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COMBATTING FORCED MARRIAGE: STRENGTHENING PROTECTION IN SCOTS LAW

July 2024

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SUMMARY OF RECOMMENDATIONS

Recommendation 1:

Clarification should be provided as to when particular 'relevant third parties' should exercise responsibility for instigating an application for a Forced Marriage Protection Order ('FMPO'), to ensure that each relevant third party is taking proper action at the appropriate time. In particular, the type of circumstances in which the Lord Advocate, and the chief constable of the Police Service of Scotland, respectively, might be expected to instigate proceedings for an application for a FMPO, rather than the relevant local authority, should be reviewed and clearly set out in the Scottish Government's statutory guidance and in relevant professional protocols. There should be national monitoring of which relevant third parties have applied for orders under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 Act ('2011 Act'), and of the success/failure of such applications. Data analysis should be used to identify potential issues regarding the operation and functioning of the 2011 Act.

Recommendation 2:

There ought to be a national framework for local authorities on responding to forced marriage (including a standard operating procedure and clear referral pathways), as well as a named individual within each local authority who is assigned to lead on matters pertaining to forced marriage. Further, to support coordinated action planning, cases of actual or threatened forced marriage should be treated across all local authority areas as appropriate for referral to MARACs.

Recommendation 3:

Since FMPOs, interim and final, can be seen as compromising individuals' human rights – both those of the protected person and those of the perpetrator(s) – it is recommended that, akin to a Compulsory Supervision Order made by a children's hearing, a FMPO should last for as long as the judge considers it to be necessary, but that any FMPO granted by the court must be reviewed by a judge a minimum of once per year from the date of making the order.

Recommendation 4:

It should be ensured that one or more agency is identified by the Scottish Government as being available within each local authority area to engage with victims of forced marriage in order to offer support in respect of any safety and/or action-planning resulting from forced marriage. In cases where a protected person is not the applicant for a FMPO, nor a party to the forced marriage proceedings, there should be appropriate signposting to ensure that the protected person is aware of their rights to enter into court proceedings, and have appropriate representation.

Recommendation 5:

Where the applicant for a FMPO is a relevant third party, there should be clarity among all relevant third parties as to the pathway that is being taken to protect the victim. Where, for example, there are multiple sets of proceedings, relevant third parties should endeavour to ensure that the approach being taken is not detrimental to the interests and wellbeing of the protected person. To safeguard the victim and to ensure that there is as much coordination as is possible between different sets of legal proceedings, it should be incumbent on a relevant third party applicant to liaise with other relevant third parties, and with relevant services in the local authority area, to ascertain if criminal proceedings have been, or should be, instigated in respect of forced marriage, and/or, with regard to child victims, to discuss with the Principal Reporter if any referral to a children's hearing has been, or should be, made, or any application for a child protection order, or any other order, has been, or should be, made.

Recommendation 6:

Section 13 ('Amendment of Children's Hearings (Scotland) Act 2011') of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 should be reviewed, and consideration should be given to empowering a sheriff to make a direct referral to the Principal Reporter to instruct that urgent consideration be given to child protection measures in respect of a child.

Recommendation 7:

In addition to national monitoring of which relevant third parties have applied for orders under the 2011 Act, and of the outcomes of such applications (see Recommendation 1), there should be national monitoring of the number of reports that are made to Police Scotland in respect of breaches of FMPOs, the number of reports that are made to the Procurator Fiscal in respect of the same, and the number of prosecutions and convictions that take place under section 9 of the 2011 Act. Likewise, there should be national monitoring of the number of reports that are made to Police Scotland in respect of offences under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014, the number of reports that are made to the Procurator Fiscal in respect of the same, and the number of prosecutions and convictions that take place thereunder.

Recommendation 8:

Clarification should be provided in the Scottish Government's statutory guidance as to the legal basis and procedures for the recognition and enforcement of a FMPO granted in one part of the UK in other parts of the UK. The importance of effective co-operation between intra-UK legal systems should be emphasised in the statutory guidance, as should be the need for relevant third parties to work closely with UK agencies, such as the UK Border Force and the UK Forced Marriage Unit.

Recommendation 9:

In light of uncertainty among some participants about whether or not child protection processes apply to victims of forced marriage aged between 16 and 18 years, the Scottish Government's statutory guidance on forced marriage should be updated and clarified in respect of this point, giving guidance on whether a protected person aged 16-17 years should be supported by children and families support and protection services, or by adult support and protection services.

Recommendation 10:

For victims of forced marriage who sit outside the child protection and adult support and protection frameworks, and for victims who are not able to seek direct assistance from the police and/or lawyers, a very important avenue of support is provided by third sector, specialist support organisations. Ongoing funding of these organisations should be an essential part of any national strategy against forced marriage. Additionally, consideration should be given at Scottish Government level to promoting a national awareness-raising campaign that highlights relevant helplines (such as Scotland's Domestic Abuse and Forced Marriage Helpline), and other sources of support for victims of forced marriage.

