

# **Scottish Statutory Guidance - Supplementary Guidance Document 2014**



**The Scottish  
Government**  
Riaghaltas na h-Alba

# Scottish Statutory Guidance – Supplementary Guidance Document 2014

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# Chapter 1

## Status, relevant persons, aims and content

### Status

1. This guidance is given by the Scottish Ministers in exercise of powers under section 122 of the Anti-Social Behaviour, Crime and Policing Act 2014<sup>1</sup> (“the Act”) and under 11(1) and (2) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (“the 2011 Act”)<sup>2</sup> Relevant persons must have regard to it when exercising public functions in or as regards Scotland.

2. This paper complements and should be read in conjunction with the Scottish Government’s Statutory Guidance on Forced Marriage. This defines relevant public authorities and persons and bodies in Scotland to whom this guidance applies.

<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

### Aims and content

3. The statutory guidance and this supplementary guidance paper is given to Chief Executives, Directors and senior managers of bodies mentioned in Appendix A. These outline their responsibilities for developing and maintaining local procedures and practice arrangements to enable their frontline practitioners to handle cases of forced marriage effectively. These guidance documents set out how cases of forced marriage should be responded to using existing frameworks for protecting children, adults at risk and victims of abuse.

4. **This document gives guidance about the effect of section 122 of the 2014 Act AND Part 1 of the 2011 Act**, and about other matters relating to forced marriage.

- Chapters 2 and 3 give guidance on the background to both Acts and other matters relating to forced marriage and the effect of Part 1.
- Chapters 4 to 6 go on to set out the duties and responsibilities of relevant persons, bodies and offices in Appendix A.

5. They also highlight actions that may inadvertently endanger and place a victim at risk of harm. These include failure to share information appropriately among agencies, breaches of confidentiality and dangers arising from involving families, including all forms of family counselling mediation, arbitration and reconciliation.

6. As forced marriage is a form of child and adult abuse, the statutory guidance and this supplementary document should form part of existing domestic abuse, child and adult protection structures, policies and procedures.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

<sup>2</sup> <http://www.legislation.gov.uk/asp/2011/15/contents/enacted>

# Chapter 2

## Background

7. From 30 September 2014 the Scottish Government commenced provisions within the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”). Section 122 makes forcing someone to marry a criminal offence in Scotland.

**This does not mean that the existing legislation in the 2011 Act will be replaced by section 122 of the 2014 Act. The 2014 Act will add an additional layer of protection for those at risk of Forced Marriage.**

**The new criminal offence in the 2014 Act will sit alongside the existing protections in the 2011 Act. Victims will still be able to use the civil route as they can now and apply for a Forced Marriage Protection Order.**

**This may be done in tandem with criminal investigation/proceedings. Bear in mind that whilst a victim may not wish criminal proceedings to go ahead the Crown Office and Procurator Fiscal’s (“the COPFS”) Prosecution Code sets out the decision making process followed by COPFS when they receive a report of a criminal offence. It sets out both the evidential considerations and the public interest considerations that are relevant to decision making.**

**The consent of the victim is not a prerequisite for criminal proceedings in Scotland. The views of the victim would be one factor for prosecutors to consider when deciding whether to initiate or continue with criminal proceedings in any particular case. However, prosecutors have a duty to make decisions based on the wider public interest.**

8. Forced marriage is a form of violence against women/gender-based violence and, when children are involved, child abuse. It is associated with other forms of domestic abuse and ‘honour-based’ violence. This is in no way intended to diminish the experience of, or risks posed to, those who do not identify as women.
9. Everyone has a right to enter into marriage with their full and free consent and to make decisions about their lives.

10. A forced marriage is a marriage in which one or both spouses do not (or, in the case of children/young people/adults at risk, cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure, threatening conduct, harassment, threat of blackmail, use of deception and other means. It is also to knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage. Duress may be from parents, other family members and the wider community.
11. The main support organisations in Scotland for female victims, who make up the vast majority of cases, are [Shakti Women's Aid](#) in Edinburgh and [Hemat Gryffe Women's Aid](#) in Glasgow. In 2013 Shakti Women's Aid supported 25 forced marriage cases and Hemat Gryffe Women's Aid 13 cases.
- There is not a great deal of data in relation to male victims of forced marriage. However we know that in 2013, of the 1302 calls to the UK Forced Marriage Unit 18% came from males.
  - Forced marriage also affects people with learning and other disabilities, regardless of which cultural community they belong to and evidence suggests that for people with learning disabilities, forced marriage may occur at a similar rate for men and women. Adults and young people from the LGBTI community can also be particularly be at risk.
- Breakdown of calls to the Forced Marriage Unit -**  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/291855/FMU\\_2013\\_statistics.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291855/FMU_2013_statistics.pdf)
12. Police Scotland, COPFS and the main support organisations are working in partnership to increase the confidence of victims to come forward and report honour based violence including forced marriage.

