

Call for Evidence on the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill
Response from the Scottish Council of Jewish Communities

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The Scottish Council of Jewish Communities supports the principle that marriage should be entered into “*freely and without coercion*”¹. Legislation is not merely about criminalising particular activities; it is also a means by which a society indicates its standards and ideals, and signposts its aspirations; and we therefore believe that there is a strong case for legislation relating to forced marriage. The Scottish Parliament has a duty to provide leadership to create a society in which individuals and communities feel safe to live their daily lives. On this basis alone we would support legislation against forced marriage, though we believe that there are also other strong arguments in favour of such a move.

We also welcome the recognition that forced marriage is not condoned by any religion. However, we believe it will be important for the guidance referred to in section 11 of the Bill and in the Financial Memorandum, to draw a clear distinction between forced and arranged marriages. Arranged marriages, in which the parties concerned are free to reject any proposed spouse, are traditional in many religions and cultures, including some traditions within Judaism, and we would deplore any negative consequences that might arise if legislation prohibiting forced marriage were to be misinterpreted as applying to arranged voluntary marriage.

Limitations of the Bill

The legislation will inevitably have limitations insofar as those who may attempt to force an individual into marriage may frequently be the very people to whom the victim has a close emotional connection, often parents or other close family members. We therefore agree that it is appropriate to permit a relevant third party to apply for a forced marriage protection order in cases in which the victim feels unable to act. However, this alone will not always provide a remedy since the court must, rightly, still consider “*the wishes and feelings of the protected person*”².

Legislation alone will not, therefore, provide a complete solution to the problem of forced marriage, and we therefore urge the Scottish Government to support initiatives in the community to raise awareness of, and to tackle this abuse. Adequate funding is vital to enable this to be done effectively, and to provide support for victims of forced marriage, and we emphasise the necessity of Government money being made available for this.

¹ Policy Memorandum (para 3)

² Bill 3(3)(c)

Part 2

Whilst we support the principle of enabling the Sheriff Court to hear actions for declarator of nullity of marriage in cases of forced marriage, we would point out that a civil court ruling cannot end or declare void religious marriages in some faith traditions³, notably Judaism and Islam. As a result, an individual who had contracted a religious marriage, even under duress, might still be married according to religious law, and therefore unable to enter into a subsequent religious marriage. We therefore recommend that the statutory guidance should advise victims and their legal advisers to consult with relevant religious authorities in order to ensure that a victim is genuinely freed from all aspects of a forced marriage, and is in a position to marry by means of either a civil or religious ceremony in future.

Summary

The Scottish Council of Jewish Communities supports “*provision for protecting people from being forced to enter into marriage without their full and free consent*”⁴, and therefore welcomes the introduction of this Bill.

Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charity SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted widely among members of the Scottish Jewish community.

³ Forced marriage occurs extremely rarely (if at all) among Jewish families. Clause 15 of the Family Law (Scotland) Act 2006 introduced a provision to prevent, so far as possible, situations in which a religious marriage persists after the parallel civil marriage has been ended, although it is only of assistance in cases in which a party who is delaying the religious divorce nonetheless desires the civil marriage to be ended. The secondary legislation currently provides for it to be applied only in relation to Jewish religious marriages.

⁴ Policy Memorandum (para 2)