Recommendation 11:

As part of the national strategy against forced marriage, and in order to ensure transparency and open justice, sheriffs should be encouraged, wherever possible, to publish any decision taken in proceedings under the 2011 Act or to issue a short explanatory note thereon (using anonymisation, where appropriate, to protect the interests of vulnerable parties).

Recommendation 12:

As part of the national strategy against forced marriage, there should be central information-gathering, with national monitoring, of the number and nature of applications for FMPOs that are submitted in each local authority area, and of the success/failure of such applications. National monitoring should also include the number of referrals, with Reporter's decisions, made in each local authority area in respect of proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage, in order that a comprehensive mapping can be carried out of legal proceedings across Scotland pertaining to forced marriage.

Recommendation 13:

A review of the subject of age of legal capacity in Scots law should be carried out, with full consultation and opportunity for debate. Any proposed change to the rule of Scots law concerning minimum age of marriage should not be recommended in isolation, but as part of a comprehensive review of Scots law pertaining to age of legal capacity, and taking account of human rights considerations, including the right to marry.

Recommendation 14:

As part of national strategies in respect of violence against women and girls, and against domestic abuse, there should be a commitment (including financial commitment) to ongoing education and training in respect of forced marriage. As part of this commitment, the Scottish Government's statutory guidance on forced marriage should be updated and refreshed on a regular basis, with corresponding training modules and/or webinars available.

Updated, bespoke guidance should be produced and made available for use in schools, colleges and universities, as well as bespoke guidance for use among community groups and within third sector, specialist support organisations and other public places, such as hospitals, surgeries, libraries, and at children's hearings centres.

1. INTRODUCTION AND RESEARCH AIMS

This Report presents the findings of a research project, *Combatting Forced Marriage: Strengthening Protection in Scots Law*, that was funded by the Scottish Government / Inspiring Scotland – Delivering Equally Safe Fund. The project examined the protection afforded in Scots law to individuals who are at risk of forced marriage.

Although forced marriage is not a form of coercion that is specific to women and girls,¹ it is an issue that affects women and girls disproportionately.²

Legislation on forced marriage was introduced into Scots law in 2011. The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill was passed by the Scottish Parliament on 22 March 2011 and received Royal Assent on 27 April 2011. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 ('2011 Act') came into force, in its entirety, on 28 November 2011,³ making provision to protect persons from being forced into marriage without their free and full consent and to protect persons who have been forced into marriage without such consent.

Consistent with the 2011 Act, the Children's Hearings (Scotland) Act 2011 establishes as a ground upon which a child can be referred to a children's hearing the fact that the child has been, is being or is likely to be forced into a marriage, or is, or is likely to become, a member of the same household as such a child.⁴

Further legislation to extend protection to those at risk of forced marriage was introduced throughout the UK in 2014. Section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 ('2014 Act'), a provision applying specifically and exclusively to Scotland and coming into force on 30 September 2014,⁵ created the criminal offence of forced marriage under Scots law.

Since the introduction of this suite of legislative measures into Scots law, there has been no legal analysis of forced marriage protection orders, nor of the criminalisation of forced marriage. Social research commissioned by the Scottish Government in 2015 identified concern about possible gaps in legal knowledge and experience among stakeholders such as legal professionals,⁶ and highlighted potentially flawed understanding and conceptualisation of forced marriage.⁷

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- 1 Cases concerning male victims of forced marriage include *Mahmud v Mahmud* 1994 SLT 599 (Scotland); and *Coventry City Council v MK GK & MAK* [2023] EWHC 249 (Fam), [2023] 2 FCR 441 (England). Instances of forced marriage involving male victims often entail intersectionality with another protected characteristic, such as sexuality or disability, e.g. *Westminster City Council v C and others* [2008] EWCA Civ 198, [2009] Fam 11 (England).
 - 2 In 2023, of the cases handled by the UK Government's Forced Marriage Unit ('FMU'), 195 cases (69%) involved female victims and 88 cases (31%) involved male victims. Of the cases in 2023 involving a victim with mental capacity concerns, 42 cases (63%) involved male victims and 25 cases (37%) involved female victims: Official Statistics - Forced Marriage Unit statistics 2023 (2024) (published 9 May 2024) (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2023/forced-marriage-unit-statistics-2023#victims-with-mental-capacity-concerns>>).
 - 3 Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Commencement) Order 2011/352 (Scottish SI).
 - 4 Section 67(2)(q), as amended by s 13(3)(b) of the 2011 Act. After receiving Royal Assent on 6 January 2011, the Children's Hearings (Scotland) Act 2011 came into force on 24 June 2013 (Children's Hearings (Scotland) Act 2011 (Commencement No. 9) Order SSI 2013/195).
 - 5 The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement) (Scotland) Order 2014 (SSI 2014/221).
 - 6 K Chantler, V Baker, M MacKenzie, M McCarry and N Mirza, 'Understanding Forced Marriage in Scotland' (Scottish Government Social Research) (2017), 38-39.
 - 7 K Chantler, N Mirza, and M Mackenzie, 'Policy and Professional Responses to Forced Marriage in Scotland', *British Journal of Social Work* (2021) 1–17 at 11-12. See also K Chantler and M McCarry, 'Forced Marriage, Coercive Control and Conducive Contexts, 2020 Violence Against Women Vol 26(1) 89.