**The new offence in the 2014 Act will provide an additional layer of protection to victims against a practice that is in itself not only a fundamental breach of one's human rights, it is also a form of physical, psychological, financial, sexual and emotional abuse and where children are involved child abuse.**

# Chapter 3

## Understanding the issues around forced Marriage

### Understanding forced marriage

13. The Scottish Government regards forced marriage as a form of violence against women<sup>3</sup>/gender-based violence and, when children are involved, child abuse. It is associated with other forms of domestic abuse and 'honour-based' violence. It can happen to both men and women although most cases involve younger women and girls aged between 13 and 30.
- **However, there is no “typical” victim of forced marriage. Some are under 16 years old, although many are older. Some victims have a disability and some are spouses from overseas. Forced Marriage is specifically referenced in “Equally Safe”, Scotland’s strategy to prevent and eradicate violence against women and girls.** <sup>4</sup>
14. Under Part 1 of the 2011 Act, a civil court may make an order for the purposes of protecting a person:
- from being forced into a ceremony of marriage or from any attempt to force the person into a ceremony of marriage, or
  - who has been forced into a ceremony of marriage
15. A person (“A”) is regarded as being forced into a ceremony of marriage if another person (“B”) forces A to enter into a ceremony of marriage without A’s free and full consent. The ceremony can be religious or civil and it can take place anywhere. In addition, the ceremony does not need to be legally binding (as a marriage) under the law of Scotland or any other place.
16. The concept of force includes coercion by any means (physical, verbal or psychological) and can include behaviours such as threatening conduct, harassment or blackmail. Force includes knowingly taking advantage of a person’s incapacity to consent to marriage or to understand the true nature of marriage.
- 17. Section 122 of the 2014 Act Section 122 of The Anti-Social Behaviour Crime and Policing Act 2014, (referred to throughout this document as “the 2014 Act”), makes forcing someone to marry a criminal offence in Scotland.**

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<sup>3</sup> See definitions in Annex B for more information

<sup>4</sup> <http://www.scotland.gov.uk/Publications/2014/06/7483>

## **Forced marriage is an abuse of human rights**

18. While it is important to be aware of the motives which drive parents, extended family members and others to force people to marry, these motives should not be accepted as justification for denying them the right to choose their own marriage partner and enter freely into marriage.
19. In addition to the provisions of the 2011 Act and the 2014 Act, Appendix C identifies some international law principles which may be of relevance in this context. In particular, forced marriage may involve an abuse of a child's rights under the UN Convention on the Rights of the Child (UNCRC). It is also an abuse of the basic human rights of children, young people and adults, as set out in the European Convention on Human Rights and is directly contrary to the domestic laws of Scotland and the UK.

## **Possible consequences of forced marriage**

20. Women forced to marry may find it very difficult to initiate any action to bring the marriage to an end and may be subjected to repeated rape (sometimes until they become pregnant) sexual degradation and also domestic abuse within the marriage.
  - Victims frequently end up trapped in a relationship marked by physical and sexual abuse. In some cases, they suffer violence and abuse from the extended family.
  - The impact this has on children within the marriage is immense. Witnessing persistent violence and domestic abuse can traumatise children and undermine their emotional security and capacity to meet the demands of everyday life. It is also associated with depression, trauma related symptoms and low self-esteem in adulthood. Children's academic abilities can be affected.
21. Some people may think that running away is their only option. For many young people, especially women from ethnic minority communities, leaving their family can be especially hard. They may have no experience of life outside the family and therefore, they do not know how, or where to access, personal and financial support, including information on the law and their rights, particularly in their own language if it is not English. They may be suspicious or fearful of engaging with organisations such as the police.
22. Most victims/potential victims contact police seeking safety and protection but see this as a temporary solution as they hope that despite the treatment they have been subjected to, those closest to them, who they still love, will accept their decision and eventually agree reconciliation. This often means that the services that can be offered such as relocation are not seen as viable options unless the victim has reached a point of desperation that can be when they are at the greatest risk. The consequences for victims

of forced marriage cannot be underestimated and effective management of the risk that exists for them must be of the highest priority for all service providers.

23. For many, finding accommodation for themselves and their children is very difficult – especially for those who do not have leave to remain in the United Kingdom and do not have recourse to public funds.
24. Living away from home with little support can make a victim more isolated, thus making it more likely that they will return to the abusive situation. In addition, leaving their family (or accusing them of a crime or simply approaching statutory agencies for help) may be seen as bringing shame on their honour and on the honour of their family in the eyes of the community. This may lead to social ostracism and harassment from the family and community. For many, this is simply not a price they are prepared to pay.
25. Those who do leave often live in fear of their own families, who will go to considerable lengths to find them and ensure their return. Families may solicit the help of others to find them, or involve the police by reporting them missing or falsely accusing the person of a crime (for example theft). Some families have traced individuals through medical and dental records, bounty hunters, private investigators, local taxi drivers, members of the community and shopkeepers or through National Insurance numbers, benefit records, school and college records. Sometimes having traced them, the family murders them (so called "honour killing"). This may seem an almost exaggerated or extreme response but the risk to those who leave is very real. The potential for such a reaction from families should never be ignored or downplayed and the contents or fears of victims on this issue should be listened to.
26. Many girls and young women are withdrawn from education early. Some are taken and left abroad for extended periods, which isolates them from help and support – this limits their choices so that often they go through with the marriage as the only option. Their interrupted education limits their career choices. Even if they manage to find work, however basic, they may be prevented from taking the job or their earnings may be taken from them.
27. This leads to economic dependence, which makes the possibility of leaving the situation even more difficult. Some may be unable to leave the house unescorted – living virtually under house arrest.

