

## **Justice Committee**

### **Supplementary Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill**

#### **Written submission from Hemat Gryffe Women's Aid**

##### **Introduction**

Hemat Gryffe Women's Aid is based at Flat 0/1, 24 Willowbank Street, Glasgow, G3 6LZ. The organisation provides safe temporary refuge accommodation primarily to women, children and young people from minority ethnic communities fleeing domestic abuse at the hands of their husband, partner or extended family member. Outreach crisis support services are also available to women and children within the wider community experiencing domestic abuse or living within difficult domestic situations as a consequence of domestic abuse.

A substantial part of our workload involves women living in Scotland with an insecure immigration status and who have no recourse to public funds. Additionally we provide support to women and girls and boys up to the age of 18 who are living with the threat of forced marriage or who have been forced into a marriage. We provide a culturally sensitive support service and we recognise that women from minority ethnic communities may experience domestic abuse influenced by culture and tradition.

##### **Forced marriage In Scotland**

The organisation participated in the Scottish Government consultation draft of the Forced Marriage bill in 2010. During this consultation there was an overwhelming response for the introduction of civil remedies and subsequently the Forced Marriage (Protection & Jurisdiction) (Scotland) Act 2011 was promulgated.

The Scottish Government lodged a supplementary Legislative Consent Memorandum (LCM) on 11 November 2013 for the Anti-social Behaviour, Crime and Policing Bill. This is a written response to the request by the Justice committee whether or not the LCM procedure should be used in respect of the provisions on forced marriage and also:

- 1) Are the proposed provisions an improvement on the current legislation covering Forced Marriage in Scotland, and
- 2) Are the provisions the most effective way to ensure that the Scottish Government meets its international obligations, as set out in the Istanbul Convention?

##### **Response by Hemat Gryffe Women's Aid**

1. **The LCM submitted by the Scottish Government should not be used in respect to the provisions on forced marriage.**

The organisation strongly believes that the criminalisation of forced marriage in the first instance will act as a deterrent to the victims of forced marriage coming forward for support and information. The Scottish Government did not conduct a consultation to gather evidence in support of the LCM lodged on 11<sup>th</sup> November from specialised organisations who work with victims of Forced Marriage. This is surprising when there was an overwhelming response for civil remedies for Forced Marriage and not criminal penalties during the previous consultation.

Additionally the organisation is disappointed at the apparent absence of consultation given the organisation's involvement with the Scottish Government Equality Unit and the considerable knowledge and experience of working with the legislation whilst at the same time ensuring the safety of victims and survivors of Forced Marriage.

2. The view of the organisation is that these proposals are not an improvement on the powers existing within current legislation relating to Forced Marriage. The reality is that victims will not report a crime for fear of their families and parents being subject to criminal prosecution. The consequences for a young person to pursue criminal prosecution will in the majority of cases result in the ostracisation of the victim from the family and community thereby severing all ties and all connection to their support system. Additionally the victim will be fearful of the social stigma associated with reporting their family to the police. This will draw negative attention to the family within their own individual family networks and the wider community. At present the ability to obtain a Forced Marriage Protection Order is sufficient to act as a warrant to perpetrators to refrain from breaching the Order for fear of criminal prosecution. Focus should be laid on the present legislation which is still very much in its infancy, with statutory organisations requiring to be educated on Forced Marriage guidelines and the cultural issues that form the context of forced marriages. An effective robust legislation can be achieved through awareness raising and putting in place support systems for effective implementation of present legislation.

The organisation has in the year 2012-2013 supported 16 women and young girls who have been at some time a victim of a Forced Marriage. Often the Forced Marriage will have occurred. The women refuse to take out a Forced Marriage Protection Order for fear of stigmatising their parents and community. The same applies to those women who we support who are threatened with a marriage that they do not want. It is the marriage that the woman does not want, not for parents to be categorised or labelled as criminals.