Since the civil remedy introduced by the 2011 Act (a ‘forced marriage protection order’) takes the form of a court order and given that the criminalisation of forced marriage involves the criminal justice process, legal research was necessary to ascertain the extent of awareness of available remedies among legal practitioners, and to identify possible accessibility and operational issues with regard to those remedies.

The purpose of this research project was to investigate, from a legal perspective, the operation and impact of the current legal framework in respect of forced marriage, and to assess the availability, accessibility and effectiveness of legal remedies in respect of, and sanctions against, forced marriage.

The aim was to seek to understand how effectively the forced marriage legislation is working in practice, and to ascertain if the introduction of a new civil remedy and the criminalisation of forced marriage have improved matters for victims of forced marriage, with a view, where necessary or appropriate, to strengthening victim protection and informing legal education and training in combatting forced marriage and, ultimately, helping to eradicate the practice of forced marriage from Scotland.

Given the extension of certain measures of protection against forced marriage to forced civil partnership, the project also encompassed investigation into forced civil partnership.

Likewise, in light of the connection between forced marriage and child marriage, the project explored the topic of child marriage in Scots law, by examining Scottish legislative provision concerning age of legal capacity to marry, and reviewing it to assess its compatibility with international standards, to ascertain if reform of Scots law in respect of age of legal capacity to marry ought to be considered.

The stated aims of the study are:

- To understand the aims and objectives and incidence of use of Scottish legislation offering protection against forced marriage, to appreciate the extent to which the current legal framework permits individuals to thrive as equal citizens, empowered, resilient and safe.
- To understand the extent to which Scots law on capacity and consent to marry is compatible with the planned⁸ incorporation of the United Nations Convention on the Rights of the Child into Scots law, against the background of the global problem of child marriage and the desire to promote the wellbeing and happiness of children and ensure that their voices are heard and that they grow up safe and respected.
- To gauge the availability, accessibility and effectiveness of Scottish legislation offering protection against forced marriage, determining if the civil and criminal justice responses are sufficiently robust, swift, consistent and co-ordinated, or if improvement in the legal framework and legal practice is required to strengthen the protection in Scots law of individuals at risk of forced marriage.
- To help policymakers in Scotland assess what can and should be done to strengthen protection in Scots law of individuals at risk of forced marriage, ensuring that perpetrators of violence are identified, sanctioned and held to account by the justice system, and helping to eradicate this practice from Scotland.
- To improve knowledge and practice concerning forced marriage among the legal community in Scotland and beyond, to strengthen professional service and support for individuals at risk of forced marriage.

8 See now United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, incorporating in Scots law rights and obligations set out in the United Nations Convention on the Rights of the Child.

2. BACKGROUND AND CONTEXT

The number of people forced into marriage in Scotland is unknown. Likewise, the number of victims taken from Scotland and forced to marry abroad is unknown. Cases are under-reported. Since 2012, the UK Government's Forced Marriage Unit ('FMU') – a joint Foreign, Commonwealth and Development Office and Home Office unit which leads on the government's forced marriage policy, outreach and casework⁹ – has generated annual statistical reports of forced marriage on a regional basis, including 'Scotland'.¹⁰ This project's focus – the operation and impact of forced marriage legislation and the availability, accessibility and effectiveness of prevention and protection measures – is not covered by the FMU statistical analysis.¹¹ There are no published statistics as to the incidence of use of forced marriage protection orders in Scottish courts. It is not possible to assess how reported cases on the 2011 Act relate to the number of applications in Scotland for forced marriage protection orders, or to the number of judicial decisions on forced marriage. Likewise, accessible evidence of the impact of the criminalisation of forced marriage in Scots law is lacking.¹²

a) The civil justice response to forced marriage in Scotland: an overview

Prior to 2011, there was no legislation in Scotland directly addressing forced marriage, albeit there were, at that time, measures providing some protection against forced marriage.¹³ The available remedies, however, were seen as costly, complex, and often incomplete, with limitations on who could apply, the party(ies) against whom remedies could be directed, and on how any breach of protective measures could be tackled.¹⁴

For England and Wales, and Northern Ireland, the Forced Marriage (Civil Protection) Act 2007 came into force on 25 November 2008. The 2007 Act did not apply in Scotland and so the Scottish Government undertook to explore if legislation to address forced marriage ought to be introduced in Scotland.¹⁵ The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill¹⁶ was introduced to the Scottish Parliament on 29 September 2010.

9 <<https://www.gov.uk/guidance/forced-marriage>>. The FMU operates both inside the UK (where support is provided to any individual) and overseas (where consular assistance is provided to British nationals, including dual nationals).

10 <<https://www.gov.uk/government/collections/forced-marriage-unit-statistics>>. See Chapter 6.d.2 of this Report.

11 Likewise, statistical information generated by organisations such as Karma Nirvana regarding the scope, scale and prevalence of Honour Based Abuse does not have detailed geographical pinpointing of forced marriage cases (<<https://karmanirvana.org.uk/data/>>).