## The legal position – Criminal law

### The 2014 Act

28. The legislation **making** Forced Marriage an offence in Scotland is contained in section 122 of the 2014 Act.

[http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga\\_20140012\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf)

The Act states that:

1. A person commits an offence under the law of Scotland if he or she—
  - (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
  - (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.
2. In relation to a victim who is incapable of consenting to marriage by reason of mental disorder, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form coercion).
3. A person commits an offence under the law of Scotland if he or she—
  - (a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and .
  - (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in Scotland.
4. “Marriage” means any religious or civil ceremony of marriage (whether or not legally binding).
5. “Mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
6. It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.
7. A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception—
  - (a) the person or the victim or both of them are in Scotland, .
  - (b) neither the person nor the victim is in Scotland but at least one of them is habitually resident in Scotland, or .

**(c)neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.**

**8. “UK national” means an individual who is—**

**(a)a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; .**

**(b)a person who under the British Nationality Act 1981 is a British subject; or .**

**(c)a British protected person within the meaning of that Act.**

**9. A person guilty of an offence under this section is liable—**

**(a)on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;**

**(b)on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or both.**

29. The COPFS' Prosecution Code sets out the decision making process followed by the Crown when they receive a report of a criminal offence. Therefore in order to allow an accusation of forced marriage to proceed to court they, the crown would be required to satisfy themselves that corroboration of the essential facts exists to provide a sufficiency of evidence, and thereafter that prosecution is in the public interest.

30. COPFS could proceed with a prosecution without the victim's consent or involvement, if there was sufficient evidence from other sources as the consent of the victim is not a prerequisite for criminal proceedings in Scotland. However the views of the victim would be one of a range of factors for prosecutors, who have a duty to make decisions based on the wider public interest, to consider when deciding whether to initiate or continue with criminal proceedings in any particular case.

31. Both the criminal and civil courts provide a range of special measures such as

- a live TV link, a screen and a supporter to help vulnerable victims and witnesses to give their best evidence. Such measures can be applied for should they be required in any prosecution for forced marriage.

### **Other remedies in Criminal Law**

**Perpetrators – usually parents or family members – could also be prosecuted for offences including stalking, harassment, alarming and threatening behaviour, assault, kidnap, abduction, theft (of passport), threats to kill, imprisonment and murder. Sexual intercourse without consent is rape, regardless of whether this occurs within a marriage or not. Criminalisation does not remove these offences and concerns/reports of forced marriage should be looked at with the “big picture” in mind**

## Child Protection

32. There are also provisions in domestic law to protect children and deal with criminal behaviour such as child abduction, cruelty to persons under 16 (including neglect and abandonment) and physical punishment of children.

33. The Immigration legislation and rules also provide protection for children and young people. The age of entry into the UK for spouses, fiancé(e)s, civil partners unmarried or same sex partners is 18 and assisting in an unlawful entry is a criminal offence.

34. Sexual intercourse without consent is rape, regardless of whether this occurs within a marriage or not. This is clearly set out in the [Sexual Offences \(Scotland\) Act 2009](#), which also contains provisions criminalising people engaging in sexual activity with children under the age of 16, regardless as to whether the conduct is apparently consensual or not. It is not a defence to these offences that the accused was married to the child or there was a lack of capacity to consent for whatever reason.

35. Female Genital Mutilation (FGM) is [defined by the World Health Organisation](#) as all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for nonmedical reasons. FGM can be linked to forced marriage as it is a form of controlling women and girls and is sometimes followed by early or forced marriage. The [Prohibition of Female Genital Mutilation \(Scotland\) Act 2005](#) makes it a criminal offence for a person to carry out the specified female genital mutilation procedures on another person, including children and young people.

36. Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 created an offence of engaging in 'threatening or abusive behaviour'. Subsection (1) provides that it is an offence for a person to behave in a threatening or abusive manner where that behaviour would be likely to cause a reasonable person to suffer fear or alarm and he or she either intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm. Also section 39 of this Act created an offence of 'stalking'.

37. For information about relevant Scottish legislation, terms and powers relating to child protection including emergency child protection measures and the Children's Hearings system, please see the Scottish Government's [National Guidance for Child Protection in Scotland 2014](#). This document also has a section on honour-based violence and forced marriage.

## Adult protection

38. There is a range of protective measures under legislation including the Adult Support and Protection (Scotland) Act 2007<sup>5</sup>, Adults with Incapacity (Scotland) Act 2000<sup>6</sup> and the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>7</sup> which can protect adults at risk. In certain circumstances, the police can intervene to protect adults at risk.

## Civil law remedies

39. In addition to the criminal law, the following civil remedies may offer some protection or assistance to those who are being, or have been, forced into a marriage:

- a common law interdict with power of arrest under the Protection from Abuse (Scotland) Act 2001,
- an interdict or non-harassment order under the Protection from Harassment Act 1997,
- a non-harassment order under the Domestic Abuse (Scotland) Act 2011
- a matrimonial interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under the 2001 Act (available within marriage, against the spouse only),
- an exclusion order under the 1981 Act (available to spouses or cohabiting couples only)
- a domestic interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under the 2001 Act (available only to couples who are or were living together)
- A determination that an interdict is a domestic abuse interdict under the Domestic Abuse (Scotland) Act 2011
- a declarator of nullity of marriage, and
- divorce.

