are available in individual responses.

4.5 Issues for people with no access to public funding were raised at various points in the consultation and have been discussed previously. Some respondents provided additional material about the nature of these issues. While further information is available in the detailed responses, amongst the issues highlighted were that:

- Victims of forced marriage who arrive legally in the UK on spousal visas are often subjected to horrific abuse from partners and family members.
- As a result of their insecure immigration status, those who leave often find that they have no recourse to public funds, and no recourse to safety (e.g. safe accommodation, living costs and legal aid).
- Victims in this situation also face cultural, religious and language barriers, racism, unemployment and other issues.
- Their options may be limited to facing homelessness and destitution; leaving their partners to be sent back to their country of origin (where they may face further abuse from the family and community for having “shamed” them); or staying within the forced marriage (and often being subjected to further abuse).

4.6 Some respondents identified issues affecting people with learning disabilities. It was suggested, for example, that some families see marriage as a way of providing a carer for a person with learning disabilities (and one suggested that this was sometimes linked to problems getting service provision to address their needs). It was also suggested that there could be specific issues relating to consent. One respondent stated that the research on forced marriage is based on domestic abuse issues, which they suggested was one of the complex components in a forced marriage relationship for people with learning disabilities. They also emphasised the lack of freedom for both partners where people with learning disabilities are involved in a forced marriage, and stated that the opportunity to leave a marriage for a spouse brought into the UK to marry is challenging without support. A detailed account was also provided of a range of legislation relevant to people with learning disabilities affected by forced marriage.

4.7 Issues were also identified for people with hearing impairments (as noted previously). These included the lack of provision of appropriate resources and support. One respondent stated that there is a high instance of forced marriage in the deaf BME community. They suggested that the whole experience can be disempowering, and can link to higher instances of mental health problems among deaf people. Specific issues were also raised for people for whom English is not their first language.

4.8 In addition to these groups, it was also noted that there can be particular issues in forced marriage for children, people with mental health problems and men, and that there can be issues relating to sexual orientation. It was suggested that these issues for particular groups need to be taken into account in identifying the way forward.

### ***Overall considerations***

4.9 Some respondents provided additional details of issues which they believed should be taken into account in developing work to tackle forced marriage, often relating to general principles and ways of working in tackling forced marriage. Again, some of these (and others) were identified earlier in the report, but additional comments included the need to:

- Avoid reinforcing or promoting stereotypes in legislation and action.
- Ensure that the remedies and actions are inclusive, transparent and accessible to all.
- Avoid disproportionate restrictions on adults’ personal freedom, and ensure compliance with the ECHR.

- Ensure that victims are empowered and supported.
- Adopt a human rights-based approach and treat every case individually (with some respondents noting that the Universal Declaration of Human Rights is explicit in the rejection of forced marriage).
- Tackle forced marriage as a part of the overall violence against women agenda.
- Ensure “joined-up” working and appropriate interface with other relevant procedures.
- Adopt a partnership / multi-agency approach, taking account of the expertise of specialist organisations.

4.10 Some respondents reiterated their overall support for legislation, or for other suggestions in the consultation document. Some stressed the importance of the issue of forced marriage and the need for such work, or for a range of supporting measures such as those described at questions 17 and 18. A small number made particular comments, such as, for example, to emphasise the importance of dignity and respect in marriage. One respondent expressed sadness that this issue should require to be raised. Another emphasised the need for the robust use of legislative protections and remedies.

### ***Comments on the consultation***

4.11 Some of the additional comments which were made focused on aspects of the consultation process itself, or the nature of the response provided.

4.12 A number of respondents gave further details of the ways in which their response had been generated. Examples included:

- Focus group discussion.
- Arrangement of a specific event.
- Discussions with relevant individuals and organisations.
- Consideration by different parts of an organisation.
- Consideration by a specific Committee or Sub-Committee.

4.13 Several respondents provided further details about the nature of their organisation and work, sometimes identifying their specific experience of dealing with forced marriage issues. Some respondents made comments about the coverage of their response, with a small number, for example, who stated that they had only commented on particular questions, or who noted any perceived limitations of their experience.