12 In England & Wales, see Y Kahn, R Khan, O Adisa, M Kumari and K Allen, 'Honour' abuse, violence, and forced marriage in the UK. Police cases (incidents and charges) and specialised training: 2018 and 2019' (2021) (Honour Abuse Research Matrix, University of Central Lancashire); and M Idriss 'Honour-Based Abuse In The Courts: Shaping Strategy For Key Issue' (2024) (<<https://mcrmetropolis.uk/wp-content/uploads/2024/03/Honour-based-abuse-in-the-courts-shaping-strategy-for-key-issues-policy-briefing-Maz-Idriss.pdf>>).

13 e.g. interdict or non-harassment order under the Protection from Harassment Act 1997; interdict with power of arrest under the Protection from Abuse (Scotland) Act 2001; exclusion order or 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); declarator of nullity of marriage; and divorce. See Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill – Policy Memorandum (SP Bill 53-PM) ('Bill Policy Memorandum') para 4.

14 Bill Policy Memorandum, para 5.

15 Scottish Government, 'Forced Marriage: A Civil Remedy? Consultation Paper' (2008); and 'Consultation on "Forced Marriage: A Civil Remedy?": Analysis of Responses' (2009).

16 SP Bill 53.

The policy objective of the proposed legislation was to protect the rights of all people in Scotland who are eligible to marry or to enter into a civil partnership, to do so, freely and without coercion; and to protect citizens from pressure, harassment or threats aimed at forcing them into a marriage or civil partnership to which they did not consent, or to which they were not capable of consenting.¹⁷

Additionally, the policy objective was to provide the best possible support for a victim or potential victim of forced marriage, by providing a simple process enabling them (as well as relevant third parties and others, with leave of the court) to apply to the civil courts for a forced marriage protection order, with civil remedies tailored to the victim's needs and conferring wide discretion on civil courts to respond flexibly and effectively to the circumstances of the individual case.¹⁸

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 was passed by the Scottish Parliament on 22 March 2011, to make provision for protecting persons from being forced into marriage without their free and full consent and for protecting persons who have been forced into marriage without such consent. In addition, in order to increase access to justice, the Act amended the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage. The 2011 Act came into force on 28 November 2011.

With regard to civil measures of protection against forced civil partnership, section 10 of the 2011 Act empowers the Scottish Ministers,

by order, to make provision applying all or part of Part 1 ('Forced Marriage Protection Orders') of the 2011 Act to civil partnership as it applies to marriage. In policy terms, although respondents to the Scottish Government's 2008 consultation were overwhelmingly in favour of making such provision, there was no evidence at that time showing that forced civil partnership was a problem.¹⁹ However, under the section 10 power, protection equivalent to that which exists in respect of forced marriage has been extended to forced civil partnership (both same sex and mixed sex partnerships).²⁰

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill and the Children's Hearing (Scotland) Bill²¹ were subject to scrutiny by the Scottish Parliament at broadly the same time. Witnesses giving evidence to the Equal Opportunities Committee (the Lead Committee for Stage 1 consideration of the Forced Marriage Bill) expressed concern that the linkages between child protection proceedings under that Bill and via the children's hearing system were not as clear as they could be.²² A written submission by the Scottish Children's Reporter to the Equal Opportunities Committee stated that, "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."²³

17 Bill Policy Memorandum, para 3.

18 Bill Policy Memorandum, para 6.

19 Bill Policy Memorandum, para 20.

20 See The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Application to Civil Partnerships and Consequential Provision) Order 2023 (SSI 2023/194). For background, see 'Policy Note', Scottish Government Justice Directorate (May 2023); and, earlier, Civil Partnership (Scotland) Bill (SP Bill 57) (2019): Policy Memorandum, paras 127-132 and, particularly, 128-129. The policy was that these measures were to be in place to counter the increased risk of forced civil partnership when it "crystallises upon the introduction of mixed sex civil partnership" (para 129). SSI 2023/194 entered into force on 30 November 2023.

21 SP Bill 41.

22 Equal Opportunities Committee, 1st Report, 2011 (Session 3) (SP Paper 570), 'Stage 1 Report on Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill', para 218.

23 *ibid.*

To ensure compatibility with the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, the Children's Hearings (Scotland) Act 2011 establishes as a ground upon which a child may be referred to a children's hearing the fact that the child has been, is being or is likely to be forced into a marriage, or is, or is likely to become, a member of the same household as such a child.²⁴ Moreover, in light of the civil partnership legislation, it is also a ground of referral that the child has been, is being or is likely to be subjected to physical, emotional or other pressure to enter into a civil partnership, or is, or is likely to become, a member of the same household as such a child.²⁵

b) The criminal justice response to forced marriage in Scotland: an overview

In 2005, the Scottish Government (at that time, the 'Scottish Executive') took part in a UK Foreign & Commonwealth Office/Home Office joint consultation on forced marriage, the purpose of which was to elicit views on whether a specific criminal offence of 'forcing someone to marry' should be introduced²⁶ and, if so, on how any proposed offence might

be formulated and on issues surrounding its enforcement, including its overseas application and possible penalties.