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<sup>5</sup> <http://www.legislation.gov.uk/asp/2007/10/contents>

<sup>6</sup> <http://www.legislation.gov.uk/asp/2000/4/contents>

<sup>7</sup> <http://www.legislation.gov.uk/asp/2003/13/contents>

## **Forced Marriage Protection Orders under the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011**

40. Part 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 empowers the civil courts in Scotland to make a forced marriage protection order (FMPO) which can protect both adults and children at risk of being forced into marriage and can offer protection for those who have already have been forced into marriage.

41. The provisions in this Part are designed to enable the courts to tailor the terms of an FMPO to protect and meet the specific needs of victims of forced marriage or potential forced marriage. For example it might state that the protected person must be taken to a place of safety designated in the order, or that the protected person be brought to a court at such time and place as the court specifies; that any violent, threatening or intimidating conduct be stopped; that the protected person not be taken abroad; or that documents such as passports or birth certificates be handed over to the courts.

### **Relevant third parties**

42. Section 3 of the Act enables any person, with leave of the court, to apply for an FMPO. However, certain specific categories such as the victim and what are referred to in the Act as a “relevant third party”, (namely a local authority, the Lord Advocate, and any other person specified by order, may apply without leave).

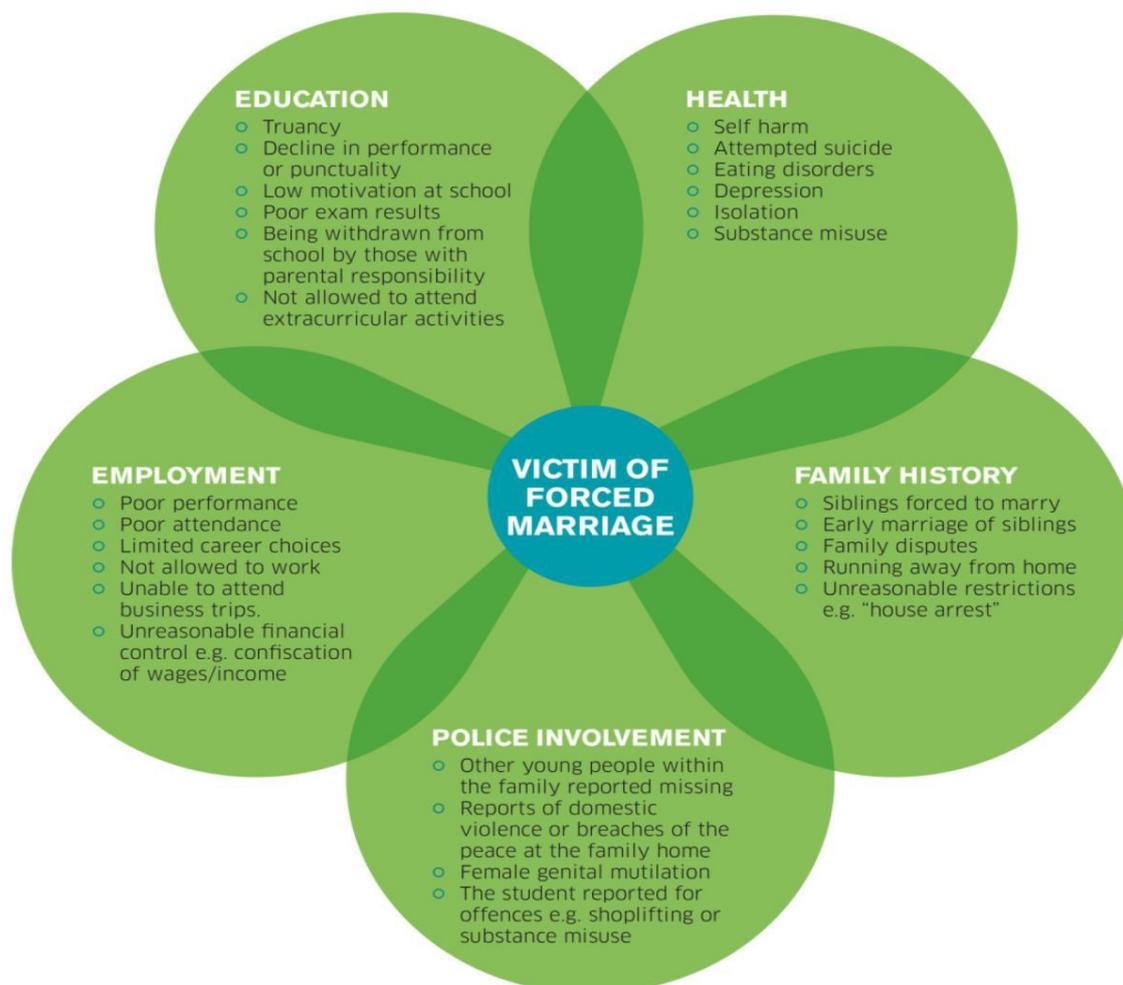
43. Local authorities will decide how best to deliver their role as a relevant third party applying for a FMPO under this provision as they do for orders under other legislation including for example, antisocial behaviour orders.

### **Breach of a forced marriage protection order**

44. Breach of a FMPO is a criminal offence and is punishable by imprisonment for up to 2 years and/or a fine. The police may arrest without warrant any person who they reasonably believe is committing or has committed a breach of a FMPO.

45. As with any other civil order, the applicant or the protected person would be the person who would report the breach to the police. However, any person including, for example, a friend or relative of the protected person (even if not directly affected by the order) could report a breach of a FMPO to the police for investigation.

