

## **POLICY NOTE**

### **THE FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND) ACT 2011 (RELEVANT THIRD PARTY) ORDER 2017**

#### **SSI 2017/461**

The above instrument was made in exercise of the powers conferred by section 3(7)(c) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011<sup>(1)</sup> and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### **Policy Objectives**

The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 came into force in Scotland on 30 November 2011 and provides civil remedies for those at risk of forced marriage and those who have already been forced into marriage. It introduced a civil Forced Marriage Protection Order (FMPO) to protect people who are threatened with or who are already in a forced marriage. Numbers of Forced Marriage Protection Orders in Scotland are not high (approximately six live orders) however like other forms of gender based and so called “Honour Based” Violence this is a hidden practice with potentially devastating consequences and often organisations and agencies have only “one chance” to act decisively. This one chance approach underpins both the [statutory](#) and [practitioner](#) guidance.

#### **Legislation**

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)). Relevant section of the Act is attached at Annex A.

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.

#### **Proposal**

Following discussion with key stakeholders in the Scottish Government facilitated Forced Marriage network, it has been agreed that the application process for a Forced Marriage Protection Order (FMPO) could be made easier for police. 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. 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.

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(1) 2011 asp 15.

## **Statutory Responsibilities**

Whilst Police Scotland are being included under Section 3(1), it should be recognised that the need for others named under that section to act in line with their statutory responsibilities has not been reduced. Therefore should a relevant agency be required to make an application for an FMPO they should do so under their existing arrangements and in line with their statutory responsibilities as set out in published guidance. Guidance will be updated to make this clear. Appropriate case studies illustrating the responsibilities of lead agencies will be provided as part of that update

It must be acknowledged that this process for streamlining of the application process is designed to act for those at risk and not to move the financial cost of application to another agency. 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. Doing so will ensure that all relevant agencies are acting at the appropriate time in line with the requirements of guidance and ensure that the circumstances which led to an order being sought are fully understood by all responsible agencies. It will also provide a forum to discuss and share good practice in order to inform any future orders.

To ensure that this desired outcome is achieved, it is proposed to evaluate at 12 months after commencement of this provision which relevant third parties have made applications for orders.

## **Consultation**

A targeted stakeholder consultation on the proposal 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. Consultation responses were overwhelmingly in favour of the proposal with 100% expressing support. Crown Office and Procurator Fiscal Service (COPFS) highlighted that almost all of the information which required to make an FMPO is held by Police Scotland and that the information transfer between Police Scotland and COPFS potentially delayed a time critical process designed to protect an individual. COPFS also highlighted that Police Scotland have existing analogous powers to apply for orders from Courts to provide protection for individuals. For example they are specifically named as being able to apply for Orders under the Sexual Offences Act 2003, the Human Trafficking and Exploitation (Scotland) Act 2015, the Police, Public Order and Criminal Justice (Scotland) Act 2006 (in relation to Football Banning Orders) and the Serious Crime Act 2007.

As a result of the consultation the following all respondents expressed support for the proposed SSI and Scottish Government Officials worked with Scottish Government legal Division to draft.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, it includes Scottish Womens Aid, Shakti Womens Aid, Hemat Gryffe Womens Aid, Police Scotland, Crown Office and Procurator Fiscal Service Scotland.

## **Impact Assessments**

An Equality Impact Assessment has been completed on *the draft SSI* and is attached. A Child Rights and Wellbeing Impact Assessment (CRWIA) will be published separately.

## **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. Any impact would fall on the public and voluntary sectors.

Scottish Government  
Local Government and Communities Directorate

December 2017