The approach taken in the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 was not to criminalise forced marriage itself, but rather to create the offence of breaching a (civil) forced marriage protection order. This was in line with the Scottish Government's overall approach to tackling violence against women, an approach based upon the protection of victims.²⁷ In policy terms, this approach was favoured by the majority of respondents to the Scottish Government's consultation.²⁸ At that time, the criminalisation of breach of a forced marriage protection order was unique to Scots law, there being no equivalent in the Forced Marriage (Civil Protection) Act 2007 applicable in England and Wales, and Northern Ireland.²⁹

Consultation by the UK Government with relevant stakeholders in England and Wales began in late 2011 and continued for 3 months.³⁰ The Anti-social Behaviour, Crime and Policing Bill was introduced in May 2013.³¹ In October 2013, a provision was added regarding the criminalisation of forced marriage in Scotland.³²

24 s 67(2)(q), as amended by s 13(3)(b) of the 2011 Act. After receiving Royal Assent on 6 January 2011, the Children's Hearings (Scotland) Act 2011 came into force on 24 June 2013 (Children's Hearings (Scotland) Act 2011 (Commencement No. 9) Order SSI 2013/195).

25 s 67(2)(p), as amended by s 13(3)(a) of the 2011 Act and the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (SSI 2013/211), art 1, Sch 1 para. 20(8).

26 'Forced Marriage: A Wrong Not a Right' (2005) (<<https://webarchive.nationalarchives.gov.uk/ukgwa/20121212135632/http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>>).

27 Bill Policy Memorandum, para 10.

28 Bill Policy Memorandum, para 10.

29 See now, however, Anti-social Behaviour, Crime and Policing Act 2014, s 120, creating the offence in England and Wales of breaching a forced marriage protection order.

30 UK Government (Home Office) Forced Marriage Consultation (2011) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266967/forced-marriage-consultation-1.pdf>. See Summary of Responses (2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157829/forced-marriage-response.pdf> .

31 See clause 104 ('Offence of forced marriage') (<<https://publications.parliament.uk/pa/bills/cbill/2013-2014/0007/14007.pdf>>).

32 House of Commons, Notices of Amendments 7 October 2013, NC9 (< <https://publications.parliament.uk/pa/bills/cbill/2013-2014/0093/amend/pbc0930703a.815-821.html>>).

On 11 November 2013, a draft Legislative Consent Motion ('LCM') was introduced to the Scottish Parliament.³³

Consultation with Scottish stakeholders then took place over a very short period of time, from which it was clear that the criminalisation of forced marriage was not universally supported in Scotland.³⁴ Ultimately, however, the LCM was approved by the Scottish Parliament and the Bill received royal assent on 13 March 2014.

Since 30 September 2014,³⁵ forcing someone into marriage has been a criminal offence in Scotland, by virtue of section 122 of the Anti-social Behaviour, Crime and Policing Act 2014.³⁶ The aim of Part 10 ('Forced Marriage') of the 2014 Act was to add another layer of protection for those at risk of forced marriage. This was done in preparation for the UK's ratification of the 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ('Istanbul Convention'),³⁷ which includes a requirement to criminalise forced marriage.³⁸

However, despite the creation of the statutory offence of forced marriage in UK law in 2014, the UK did not ratify the Istanbul Convention until 21 July 2022, and the Convention did not enter into force in the UK until 1 November 2022.

With regard to criminal measures of protection against forced civil partnership, although there is no evidence in Scotland of any problem of forced civil partnership, the Scottish Government's position was that the extension of civil partnership to mixed sex couples could create a loophole³⁹ that ought to be closed by creation of the offence of forced civil partnership. Accordingly, section 122 of the 2014 Act was amended by section 13 of the Civil Partnership (Scotland) Act 2020 to include the offence of forced civil partnership.⁴⁰

c) Child and early marriage in Scotland: an overview

There is no universally fixed definition of 'child marriage' or 'early marriage', but these terms typically refer to a purported union of two persons, at least one of whom is under 18 years of age.⁴¹

33 Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill LCM(S4) 22.2; Justice Committee 2nd Report, 2014 (Session 4) (< https://archive2021.parliament.scot/S4_JusticeCommittee/Reports/juR-14-02w.pdf>).

34 See, e.g., arguments against criminalisation set out in UK Government (Home Office) Forced Marriage Consultation (2011) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266967/forced-marriage-consultation-1.pdf> at 12; and written submissions received by the Scottish Parliament Justice Committee regarding the Anti-social Behaviour, Crime and Policing Bill: <<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/70307.aspx>> Also, 2nd Report, 2014 (Session 4) (SP Paper 452: JUS/S4/14/R2): 'Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill' LCM (S4), 1, [66]. <<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/71894.aspx>>.

35 SSI 2014/221, art 2.

36 Likewise, forced marriage was made a criminal offence in England and Wales by s 121 of the Anti-social Behaviour, Crime and Policing Act 2014.