## Potential warning signs or indicators



46. Individuals facing forced marriage may appear anxious, depressed and emotionally withdrawn with low self-esteem. They may come to the attention of professionals for a variety of reasons. Whilst the factors set out in the diagram may be, collectively or individually, an indication that someone is facing forced marriage, it should not be assumed that it is forced marriage simply on the basis that someone presents with one or more of these warning signs. These warning signs may indicate other types of abuse that will also require a multiagency response. These indicators are not meant to be exhaustive.

47. There have been occasions when women have presented with less common warning signs. For example, with hair having been cut or shaved as punishment for disobeying or “dishonouring” her family; or girls being taken to the doctor to be examined to see if they are virgins. Some women have presented with symptoms associated with poisoning.

48. In certain communities, women undergo female genital mutilation (FGM) before being able to marry – usually this is performed during childhood

but there have been reports of young women undergoing FGM just before a forced marriage. **FGM is illegal in Scotland** as well as in the rest of the UK and it is also a criminal offence to take someone overseas for the purposes of FGM.

## Chapter 4

### Actions for Chief Executives, Directors and senior managers to whom this guidance is addressed

49. All Chief Executives, Directors and senior managers providing services to victims of forced marriage and honour-based violence need to be aware of the “one chance” rule. That is, their staff may only have one chance to speak to a potential victim and thus, their staff may only have one chance to save a life. This means that all professionals working within statutory agencies need to be aware of their responsibilities and obligations when they come across forced marriage cases. If the victim is allowed to walk out of the door without support, that one chance might be lost.

50. Forced marriage is also a form of domestic, child and adult abuse and should be treated as such. Ignoring the needs of victims is not an option. Cases should be tackled regardless of cultural sensitivities, using existing structures, policies and procedures designed to protect children, adults at risk and victims of domestic abuse.

51. Existing strategic bodies should ensure that their member agencies work effectively using agreed policies and procedures to tackle this issue. This includes local strategic partnerships, such as Community Safety Partnerships and Multi Agency Violence Against Women Partnerships, local Child Protection and Adult Support and Protection Committees and Multi-agency Risk Assessment Conferences (MARACs) where these are in place.

52. Public authorities should also be aware of their statutory obligations under the [Equality Act 2010](#) to have due regard to the need to eliminate discrimination which is unlawful under the Act, advance equality of opportunity and foster good relations.

53. The UK Government’s Equality Act 2010 introduced a public sector equality duty (PSED) which requires public authorities to have 'due regard' to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

54. Further Scottish [specific duties](#) came into force on 27 May 2012 to help listed public authorities better perform their obligations under the PSED.

**Senior management commitment – refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

55. Chief Executives, Directors and senior managers should ensure their organisation has:

- A lead person responsible for the issue of forced marriage. This is likely to be the person with overall responsibility for protecting children, adults at risk or victims of domestic abuse and other forms of gender-based violence
  - Policies and procedures in place to protect those potentially at risk of forced marriage, both in terms of internal Human Resources and staff policies and the external service delivery/provision. The policies and procedures should be in line with existing statutory and non-statutory guidance on protecting children<sup>8</sup>, adults at risk<sup>9</sup> and victims of domestic abuse and other forms of gender-based violence<sup>101112</sup>
  - These policies and procedures should form part of an overall child/adult protection strategy
  - Policies and procedures that are updated regularly to reflect any structural, departmental and legal changes
  - A named person who has day to day responsibility for overseeing the organisational response to forced marriage ensuring that cases of forced marriage are handled, monitored and recorded properly

**Roles and responsibilities - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

56. Chief Executives, Directors and senior managers should ensure that:

- Staff have an awareness and understanding of the nature and impact of forced marriage, including the Scottish Government's Multi-Agency Practitioner Guidance on Forced Marriage.  
<http://www.scotland.gov.uk/Publications/2014/10/4797>
- Their staff understand their role in protecting people under threat of, or already trapped in, a forced marriage and how this fits into their organisation's strategy and is relevant to their work

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<sup>8</sup> National Guidance for Child protection in Scotland 2014  
<http://www.scotland.gov.uk/Publications/2014/05/3052>

<sup>9</sup> [Adult Support and Protection \(Scotland\) Act 2007 Code of Practice](#) for local authorities and practitioners exercising functions under Part 1 of the ASP Act.

<sup>10</sup> [A Partnership Approach to Tackling Violence Against Women in Scotland: Guidance for Multi-Agency Partnerships](#), Scottish Government, 2010

<sup>11</sup> [CEL 41](#) (2008) instructs Health Boards to implement an HR policy on gender based violence

<sup>12</sup> Equally Safe sets out Scotland's strategy to take action on all forms of violence against women and girls. <http://www.scotland.gov.uk/Publications/2014/06/7483>

- Their staff are familiar both with their organisational and statutory responsibilities when protecting individuals threatened with or already in a forced marriage and with the relevant internal and external policies and protocols
- Their staff know who has overall responsibility within their Organisation for forced marriage issues, who has day-to-day responsibility, to whom they should refer cases within their organisation and when to refer cases to other agencies, or consult with them, and the named external contacts/teams
- Frontline staff dealing with cases of forced marriage have access to, and are strongly recommended to consult, the practice guidelines that have been issued by the Scottish Government

## **Clear lines of accountability**

57. Chief Executives, Directors, lead officers for both adult and children's services and senior managers should ensure that:

