

Justice Committee

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

Written submission from Scottish Women's Aid, Shakti Women's Aid and Hemat Gryffe Women's Aid

Foreword

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to members and non-members. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need, and an appropriate response and support from, local Women's Aid groups, agencies they are likely to contact and from the civil and criminal justice systems.

Hemat Gryffe Women's Aid is the first Asian, Black and Minority ethnic Women's Aid group in Scotland. Established in 1981 and now based in Glasgow, they are an affiliated member organisation of SWA and offer support, advocacy, information and refuge accommodation to all black/minority ethnic women, children and young people experiencing and/or fleeing domestic abuse.

Shakti Women's Aid is also an affiliated member organisation of SWA; based in Edinburgh, they have been working since 1986 to offer support, advocacy, information and refuge accommodation to all black / minority ethnic women, children and young people experiencing and/or fleeing domestic abuse.

This response has been prepared by Scottish Women's Aid in collaboration with our sister members, Shakti Women's Aid and Hemat Gryffe Women's Aid. We welcome the opportunity to comment on this important matter.

Introduction

Between September and December 2005, the UK Government and the, then, Scottish Executive explored the advantages and disadvantages of introducing a specific criminal offence relating to forced marriage through a joint consultation, *Forced Marriage: A Wrong Not a Right*. 39.4% of Scottish respondents were against the creation of a new offence, while 36.4% were in favour; overall, the majority felt that the disadvantages of creating new legislation to make forced marriage a criminal offence outweighed the advantages.¹

¹<http://collections.europarchive.org/tna/20080205132101/http://fco.gov.uk/files/kfile/05062006%20final%20fm%20report%20nja.0.pdf>

Following the introduction of the UK Government's Forced Marriage (Civil Protection) Act 2007, the Scottish Government made a commitment to consider whether similar legislation should be introduced in Scotland and a consultation, *Forced Marriage: A Civil Remedy?* was undertaken and completed in March 2009. Given the outcome of the earlier 2005 exercise, this 2009 consultation focused on the civil remedies available in Scotland in relation to forced marriage.

SWA commented in our response, *"The attraction of a civil order with criminal penalties on breach is sevenfold:-*

- *The focus is on the safety of the woman, child or young person at risk and not simply on criminally penalising those involved*
- *For those at risk, the issue of the stigma attached to a criminal prosecution for the perpetrators or would-be perpetrators does not exist simply because the FMO is granted. Only if those parties then go on to breach the Order and defy the instructions of the court will they be penalised.*
- *If, in the face of a court instruction ordering them not to do so, the perpetrators persist in attempting to force the person at risk into marriage, thereby breaching the FMO, the person at risk can clearly see that the perpetrators are not acting in their best interests or safety."*

Consultation responses were overwhelmingly in favour of introducing civil remedies, as opposed to introducing any new criminal offence.² 88% of the respondents believed that the Scottish Government should introduce specific civil remedies in relation to forced marriage, which led to the Forced Marriage (Civil Protection) (Scotland) Act 2011.³

In a joint submission on the draft Forced Marriage Bill in 2010 from SWA, Shakti and Hemat Gryffe, we stated *"We support the provisions and intentions of the Bill, particularly the introduction of the Forced Marriage Protection Order ("the Order") as a civil order with criminal penalties. The attraction and value of such an instrument is that being a civil order initially, those likely to engage in the prohibited behaviour will not be penalised until, and if, they breach the Order and the law by attempting to force their son or daughter into marriage, and only then do they face criminal proceedings.. A specific, robust, legal remedy, combined with awareness-raising and appropriate training for all relevant agencies involved in supporting partners forced into marriage, will go far towards offering protection and help those women still at risk..."*

Recent developments at Westminster

The UK Government has recently revisited the issue of criminalisation of forced marriage. Following the outcome of their consultation in England and Wales on the matter in December 2011, where 54% of those who responded were in favour, with 37% against, they undertook to bring forward legislation to criminalise forced marriage.⁴ Consequently, the Anti-Social Behaviour, Crime and Policing Bill, introduced to the Westminster Parliament on 9 May 2013 included provision to create a new criminal offence of forced marriage, in England and Wales only.⁵