37 See Chapter 4.a.6, below.

38 Art 37.

39 Civil Partnership (Scotland) Bill (SP Bill 57) (2019): Policy Memorandum, para 121.

40 s 13(2). See also the Civil Partnership (Scotland) Act 2020 (Commencement No. 5) Regulations 2023 (SSI 2023/146), reg 2; and the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Application to Civil Partnerships and Consequential Provision) Order 2023 (SSI 2023/194).

41 See e.g. definition adopted by the Parliamentary Assembly of the Council of Europe: 'Forced Marriages and Child Marriages', Resolution 1468 (2005) [7]: <<https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17380&lang=en>>.

The UNFPA-UNICEF⁴² 'Global Programme to End Child Marriage' considers 'child marriage' to be a purported marriage, whether by formal or informal union, before one or both parties attains the age of 18 years.⁴³ Global statistics are available also in respect of purported unions where at least one party is under 15 years of age.⁴⁴

While force is not a pre-condition of child or early marriage, abusing or manipulating a person's incapacity to consent to marriage or to understand the nature of marriage⁴⁵ – including incapacity by reason of non-age – amounts to 'force' and thereby may be sufficient to render a purported child or early marriage also a forced marriage.⁴⁶ There is, therefore, a connection between forced marriage and child or early marriage.⁴⁷

Various international instruments seek to defend an individual's right to marry and, at the same time, impose safeguards to protect party freedom to choose when, and whom, to marry (or not). These international standards form a backdrop to the rules of Scots law pertaining to legal capacity to marry and consent to marriage.

In Scots law, the Marriage (Scotland) Act 1977 establishes the minimum age for marriage, providing that (1) no person domiciled in Scotland may marry before he attains the age of 16; and (2) a marriage solemnised in Scotland between persons either of whom is under the age of 16 shall be void.

Very often, as with cases of forced marriage, so too with instances of child or early marriage, there is an international element to the factual or legal matrix: one or both party/ies to the purported marriage may be a foreign national,⁴⁸ and/or domiciled or habitually resident in a country other than that in which the marriage takes place; and/or the marriage ceremony, in whole or in part, may take place abroad.⁴⁹ For this reason, the rules on minimum age for marriage that are set out in the 1977 Act must be read in conjunction with Scots international private law rules pertaining to the validity of marriages, set out in section 38 of the Family Law (Scotland) Act 2006, which determine the law governing the question, inter alia, whether a person who enters into a marriage had capacity and consented to marriage.

42 United Nations Fund for Population Activities - United Nations Children's Fund.

43 <<https://www.unfpa.org/child-marriage>>. See also <<https://www.unicef.org/eca/what-we-do/child-marriage>>.

44 See <<https://www.girlsnotbrides.org/about-child-marriage/>>.

45 cf. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, s 1(6)(b).

46 cf. Joint General Recommendation No 31 of the Committee on the Elimination of Discrimination against Women/ General Comment No 18 of the Committee on the Rights of the Child (2019) on harmful practices, [20]: 'A child marriage is considered to be a form of forced marriage, given that one or both parties have not expressed full, free and informed consent.'

47 See Chapter 6, below, for statistical information. According to FMU statistics, in 2023, 12% of the cases in which the FMU gave advice or support involved victims who were known to be aged 15 and under; 13% were known to be aged 16 or 17 years old and 18% were known to be aged 18 to 21.

<www.gov.uk/government/statistics/forced-marriage-unit-statistics-2023/forced-marriage-unit-statistics-2023#forced-marriage-unit-statistics>.

48 In 2023, of the 283 cases in which the UK FMU gave advice and support, 75% of victims (212 cases) were British nationals, including dual nationals, and 16% of victims (46 cases) were non-British nationals. 6% of victims (18 cases) were EU nationals. The nationality of the individual was unknown in 2% of cases (7 cases): FMU Official Statistics (n 10 above) [7].

49 e.g. *A v K* [2011] CSOH 101, 2011 SLT 873; *SB v The Secretary of State for Work and Pensions (BB)* [2014] UKUT 0495 (AAC); *Coventry City Council v MK GK & MAK* [2023] EWHC 249 (Fam), [2023] 2 FCR 441. In 2023, the FMU handled cases relating to the UK and to 30 other 'focus countries', defined as countries to which the risk of forced marriage relates (the country where the forced marriage is due to take place, the country where it has taken place, and/or the country in which a spouse is currently residing). In 2023, 95% of FMU cases involved a focus country other than the UK, including, inter alia, Pakistan, Bangladesh, India, Afghanistan, Turkey and Somalia (FMU Official Statistics) (n 10) [9] and [10]).

d) Statutory practitioner and related guidance

The Scottish Government has produced three sets of guidance on the legislation concerning forced marriage.⁵⁰

'Statutory guidance'⁵¹ has been issued for persons, bodies or offices exercising public functions in or as regards Scotland which may relate to, or have an effect in relation to, forced marriage, and all such parties should have regard to the guidance in the exercise of their functions.⁵² This statutory guidance addresses topics including: understanding the issues around forced marriage; actions for chief executives, directors and senior managers to whom the guidance is addressed; specific issues to be considered by agencies working with, or providing services to, children and young people; and specific issues to be considered by agencies working with, or providing services to, adults or adults at risk.