4.14 A number of respondents made positive comments about the Scottish Government’s action in undertaking the consultation. These included, for example, commending the Scottish Government for addressing the issue, as well as welcoming the consultation and the opportunity to comment. For example:

*“... we welcome the opportunity to comment on this matter with a view to pro-actively planning for the future”. (Public sector organisation)*

4.15 A small number of respondents made comments on the scope of the consultation or the issues included. One stated that the consultation should have asked organisations’ views of what legislation should be proposed. Another suggested that the focus of the questions did

not capture fully the experiences of their service user group. One respondent commented on the absence of specific statistical information. One stated that the question of jurisdiction was not discussed in the consultation (and this was seen to be a crucial issue). Another, whilst acknowledging the focus of the consultation on civil remedies, identified the need to recognise that forced marriages existed:

*“ ... within a spectrum of coercive social control that sought to uphold traditional family values in eastern and western cultures”. (Public sector organisation)*

4.16 A small number of specific comments were made on the wording of parts of the consultation document, or issues for clarification. In relation to the “Foreword”, for example, one respondent suggested that, when describing the rights of a person to make vital life choices without fear, it may be more appropriate to include the themes contained within the definition of domestic abuse (i.e. any form of physical, sexual or mental and emotional abuse). In relation to Section 3, “Why We Are Consulting” it was suggested that there is a need for clarification of the degree of proof required for a Forced Marriage Protection Order to be granted. This respondent stated that there can be difficulties in establishing grounds for the attachment of a power of arrest, particularly where nothing has been reported to the police previously.

4.17 One respondent reported that a group of service users had raised the question of whether the full consultation was available in BSL.

### **Summary of other issues**

4.18 The main points raised relating to other issues were as follows:

- There are specific aspects of the nature of forced marriage which some respondents identified as being relevant to the consultation and some provided details of these.
- Some respondents have experience of working with specific forced marriage cases, details of which were provided in responses, and can help to inform the way forward.
- Some respondents highlighted issues which affect particular groups of victims of forced marriage, including: victims with no access to public funding; people with learning disabilities; people with hearing impairments; people for whom English is not their first language; children; people with mental health problems; and men. Specific issues relating to sexual orientation were also raised. Some respondents provided detailed information about issues affecting these groups.
- Some respondents identified additional issues for consideration relating particularly to general principles and ways of working in tackling forced marriage.
- Comments were made on how responses to the consultation were generated and these means included, for some respondents: discussion at a focus group or event; discussion with relevant individuals, organisations and parts of organisations; and consideration by a specific Committee or Sub-Committee. Some respondents provided detailed information about the nature of their organisation and the coverage of their response.

- A number of respondents 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 of forced marriage.
- A small number of comments were made about the scope of the consultation or the issues included.

## ANNEX 1 THE WRITTEN CONSULTATION QUESTIONS

**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?

**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?

**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?

**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)?

**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.



## **ANNEX 2 THE RESPONDENTS**

The respondents were as follows:

3 Individuals

ACPOS

AMINA Muslim Women's Resource Centre

Amnesty International

Angus Partnership on Domestic Abuse

Angus Women's Aid

B Ahmad (MSP)

Ballater and Crathie Community Council

Children in Scotland

Church of Scotland

Clackmannanshire Council

Coltness Community Council

Crown Office and Procurator Fiscal Service

David and Janet Whyte

Dundee Violence Against Women Partnership

East Ayrshire Child Protection Committee

East Dunbartonshire Domestic Abuse and Violence Against Women Multi-Agency Partnership

East Pollokshields Project

Engender

Ethnic Minorities Law Centre

Faculty of Advocates

Fife Domestic and Sexual Abuse Partnership

Glasgow City Council and Glasgow Community and Safety Services (GCSS)

Hemat Gryffe Women's Aid

Highland Community Planning Partnership

Inverclyde Council Safer Communities Service

Ishara at Deaf Connections

Judges of the Court of Session

Law Society of Scotland

NHS Forth Valley

NHS Glasgow and Clyde

North Lanarkshire Council

Perth & Kinross Domestic Abuse & Violence Against Women Forum

Salvation Army

Scottish Women's Aid

Scottish Women's Convention

Scottish-Islamic Foundation

Shakti Women's Aid

Sheriffs' Association

Stevenson College

Stirling Council Children's Services (on behalf of: Stirling Child Protection Committee;

Stirling Action for Change Violence Against Women Multi-Agency Forum; Stirling

Community Safety Partnership; Stirling Multicultural Partnership; Stirling Council Diversity Working Group; and NHS Forth Valley)  
Stow College  
United Reformed Church  
Unity Family Services  
University of the West of Scotland

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