² <http://www.scotland.gov.uk/Publications/2008/11/25131845/0>

³ [http://www.scottish.parliament.uk/S3_Bills/Forced%20Marriage%20etc.%20\(Protection%20and%20Jurisdiction\)%20\(Scotland\)%20Bill/b53s3-introd-pm.pdf](http://www.scottish.parliament.uk/S3_Bills/Forced%20Marriage%20etc.%20(Protection%20and%20Jurisdiction)%20(Scotland)%20Bill/b53s3-introd-pm.pdf)

⁴ <https://www.gov.uk/government/consultations/forced-marriage-consultation>

⁵ http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/cbill_2013-20140007_en_9.htm

Response by the Scottish Government

Without undertaking prior public consultation on the matter, the Scottish Government obtained an amendment to this Bill on 15th October 2013, seeking to extend the appropriate parts of clause 104 to Scotland. The UK Government's Anti-Social Behaviour, Crime and Policing Bill ("the Bill") now contains clause 109, introducing an offence of forced marriage to Scotland.⁶

The relevant Legislative Consent Memorandum ("LCM") on this issue has been lodged with the Scottish Parliament by the Cabinet Secretary for Health and Wellbeing⁷. The LCM states that criminalising forced marriage will ensure that legislation is consistent across the UK and that Scotland is in compliance with the relevant article of the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention").

It asserts that as the UK Government is now a signatory to the Istanbul Convention, this requires forced marriage to be a criminal offence, but that the existing legislation in Scotland does not wholly meet the requirements of Article 37 of the Istanbul Convention; currently, forcing someone to marry, or taking advantage of their lack of understanding to trick them into taking part in a marriage is not a specific crime in Scotland.

Submission by Scottish Women's Aid, Hemat Gryffe Women's Aid and Shakti Women's Aid on the Legislative Consent Memorandum

The Justice Committee, in its call for evidence on this LCM asked

- whether or not the LCM procedure should be used in respect of the provisions on forced marriage and also:
- are the proposed provisions an improvement on the current legislation covering forced marriage in Scotland, and
- are the provisions the most effective way to ensure that the Scottish Government meets its international obligations, as set out in the Istanbul Convention

Our response is as follows:-

1) The LCM procedure should not be used in respect of the provisions on forced marriage.

SWA, along with Hemat Gryffe and Shakti, in their expert capacity as specialist service providers, are members of the Scottish Government's Forced Marriage Network, set up to support and inform the Government's work to tackle forced marriage.

We are concerned that, unlike England and Wales, this step to criminalise forced marriage in Scotland has been undertaken with no public consultation or discussion with the expert organisations working to support those at risk and whose support the Government usually obtains in devising appropriate policy and legal responses and guidance in this area.

⁶ http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0052/lbill_2013-20140052_en_1.htm

⁷ <http://www.scottish.parliament.uk/LegislativeConsentMemoranda/AntiSocialBehaviourLCM.pdf>

There is a clear indication from previous public consultations that there was no wish for a criminal offence to be introduced in Scotland. The amendments to the Westminster Bill represent a major policy reversal by Scottish Ministers. As such, this policy shift must be subject to full and transparent scrutiny through the normal Scottish Government open consultation process with the Scottish public. Thereafter, if the findings and evidence indicated that there was an appetite and need for appropriate legislative change, this should be done in consultation and through the scrutiny of the Scottish Parliament in their Bill process where the public would, once more, have the opportunity to comment.

This transparent and public engagement has not been undertaken and the matter cannot proceed simply through the injection of an amendment to a Westminster Bill, the existence of which has not been brought under the scrutiny and comment by the Scottish public and, more importantly, those in Scotland who would be directly affected by the imposition of this offence.

