

# **Business and Regulatory Impact Assessment**

## **Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011**

1. This Business and Regulatory Impact Assessment (BRIA) provides information on the proposal to strengthen, by way of a Scottish Statutory Instrument (SSI) the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011.

### **Purpose and intended effect**

2. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 makes provision for protecting people against being forced to enter into marriage without their free and full consent, and for protecting those who have been forced to enter into marriage without such consent.
3. As it stands, under section 3(1) a court may make a forced marriage protection order on an application to it by (a) the protected person (b) a relevant third party (a relevant third party is defined in section 3(7)).
4. Section 3 (1) does not list Police Scotland and they therefore need to apply for orders in terms of section 3(2) i.e. any other applicant who must first get the permission of the court before they are able to make an application.

### **Objectives**

5. The proposal in this SSI will bring Police Scotland within the coverage of section 3(1). Doing this would allow Police Scotland to apply directly to a court as required, without first having to seek permission before making the application.
6. This will remove a step from the application process and may help in securing an order quickly when there may be a need to act promptly to keep a person who is at risk safe.
7. This is part of the Scottish Government's wider work to tackle violence against women and girls in Scotland which is being progressed through Equally Safe<sup>1</sup>. It also links with many of the National Performance Framework National Outcomes such as:
  - We have improved the life chances for children, young people and families at risk;
  - Our young people are successful learners, confident individuals, effective contributors and responsible citizens, and
  - We live our lives safe from crime, disorder and danger.

---

<sup>1</sup> <http://www.gov.scot/Publications/2016/03/7926>

## **Background**

8. The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 came into force in Scotland on 30 November 2011 introducing a civil Forced Marriage Protection Order (FMPO) to protect people who are threatened with or who are already in a forced marriage. In 2014 protection for was strengthened by making forcing a person into marriage a criminal offence by way of section 122 of the Anti-Social Behaviour Crime and Policing Act 2014.

## **Rationale for this proposal**

9. Since the introduction of Forced Marriage Legislation the Scottish Government has kept it under review and has continued to meet with stakeholders in the statutory and third sectors. It is this ongoing multi agency discussion that has led us to the conclusion that we can strengthen existing legislation.
10. The Multi Agency Forced Marriage Network supports and informs the Government's work to tackle forced marriage. Its membership includes representatives from Police Scotland, NHS Health Scotland, Crown Office and Procurator Fiscal Service Scotland, Social Work as well as a range of voluntary sector organisations that directly support those affected by forced marriage. Those organisations include Scottish Womens Aid, Shakti and Hemat Gryffe Women's Aid and Amina (the Muslim Women's Resource Centre). The Network has been instrumental in the consultative work on this proposal.

## **Consultation**

### **Stakeholder Consultation**

11. Following discussion with key stakeholders in the Scottish Government facilitated Forced Marriage network<sup>2</sup>, it was agreed that the application process for a Forced Marriage Protection Order (FMPO) could be made easier. It was agreed that in situations where urgent action was required Police may be best placed to do this, however this does not diminish the responsibility of any other agencies. Therefore to explore this thinking a targeted stakeholder consultation took place between 10 July and 26 August 2017. Responses were received from a range of organisations and agencies, 11 in total, including the third sector support agencies, Police Scotland, the Crown Office & Procurator Fiscal Service, NHS Health Scotland and Social Work
12. Consultation responses were overwhelmingly in favour of the proposal with 100% expressing support, subject to updating guidance and the responsibilities of relevant third parties being made clear.
13. To explore further the benefit this proposal would bring the Scottish Government facilitated a multi-agency workshop focussing upon good practice in relation to protecting those at risk of Forced Marriage. This workshop was informed by case studies, supplied by support organisations, which described how, all involved in each case, both statutory and third sector, responded. The outcome from that workshop again was overwhelmingly positive

---

<sup>2</sup> Representation includes: Social Work, NHS Health, Police Scotland, Third Sector BME organisations and representatives from affected communities

## **Proposal**

14. The strengthening of legislation by means of an SSI is the preferred option of the Scottish Government and Scottish stakeholders, with all targeted consultation respondents in favour.

## **Business**

### **Sectors and groups affected**

15. There will be no direct effect on business as a result of this proposal. Any impact would fall on the public and voluntary sectors. It is therefore within these sectors that the Government focused its targeted consultation.

## **Costs**

16. The Scottish Government has estimated the costs relating to the implementation the proposal, as set out below. Statutory and practitioner guidance is already in place for the existing Forced Marriage legislation therefore costs to be update these would be minimal in terms of d updating on-line resources. These changes would be co-produced with partners to ensure clarity is achieved. Primarily they will involve updating to advise of Police Scotland being listed as a relevant third party and to make it clear that the change does not reduce the statutory responsibilities of agencies who may be required to seek an FMPO. These estimated costings are based on other similar pieces of work carried out by Government or in the case of training, by voluntary organisations, which currently provide training to mainstream organisations on forced marriage.