- There is a designated person within the organisation who is accountable for promoting awareness of forced marriage and a designated individual responsible for developing and updating all policies and procedures associated with forced marriage. This is likely to be the person with overall responsibility for promoting awareness of, and updating policies and procedures concerning the protection of children/adults at risk or victims of domestic abuse, namely the lead person
  - The designated person is a specialist in domestic abuse, adult protection or child protection with existing experience, expertise and knowledge
  - There is a senior specialist who has undertaken additional training who can be approached to discuss and direct difficult cases
  - There are clear lines of accountability from the frontline staff to senior management

**Victim-centred approach - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

**Effective inter-agency working and information sharing - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

**Confidentiality - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

## **Staff training and awareness raising**

58. Chief Executives, Directors and senior managers should ensure that:

- Suitable training and awareness raising, particularly on the 2011 Act, the 2014 Act and criminal offence, is incorporated into existing training within agencies to ensure frontline staff are aware of the issues and know how to respond quickly and appropriately to individuals threatened with, or already in, a forced marriage
  - Training input should always be facilitated by a professional who has experience of dealing with forced marriage cases
  - Staff receive updates on the issues surrounding forced marriage and honour-based violence within their existing training on domestic abuse and child/adult protection
  - Existing work on social cohesion, equality and community outreach programmes should be used to raise general awareness of forced marriage and the help and support available within the local community

**Monitoring and evaluation - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

**Risk assessment - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

**The danger of family counselling, mediation, arbitration and Reconciliation - refer to existing Statutory Guidance**  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>

## Chapter 5

### Specific issues to be considered by agencies working with, or providing services to, children and young people

#### Existing multi-agency guidance about children and young People

59. There is existing multi-agency statutory and non-statutory guidance for protecting children. This includes [A Guide to Implementing Getting it right for every child](#), updated 2012, and its supporting briefings<sup>13</sup> which are key documents for people at all levels who are involved in improving outcomes for children and young people.

60. The *Getting it right* guidance sets out: the role of the Named Person to take initial action if a child needs extra help; the role of the Lead Professional to co-ordinate multi-agency planning where necessary; how to identify, record and share concerns; using the My World Triangle to assess the strengths and pressures in all aspects of a child or young person's life; the use of the Resilience Matrix and the Child's Plan; and the contribution of *Getting it right* to the Children's Hearings System.

61. [National Guidance for Child Protection in Scotland updated in 2014](#) gives a national framework to help shape local practices and procedures in child protection. It is based on the principles of *Getting it right for every child* by focusing on putting the child at the centre and better outcomes for children in need of protection at the earliest possible stage. It includes key messages for practitioners on cases of forced marriage.

#### The danger of involving the family and the community

**62. One of the underpinning principles of *Getting it right* is the involvement of the child's or young person's family wherever possible. However, in cases of forced marriage, involvement may increase the risk of significant harm to the child or young person and any siblings as the family may deny that the child or young person is being forced to marry and they may expedite any travel arrangements and bring forward the marriage. Efforts should be made to ensure that families are not alerted to a concern that may result in them removing the child or young person from the country or placing them in further danger.**

63. The primary principle of *Getting it right* is to act in the best interests of the child and young person. Child protection guidance states that discussion

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<sup>13</sup> Giftec practice Briefings - <http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright/publications/practice-briefings>

with family and the family's agreement to refer to local authority children and families social work should only be done where such discussion and agreement-seeking will not place a child at increased risk of significant harm. **Consequently, agencies should not approach or involve families if forced marriage is suspected.**

64. Children's Hearings are independent tribunals which operate under the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings Rule 2013 and the Children's Hearings (Scotland) Act 2011). Under rule 15 and section 178 of the Children's Hearings (Scotland) Act 2011, the Principal Reporter may withhold information relating to the whereabouts of the child. For example, if a child is kept in a place of safety, that address may not be disclosed to persons where disclosure would risk serious harm to the child.

The operation of the Children's Hearings (Scotland) Act 2011 is more fully explained in the Multi-Agency Practitioner Guidance - <http://www.scotland.gov.uk/Publications/2014/10/4797>

## **Immediate protection**

65. Ideally, professionals should discuss cases of forced marriage with, and seek advice from, a designated professional or another statutory agency; however, there may be occasions when immediate emergency action is necessary to protect a child or young person from being forced to marry or abducted e.g. police protection or legal measures for the emergency protection of children, contained within the [Children's hearings \(Scotland\) Act 2011 and Children \(Scotland\) Act 1995](#). More information can be found in the Multi-Agency Practice Guidance <http://www.scotland.gov.uk/Publications/2014/10/4797>. In this case, a strategy discussion should take place as soon as possible after the immediate protection to plan the next steps<sup>14</sup>

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<sup>14</sup> Local protocols and procedures relating to child and adult protection and domestic abuse should be referred to, to determine who should be involved in these discussions.