2) The proposed provisions are not an improvement on the current legislation covering forced marriage in Scotland and are not the most effective way to ensure that the Scottish Government meets its international obligations, as set out in the Istanbul Convention

The Istanbul Convention does not require that State parties have a specific criminal offence, only that certain behaviours are criminalised. Article 37 of the Convention states that “1 - Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised. 2 - Parties shall take the necessary legislative or other measures to ensure that the intentional conduct 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 is criminalised.”⁸

Compliance with the obligations of the Istanbul Convention is already being met in Scotland through the existing Forced Marriage Protection Orders in Scotland (“FMPOs”). These may contain a wide number of provisions, including preventing the use of deception and coercive or threatening behaviours, as the court deems necessary to protect an individual who is at risk of forced marriage or who has already been forced into a marriage. A breach of an FMPO is already a criminal offence in Scotland therefore there is no additional requirement to develop a specific offence.

Unlike other state parties to the Convention, the UK already has criminal law, both common and statute, which contains a broad spectrum of offences under which this behaviour can already be prosecuted. In Scotland, these include abduction, aiding and abetting a criminal offence, assault, child abduction, blackmail, breach of the peace, breach of a forced marriage protection order, extortion, false imprisonment, harassment, kidnapping, murder, rape, stalking, theft, threats to kill and trafficking. It is our view, therefore, that there is no need for a new specific offence of ‘forced marriage’. This point was made by respondents to the 2005 consultation. There is, for example, no specific criminal offence of domestic abuse but that has not prevented a culture of zero tolerance of domestic abuse from emerging. A better

⁸ <http://www.conventions.coe.int/Treaty/EN/treaties/html/210.htm>

approach would be to introduce forced marriage as an aggravating feature during the sentencing stage of criminal proceedings in Scotland.

It is not at all clear that merely making forced marriage a criminal offence would automatically ensure that it has a deterrent effect. A number of European countries have criminalised forced marriage but no research on the success of this legislation has been published to date.

It is difficult for people at risk of forced marriage to report their parents and families to the police or even to pursue civil protection. They often need to be reassured that the protection they seek can be obtained in the family courts, and, thus, that their families will not be prosecuted, before they will agree to make a formal statement. Many are reluctant to report their experiences to the authorities for fear that their family will face criminal sanctions. Criminalisation of forced marriage may therefore further deter vulnerable persons from coming forward and may negatively impact on the use of the existing civil legislation. The symbolic value of any criminal law on forced marriage will be greatly diminished if perpetrators know that it will not be used.

Criminalisation of forced marriage is not about prevention. By the time criminal proceedings take place, the forced marriage may already have taken place, probably abroad, by perpetrators seeking to circumvent this jurisdiction. A case may have got so far that it may be too late to do anything about it.

These are all issues and concerns already raised by Dr Aisha K. Gill, Southall Black Sisters, Ashiana Network, Imkaan and the Children's Commissioner for England in their written evidence to the House of Commons Public Bill Committee on the Anti-social Behaviour, Crime and Policing Bill provisions to criminalise forced marriage in England and Wales.⁹

Scottish Women's Aid, Hemat Gryffe Women's Aid and Shakti Women's Aid all share their view that the focus should be on existing civil and criminal laws and guidelines on forced marriage to ensure that they are robustly implemented.

Summary

In summary, responding to paragraph 28 of the LCM, for the reasons set out above, we do not consider that extending the application, to Scotland, of the relevant provisions in the Bill relating to the criminalisation of forcing a person to marry is a sensible and appropriate step which will ensure the effective implementation UK-wide of forced marriage provisions.

We believe that it is neither in the interests of the Scottish people, nor good governance, that the relevant provisions be considered by the UK Parliament. On the contrary, for good governance, and in the interests of the Scottish people - particularly those at risk of forced marriage - this issue should be considered by the people of Scotland and any change, if appropriate, considered by the Scottish Parliament.

⁹ <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill/committees/houseofcommonspublicbillcommitteeontheantisocialbehaviourcrimeandpolicingbill201314.html>

We urge the Justice Committee, in their report to the Scottish Parliament on the LCM, to recommend both that the Parliament reject that part of the LCM relating to forced marriage and that the UK Parliament should not be legislating on its behalf in this matter.