

## Justice Committee

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

#### Written submission from the Law Society of Scotland

I refer to the above and write on behalf of the Family Law sub-committee ('the committee') of the Law Society of Scotland to comment specifically on the forced marriage provisions covered by this legislative consent motion.

The Society has been a member of the Forced Marriage Network in Scotland since it was established in 2005. As such, we were quite involved in shaping Scotland's forced marriage legislation and we are still of the view that the end result is a piece of legislation in which the Scottish Parliament should feel justly proud.

To be effective, it was recognised that it had to be respectful of the cultures and communities in Scotland most likely to be affected by forced marriage. During the passage of the legislation, this included detailed consideration of the question of the effect of criminalising forced marriage. It was argued by many groups, the Society included, that the knowledge that a victim or potential victim of forced marriage would be incriminating a family member by seeking legal assistance to avoid or annul the marriage, would deter the individual from acting at all.

The Equal Opportunities Committee concluded in its Stage 1 report that it supported the approach taken in the bill that making a breach of a forced marriage protection order a criminal offence (rather than the act of forcing someone into marriage itself) *"...strikes the right balance between identifying and helping victims of forced marriage and overcoming the concerns about criminalising family members."*<sup>1</sup>

The committee is aware that the UK Government is taking the legislative steps required to enable it to ratify the Istanbul Convention<sup>2</sup>, to which it signed up in 2012 and the committee accepts that the Scottish Government is also bound by its terms. This expressly includes in article 37 of that convention the criminalisation of the "intentional conduct of forcing an adult or a child to enter into a marriage" and "of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage".

We are therefore of the view that despite our reservations on the criminalisation of the act of forcing someone to marry, the Scottish Government is now obliged to take steps to ensure that we comply with this provision. We are also aware of the pressures on the Scottish Parliament's time and it may well be that consenting to the LCM is the most expeditious way of ensuring compliance.

However, the committee would like to express its disappointment that it appears that this decision was made by the UK Government following consultation in England and Wales but not in Scotland, thereby failing to take account of our distinctive legal

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<sup>1</sup> [Stage 1 Report on Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Bill, Paragraph 158](#)

<sup>2</sup> the Council of Europe Convention on preventing and combating violence against women and domestic violence

background in this area. Furthermore, given that we have devolved capacity to legislate on this matter and that in practice, we put a considerable amount of effort into doing so effectively, it is disappointing to have this matter decided and legislated on beyond our control.

It would be useful to know what consultation the UK Government carried out with the Scottish Government before finalising the Bill and why wider consultation on its proposals was not carried out.

We hope that in future, steps are taken to ensure that we are consulted on important issues affecting our communities before such decisions are made.

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International Relations Officer  
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