We understand there are 7 Forced Marriage Protection Orders in Scotland currently. We are unsure whether any of the Orders pronounced were at the instigation of the individual being forced into the marriage or by a relevant person or third party as provided for within the Act. We suspect the latter. We believe this to be commendable of the work of professional organisations who have experience of working with vulnerable individuals who recognise that they may be at risk of harm because of the prospect of forced marriage occurring. Individuals who are faced with Forced Marriage require a great deal of support as there is often a lack of awareness of the legislation that is currently in place on the part of the individual requiring the support. It is our experience that simply the mention of going to court regardless of whether it is a civil or criminal court raises fear and alarm for the person requiring the protection

It is the responsibility of agencies such as women's aid and in particular the specialised agencies such as Hemat Gryffe Women's Aid and Shakti Women's Aid who have considerable experience in recognising the difficulties that women and girls are likely to face as a consequence of cultural sensitivities associated with the family and community. The fear of isolation and ostracisation from their family and community often puts them in a position of protecting their family and community identity before their own gender identity as a result they put up with the abuse and pressure they are enduring. It is the responsibility of these specialised organisations to ensure the safety and well-being of individuals being forced into a marriage. This organisation is faced with a predicament in the future support and safety planning that we provide. We can predict the reaction that we will receive from individuals seeking our support if forced marriage is criminalised in Scotland. We cannot reiterate enough that individuals will not wish to criminalise their families nor wish to go through with a criminal trial themselves. It will only draw attention to their family and community and make matters worse.

The arranging of marriages is widely practised within the minority ethnic community. It is a programme of education and awareness raising of the existing legislation that is necessary within these communities. It is essential that the practice of arranging marriages of children without their consent is prohibited in Scotland is brought to the attention of the communities where it is most common. This programme of education and awareness raising should send a clear message to those involved that it is no longer tolerated within Scotland and at the same time provide protection for young Scots faced with a marriage they do not want.

This is an extremely culturally sensitive area for the individual faced with a Forced Marriage. It is likely that the individual faced with a Forced Marriage has been brought up within the confines of a strict culture requiring that he or she adhere to certain cultural practices and traditions. We know that their choice of partner is limited as it is customary for the parents and extended family members to have selected or chosen a partner from within the family network and community. The choice of partner may have been decided at a very young age of the individual involved. The premise of family networks within certain minority ethnic communities involve bonds of mutuality and recognition of obligations towards family and community members within the network. These obligations include the marriage of their sons and daughters within the family network. The organisation strongly believe the importance of respecting cultural traditions, however, it is those cultural practices and traditions that cause harm or abuse that should be confronted through a programme of awareness raising, education and training. Where redress to legal protection is required, a Forced Marriage Protection Order is sufficient.

It is the experience of the organisation whilst working with victims of Forced Marriage that considerable support in relation to the legal process associated with the Forced Marriage legislation is required. In particular in relation to the consequences of the Forced Marriage Protection Order as well as the consequences for perpetrators if any conduct occurs that is in breach of the Order. It is our experience that parents employ subtle methods of emotional blackmail toward the victim making them feel guilty for having gone against the wishes of their parents. This is achieved because

the victim's interests supersedes that of their parents over their own self-interest. This is why the practice or process of Forced Marriage should not be criminalised.

Additionally, many of the victims may be children under the age of 16 who will require to return to the family environment when protective measures are obtained. The spectre of criminal prosecution will not allow them to live within the family environment. They will be denied any form of familial support. Confronted with these stark realities they will choose not to pursue a Forced Marriage Protection Order.

The organisation considers that the criminalisation of forced marriage will drive it underground and fewer individuals will come forward to seek information and support.

3. Compliance with the Istanbul Convention is already met through the availability of the Forced Marriage Protection Order. Breach of the Forced Marriage Protection Order will lead to a criminal offence. There is therefore no need to criminalise Forced Marriage in Scotland.

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29 November 2013