Separately, multi-agency 'Practitioner guidance'⁵³ has been issued to inform frontline staff and volunteers in agencies and organisations who are likely to come across adults or children and young people threatened with, or in, a forced marriage. This practitioner guidance addresses topics including understanding of, and approach to, forced marriage; legal context and remedies; and service-specific information (for health workers; school, college and university staff; police officers; children and families social workers; adult support and protection staff; and local authority housing and homelessness staff).

Additionally, specific guidance for legal professionals has been issued to help legal professionals work with victims of forced marriage sensitively and effectively, as well as with other agencies involved with victims.⁵⁴

As well as Government-issued guidance, guidance has been issued to inform and assist the Police Service of Scotland (PSoS) and the Crown Office & Procurator Fiscal Service (COPFS) regarding (a) the investigation, reporting and prosecution of offences of forced marriage contrary to section 122 of the 2014 Act; (b) the investigation, reporting and prosecution of a range of offences where there is a background of forced marriage; and (c) assessing the need to seek a FMPO under the 2011 Act.⁵⁵ This guidance was jointly produced and approved by PSoS and COPFS in consultation with key stakeholders within the Scottish Government Forced Marriage Network, and is intended to supplement, rather than replace, any internal guidance produced by either organisation.

50 <<https://www.gov.scot/policies/violence-against-women-and-girls/forced-marriage/#:~:text=The%20Forced%20Marriage%20etc.,already%20in%20a%20forced%20marriage.>>.

51 Forced Marriage statutory guidance revised edition (2014) <<https://webarchive.nrscotland.gov.uk/20180105152932/http://www.gov.scot/Publications/2014/10/6721/0>>.

52 Appendix A of the guidance comprises a non-exhaustive list of persons, bodies and offices to whom the guidance is issued.

53 <<https://www.gov.scot/publications/forced-marriage-practitioner-guidance-update-2014/>>.

54 'Responding to Forced Marriage: Practice Guidelines for Legal Professionals' (2012) <<https://www.gov.scot/publications/forced-marriage-guidance-legal-professionals/>>.

55 See <<https://www.copfs.gov.uk/publications/forced-marriage-joint-guidance-with-police-scotland/html/>>.

3. RESEARCH METHODS

The research comprised five workstreams:

1. A review of forced marriage legislation in Scotland.
2. A review of forced marriage case law in Scotland.
3. Freedom of Information requests to relevant Scottish public authorities.
4. An online survey of legal professionals.
5. Semi-structured interviews.

Ethical approval of the research was granted by the University of Glasgow's College of Social Sciences Ethics Committee.

a) Review of forced marriage legislation in Scotland

Legislation offering protection in Scots law against forced marriage, and in respect of age of legal capacity to marry and consent to marriage, was collated and reviewed, in order to map all relevant legislation affecting these topics, as a backdrop to understanding how effectively the legislation is working in practice and in light of international standards.

The following legislative provisions as they pertain to forced marriage and child or early marriage were reviewed:

International instruments

1. Universal Declaration of Human Rights.
2. European Convention on Human Rights.
3. 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.
4. 1979 United Nations Convention on the Elimination of all Forms of Discrimination against Women.
5. 1989 United Nations Convention on the Rights of the Child.
6. 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.
7. Charter of Fundamental Rights of the European Union.
8. UN 2030 Agenda for Sustainable Development.

Scottish/UK legislation

1. Marriage (Scotland) Act 1977.
2. Civil Partnership Act 2004 and Civil Partnership (Scotland) Act 2020.
3. Family Law (Scotland) Act 2006.
4. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011.
5. Children's Hearings (Scotland) Act 2011.
6. Anti-Social Behaviour, Crime and Policing Act 2014.
7. Marriage and Civil Partnership (Minimum Age) Act 2022.
8. United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

The detailed Legislation Report is set out in Chapter 4 of this Report.

b) Review of forced marriage case law in Scotland

Reported case law in Scotland concerning forced marriage legislation was collected and analysed, and a digest compiled, as part of the backdrop to understanding how effectively the legislation is working in practice.

The detailed Case Digest is set out in Chapter 5 of this Report.

c) Freedom of Information requests to relevant Scottish public authorities

In order to capture relevant data concerning instances of, and complaints about, forced marriage in Scotland, Freedom of Information ('FOI') requests were submitted to various Scottish public authorities in terms of the Freedom of Information (Scotland) Act 2002, and all responses were analysed. Specifically, FOI requests were submitted to all Scottish local authorities;⁵⁶ Police Scotland; the Crown Office & Procurator Fiscal Service; the Scottish Courts and Tribunals Service ('SCTS'); and the Scottish Children's Reporter Administration ('SCRA'). The Freedom of Information request templates are set out in Appendix A of this Report.

Additionally, relevant searches were conducted of recorded statistics published by SCRA,⁵⁷ and by the FMU,⁵⁸ and of relevant information collated by Scotland's Domestic Abuse and Forced Marriage Helpline,⁵⁹ Scottish Government Justice Directorate and National Records of Scotland.