17. The Scottish Government would meet the costs required to update existing guidance and awareness.

## **Police Scotland**

18. In their response to the targeted consultation Police Scotland have requested an impact assessment be carried out in relation to the proposal.

19. Figures provided by Police Scotland in relation to the numbers of FMPOs applied for in Scotland between March 2012 and November 2016. Show that 16 FMPOs have been applied for.

20. Given the hidden nature of Forced Marriage it would be difficult to estimate with any degree of accuracy any potential increase in applications from a single agency, however it is unlikely that there would be a significant increase which would place a burden on one more than other. Since the legislation introducing came into force which introduced FMPOs figures from Police Scotland show that as at there have been sixteen orders made, nearly all have been applied for by Local Authorities. The proposal is designed to make it easier for statutory agencies, in concert with others, to act with greater urgency should the need arise. Equally the proposal does not diminish the responsibility of any other relevant third party to seek an order should they be required to do so. Should any agency believe that responsibility for progressing an FMPO has defaulted to them and they were not the most appropriate agency to progress it quickly (notwithstanding actual progression) they should be prepared to provide clear rationale for their thinking in a multi- agency discussion with all partners including Scottish Government, in order to inform and review future good practice.

21. The estimated costs for this proposal would principally be in terms of:

- Applying for an order
- Updating Guidance

22. The costs for raising and applying for an FMPO are set out as follows (it should be noted that this is not a new cost attached to the proposal, it is in relation to relevant third parties applying for an order):

#### **Cost for raising an order:**

- £120 in the Sheriff Court –Ordinary Procedure if it is raised as a summary application
- £300 in the for lodging an application with the Court of Session

23. It should be noted that the costs above refer to the court fees incurred in raising an order only and that costs in the Court of Session are higher than that in the Sheriff Court. These do not represent the cost of legal representation in lodging these and seeking an order.

24. Should an order be defended, costs to the applicant would increase to include legal representation. The actual financial cost to the applicant would depend on their eligibility to claim civil legal aid and the complexity of the situation, which would dictate the level of involvement from a legal representative.

25. Statutory agencies such as Social Work, and Police Scotland would not be eligible to submit a claim for financial assistance through civil legal aid and would have to bear the cost from their own budgets. The costs below detail the costs incurred by a local authority in relation to obtaining an interim FMPO:

- External (private) firm to submit the application
- For one week's work, the Council was charged £2166.54
- This included the cost of lodging the application in Court £150
- Sheriff Officers serving the order (to two addresses) £211

26. Legal costs would be higher if the application was defended and went to proof. However these would depend on the individual circumstances surrounding any application.

## **Benefits**

27. In measuring the benefits of this proposal the Scottish Government has been informed by key Scottish stakeholders, that this is their preferred option.

28. The Scottish Government would see other long term assumed benefits of the proposal. It would demonstrate our commitment to preventing and Eradicating Violence Against Women and Girls. It will support the delivery of a key priority of Equally Safe, principally Priority 3<sup>3</sup>.

29. Preventing and Eradicating Forced Marriage should allow women and children and young people make their who may be affected by the practice reduction in domestic abuse; improved general health and especially mental health for victims or potential victims; a more skilled mainstream public sector workforce, allowing victims to utilise existing services ensuring less reliance on specialist services to carry out support work with victims.

## **Implementation and delivery plan**

30. The Scottish Government will meet the I costs relating to the implementation of the proposal from planned budgets. This will mainly include the update of statutory and practitioner guidance, and awareness raising through existing networks. Estimated expenditure will be in the region of £3000 for amending guidance. Training and awareness raising is being covered through an allocation of money from the £20m announced by the First Minister in 2015 (for 2015-2018) to strengthen the Justice response to tackling violence against women.

31. The proposal will be reviewed on an ongoing basis through the Scottish Government's existing networks. This will take the form of feedback and discussion in the Multi Agency Forced marriage Network.

---

<sup>3</sup> <http://www.gov.scot/Publications/2016/03/7926>

## Summary and recommendation

### Summary costs and benefits table

Option	Benefits	Costs
<b>Economic, Social &amp; Environmental</b>		
Strengthening existing forced marriage legislation	This will allow Police Scotland to apply directly to a court as required, without first having to seek permission before making the application. It will remove a step from the application process and may help in securing an order quickly when there may be a need to act promptly to keep a person who is at risk safe. Removing a step from the application process may help in securing an order quickly when there may be a need to act promptly to keep a person who is at risk safe.	Economic – Update of guidance estimated at £3000
		Raising an order  £120 in the Sheriff Court –Ordinary Procedure if it is raised as a summary application  £300 in the for lodging an application with the Court of Session

### Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected costs, benefits and impact of the proposal, and that the benefits justify the costs.

**Angela Constance, Cabinet Secretary for Communities Social Security and Equalities**

**Date:** 20 November 2017