

1. Summary response

1.1 SCRA welcomes the opportunity to provide Stage 1 written evidence on the Forced Marriages Etc. (Protection and Jurisdiction) (Scotland) Bill. We obviously have a particular concern and interest in the impacts on children and young people, who may be forced into marriage themselves or may be adversely impacted by a parent or family member being so forced. We therefore welcome the additional protections offered by the Bill and in particular the creation of the Forced Marriage Protection Order.

1.2 We do have some concerns however, that the linkages and interfaces between proceedings under this Bill and those under the Children's Hearings System are not as clear as they could be. It is to be hoped that the involvement of the local authority would provide some of these links but they may not be involved in all cases or at all stages of the various processes.

1.3 The need to ensure that the two systems are appropriately joined up is highlighted by the fact that the Children's Hearings (Scotland) Bill, which is currently undergoing Parliamentary scrutiny at Stage 3, includes a new ground of referral for children at risk of being forced into marriage. Section 65(2)(p) of the Bill provides that a child can be referred where:

"the child -

(i) is being or is likely to be subjected to physical, emotional or other pressure to enter into a marriage or civil partnership

(ii) is or is likely to become a member of the same household as such a child"

1.4 It is important for the necessary linkages between these two pieces of legislation to be made so that children who are either being forced into marriage themselves, or who may be at risk due to a parent or sibling being so forced, can be fully protected and so that there is no confusion over which legislation should apply in which circumstances.

2. Detailed response

2.1 Section 1(4) of the Bill provides that a person is forced into marriage if they do not give their full and free consent. Notwithstanding the fact that children cannot consent to a marriage under Scots law if they are under the age of 16, SCRA believes that there may be some value to enshrining that principle on the face of the Bill.

2.2 Section 4(1)(a) provides that the court may make a forced marriage protection order on its own initiative where civil proceedings are before the court. We are unclear whether this can be construed to include Children's Hearings proceedings, which are proceedings sui generis. We can see some advantages to the Sheriff being able to use the additional powers in s.2(3)(c) when considering a proof for example and would welcome some clarity from the Scottish Government on this issue.

2.3 We consider that, should the Forced Marriage Bill be passed, there will be a need to add Forced Marriage Protection Orders to the list in Section 60(5) of the Children's Hearings Bill. This will ensure that, where a Sheriff is considering such an order, any children involved can be referred into the

Children's Hearings System if one of the grounds for referral to the Reporter in s.65(2) of the Children's Hearings Bill applies.

3. Conclusion

3.1 SCRA is wholly supportive of the policy intention and the provisions of the Bill, subject to the comments made above.

SCRA
25 November 2010