## Chapter 6

### Specific issues to be considered by agencies working with, or providing services to, adults and adults at risk

#### Existing multi-agency guidance concerning adults

66. There are existing multi-agency policies and procedures to protect adults at risk of harm. These have been developed at a local level by the Adult Support and Protection Committee whose membership includes, local authority staff, NHS, Police and other agencies. There is also legislation which exists to help and support adults at risk:

- the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)
- the [Adults with Incapacity \(Scotland\) Act 2000](#)
- the [Adult Support and Protection \(Scotland\) Act 2007](#)

67. The Adult Support and Protection (Scotland) Act 2007 sets out the roles and responsibilities of all agencies involved in protecting adults at risk and is the main point of reference for Adult Protection Committees. Each local Adult Protection Committee is responsible for developing its own guidance and training using the [Adult Protection Code of Practice](#) (updated 2014) This Code of Practice fulfils the obligation placed on Scottish Ministers by Section 48 of the 2007 Act, to prepare a code of practice containing guidance about the performance of functions by councils and their officers and health professionals under the Act.

See both:

- existing Statutory Guidance  
<http://www.scotland.gov.uk/Publications/2011/11/25115331/0>
- Multi Agency Practitioner Guidance  
<http://www.scotland.gov.uk/Publications/2014/10/4797>

68. The document *Safer Lives: Changed Lives* established the Scottish Government's intention to take an inclusive approach to a wide range of connected issues on violence against women with the key objectives of preventing and reducing violence against women. [Equally Safe](#), the Scottish Government's strategy for preventing and eradicating violence against women and girls, seeks to build upon this approach.

## **APPENDIX A**

### **Persons to whom guidance is given**

Adult Support and Protection Committees

Police Scotland

Association of Directors of Education in Scotland

Association of Directors of Social Work

British Medical Association Scotland

Child Health Commissioners

Children's Hearings Scotland

Child Protection Committee Lead Officers

Child Protection Committees Chairs

Community Health Partnerships

Community Planning Partnerships

Convention of Scottish Local Authorities

Crown Office and Procurator Fiscal Service

Local Authority Adult Protection Lead Officers

Local Authority Chief Executives

Local Authority Sexual Health Leads

Mental Welfare Commission for Scotland

NHS Board Directors of Public Health

NHS Board Lead Clinicians

NHS Chief Executives

NHS Health Scotland

NHS Sexual Health Strategy Leads

National Records of Scotland (NRS)

Office of the Public Guardian in Scotland

Royal College for Paediatrics and Child Health ( RCPCH) Scotland

Royal College of General Practitioners ( RCGP) Scotland

Royal College of Midwifery

Royal College of Nursing

Royal College of Speech and Language Therapists

Schools

Scotland's Colleges

Scottish Children's Reporter Administration (SCRA)

Scottish Universities

Social Care and Social Work Improvement Scotland

Violence Against Women Multi-Agency Partnerships

This list is not exhaustive and any other person, body or office exercising public functions in or as regards Scotland which may relate to or have an effect in relation to forced marriage should have regard to the guidance in the exercise of their functions, as appropriate.

# APPENDIX B

## Definitions

### Adult

A person aged 16 or over (or up to 18 subject to the Children and Young People Scotland Act 2014) (but see also below definition of child, children and young people).

### Adult at risk

The Adult Support and Protection (Scotland) Act 2007<sup>15</sup> defines adults at risk as adults who:

- (a) Are unable to safeguard their own well-being, property, rights or other interests and
- (b) Are at risk of harm and
- (c) Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected

'Risk of harm' for the purposes of subsection (1) is if:

- (a) Another person's conduct is causing (or likely to cause) the adult to be harmed or
- (b) The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm

### Arranged marriage

An arranged marriage is one in which the families of both spouses take a leading role in arranging the marriage but the choice whether or not to accept the arrangement remains with the prospective spouses.

### Child, children and young people

Practitioners must be clear that when children and young people are forced into marriage there should be a child protection response and that they should refer to local inter-agency child protection procedures and the Scottish Government's National Guidance for Child Protection updated in 2014<sup>16</sup>. The National Guidance explains that a child can be defined differently in different legal contexts.

Section 93(2)(a) and (b) of the Children (Scotland) Act 1995 defines a child in relation to the powers and duties of the local authority, as being under 16 years. However, young people between the age of 16 and 18 who are still subject to a

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<sup>15</sup> The Adult Support and Protection (Scotland) Act 2007:  
<http://www.legislation.gov.uk/asp/2007/10/contents>

<sup>16</sup> National Guidance for Child Protection in Scotland  
<http://www.scotland.gov.uk/Publications/2014/05/3052>

supervision requirement by a Children's Hearing can be viewed as a child. Young people over the age of 16 may still require intervention to protect them.

The Children's Hearing (Scotland) Act 2011, defines a child in similar terms, depending on the circumstances.

The United Nations Convention on the Rights of the Child applies to anyone under the age of 18. However, Article 1 states that this is the case unless majority is attained earlier under the law applicable to the child.

Although the differing legal definitions of the age of a child can be confusing, the priority is to ensure that a vulnerable young person who is, or may be, at risk of significant harm is offered support and protection. The individual young person's circumstances and age will, by default, dictate what legal measures can be applied. For example, the Adult Support and Protection (Scotland) Act 2007 can be applied to over-16s where the criteria are met. This further heightens the need for local areas to establish very clear links between their Child and Adult Protection Committees and to put clear guidelines in place for the transition from child to adult services. Young people aged between 16 and 18 are potentially vulnerable to falling 'between the gaps' and local services must ensure that processes are in place to enable staff to offer ongoing support and protection as needed, via continuous single planning for the young person.

Where a young person between the age of 16 and 18 requires protection, services will need to consider which legislation, if any, can be applied. This will depend on the young person's individual circumstances as well as on the particular legislation or policy framework. Special consideration will need to be given to the issue of consent and whether an intervention can be undertaken where a young person has withheld their consent.

### **Domestic abuse**

The National Strategy to Address Domestic Abuse in Scotland (2000)<sup>17</sup> states:

*'Domestic abuse (as gender-based abuse), can be perpetrated by partners or ex-partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family or friends).'*

The strategy recognises that:

*'Domestic abuse is most commonly perpetrated by men against women and takes a number of specific and identifiable forms. The existence of violence against men is not denied, nor is the existence of violence in same sex relationships, nor other forms of abuse, but domestic abuse requires a*

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<sup>17</sup> The National Strategy to Address Domestic Abuse in Scotland (2000)  
<http://www.scotland.gov.uk/Resource/Doc/47176/0025563.pdf>

*response which takes account of the gender specific elements and the broader gender inequalities which women face.'*

It also states:

*'...in accepting this definition, it must be recognised and taken into account that, particularly among black and minority ethnic communities, other family members connected to a woman through marriage may be involved in, or may participate in the abuse of the woman. In certain cases, abuse is perpetrated by other family members, even without the knowledge of the partner. In addition, there is abuse of women by members of their own families in the context of forced, as opposed to arranged, marriages or as a result of their failed marriages or divorce.'*

"There are other national definitions included with the Police Scotland/COPFS Protocol "In Partnership: Challenging Domestic Abuse" - [http://www.scotland.police.uk/assets/pdf/keep\\_safe/175573?view=Standard](http://www.scotland.police.uk/assets/pdf/keep_safe/175573?view=Standard)

### **Forced marriage**

A forced marriage is a marriage in which one or both spouses do not (or, in the case of children and some adults at risk, cannot) consent to the marriage and coercion is involved. Coercion can include physical, psychological, financial, sexual and emotional pressure.

For the definition at law see:

[www.legislation.gov.uk/asp/2011/15/pdfs/asp\\_20110015\\_en.pdf](http://www.legislation.gov.uk/asp/2011/15/pdfs/asp_20110015_en.pdf)

### **Gender-based violence**

This is defined by the United Nations<sup>18</sup> as 'violence that is directed against a woman because she is a woman, or violence that affects women disproportionately; it encompasses a spectrum of abuse that includes domestic abuse, rape and sexual assault, childhood sexual abuse, sexual harassment, stalking, commercial sexual exploitation, and harmful traditional practices such as female genital mutilation (FGM), forced marriage and so called 'honour' crimes'.

### **Honour-based violence**

The terms 'honour crime', 'honour-based violence' and 'izzat' embrace a variety of crimes of violence (mainly but not exclusively against women), including physical abuse, sexual violence, abduction, forced marriage, imprisonment and murder where the person is being punished by their family or their community. They are punished for actually, or allegedly, 'undermining' what the family or community believes to be the correct code of behaviour. In transgressing this, the person shows that they have not been properly controlled to conform by their family and this is to the 'shame' or 'dishonour' of the family. 'Honour crime' may be considered by the perpetrator(s) as justified to protect or restore the 'honour' of a family.

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<sup>18</sup> United Nations definition:

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

## **Violence against women**

The Scottish Government defines forced marriage as a form of violence against women. The full definition of violence against women is in Safer Lives, Changed Lives: a shared approach to tackling violence against women in Scotland, Scottish Government, 2009<sup>19</sup> and in Equally Safe<sup>20</sup> published 2014

## **Perpetrator**

The term perpetrator is used to refer to the people who are forcing someone to marry. This may include the spouse or prospective spouse, close and extended family members and members of the wider community.

## **Relevant third party (RTP)**

Under the Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011, a relevant third party can apply for a Forced Marriage Protection Order (see page 15) without the permission of the court. RTPs are specified as a local authority, the Lord Advocate and others specified by Scottish Ministers.

## **Victim**

The term 'victim' is used throughout this document for the sake of simplicity to refer to people who are, or have been, or are at risk of being forced into marriage against their will. This term is not used to connote weakness or inferiority.

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<sup>19</sup> Safer Lives, Changed Lives: a shared approach to tackling violence against women in Scotland, Scottish Government, 2009 <http://www.scotland.gov.uk/Publications/2009/06/02153519/0>

<sup>20</sup> Equally Safe, Scotland's Strategy to preventing and eradicating Violence Against Women <http://www.scotland.gov.uk/Publications/2014/06/7483>

## APPENDIX C

### International law principles

**“Marriage shall be entered into only with the free and full consent of the intending spouses.”** Universal Declaration of Human Rights, Article 16(2) (<http://www.un.org/en/documents/udhr/index.shtml#a16>)

**“No marriage shall be legally entered into without the full and free consent of both parties.”** UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

**“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”** United Nations Convention on the Rights of the Child, Article 3 <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

**“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity”** United Nations Convention on the Rights of the Child, Article 34a  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

**“A woman’s right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being.”** General Recommendation No. 21, Comment Article 16 (1) (b), UN Convention on the Elimination of All Forms of Discrimination Against Women (<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>)

**“Protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”** United Nations Convention on the Rights of the Child, Article 19 (<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>)

**“Abolish traditional practices detrimental to the health of children”** United Nations Convention on the Rights of the Child Article 24  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

**“Protect children from torture and other ill-treatment”** United Nations Convention on the Rights of the Child, Article 37  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>



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