The findings from the Freedom of Information Requests and the statistical analysis are set out in Chapter 6 of this Report.

d) Online survey of legal professionals

The online survey, administered via the online platform 'Jisc', was designed to collect both quantitative and qualitative 'free text' data. Guided by the overall research project, it aimed to gather information from legal professionals across Scotland on ease of access to, and on the effectiveness of, prevention and protection measures in Scots law against forced marriage. The purpose was to gather information about legal professionals' knowledge and experience of forced marriage law in practice, and to obtain individuals' views on its strengths and weaknesses, and on potential areas for reform.

The survey comprised 54 questions set out in four sections, viz.:

- a. Your employment.
- b. Your awareness of forced marriage and associated legislation.
- c. Your experience of legal proceedings concerning forced marriage.
- d. Your evaluation of legal remedies/sanctions available in Scotland in respect of forced marriage.

Survey respondents were issued with a Privacy Notice and were required actively to indicate their consent to taking part in the survey before accessing any of the survey questions.

The survey questions comprised a mix of multiple choice (single answer) questions, selection list questions, scale/rank questions, and multi-line free text questions, enabling respondents to expand on their answers by way of open comment. The full survey is set out in Appendix B of this Report.

56 <<https://www.mygov.scot/organisations#scottish-local-authority>>.

57 <https://www.scra.gov.uk/resources_articles_category/official-statistics/>.

58 <<https://www.gov.uk/government/collections/forced-marriage-unit-statistics>>. Statistics are recorded and are available for each year from 2012 to 2023.

59 <<https://www.sdafmh.org.uk/en/>>.

The survey was targeted at legal professionals across Scotland. A survey link was e-mailed directly to the following individuals and organisations:

- Scottish Supreme Courts;
- Scottish sheriffs principal;
- Scottish sheriffs;⁶⁰
- Scottish sheriff clerks;
- Crown Office & Procurator Fiscal Service;
- Local Procurators Fiscal offices;
- Advocates stables, including advocates' clerks;
- Advocates, solicitors and solicitor advocates identified as having expertise in child and family law;
- Advocates, solicitors and solicitor advocates identified as having expertise in criminal law;
- Advocates, solicitors and solicitor advocates identified as having expertise in immigration and asylum law;
- Academic lawyers having expertise in child and family law;
- Academic lawyers having expertise in criminal law;
- Academic lawyers having expertise in immigration and asylum law;
- Scottish local authorities legal departments;
- Law centres in Scotland;
- National legal societies with expertise in family law;
- Scottish Government civil justice and family law teams;
- SCRA national office and local teams; and
- Charities and aid organisations working to support victims of forced marriage, including AMINA (Muslim Women's Resource Centre); Citizens Advice Scotland; Hemat Gryffe Women's Aid; Scottish Child Law Centre; Scottish Refugee Council; Scottish Women's Aid; Shakti Women's Aid; and Victim Support Scotland.

Areas of professional expertise were ascertained via advertised professional profiles, including the Faculty of Advocates 'Find an Advocate – Areas of Special Interest' search tool and the Law Society of Scotland 'Find a Solicitor' search tool; and via The Scottish Law Directory: The White Book 2022, 131st edition (LexisNexis), which is the most widely used source for parties who are seeking information about provision of legal services in Scotland, and includes details of accreditation specialisms, e.g., in child law, discrimination law, family law, and immigration law.

The survey weblink was e-mailed to approximately 400 individuals and organisations, and recipients of the weblink were encouraged to share it with other relevant contacts.

Following piloting, the survey was implemented from 20 September 2022. An initial closing date of 31 October 2022 was extended to 4 November 2022.

19 substantive responses were received.

The findings from the online survey are set out in Chapter 7 of this Report.

e) Semi-structured interviews

23 semi-structured interviews were carried out with a range of professionals over spring 2023, to explore their lived experience of navigating forced marriage law, legal process and practice.

Indicative interview questions were developed on the basis of the overall project aims and also using provisional analysis of the online survey responses. The Indicative Interview Questions are set out in Appendix C of this Report.

60 We are grateful to the Lord President/Lord Justice General for granting in part our Scottish Courts and Tribunals Service Research Access Request, and approving participation in the survey by a maximum of two sheriffs per sheriffdom.

The purpose of the interviews was to explore, with a range of professionals/key parties in the family law justice system, their experience of forced marriage law and practice in Scotland, and of legal processes relating thereto, with a view to determining whether or not Scots civil and criminal law are fit for purpose and if justice responses are robust, swift, consistent and co-ordinated, and, importantly, to ascertain if there are areas where reform of Scots law is needed to strengthen the protection of individuals at risk of forced marriage.

Interviewees were recruited from the judiciary in Scotland (with the consent of the Lord President/Lord Justice General⁶¹), from members of the Scottish Bar, from solicitors (in private practice and local authority practice, respectively) and solicitor advocates in Scotland, from legal academia, from Police Scotland, and from stakeholder organisations with expertise in advising and assisting victims of forced marriage. We approached, but were not granted an interview with a representative of the office of the Children & Young People's Commissioner Scotland.

Likewise, we approached, but did not carry out an interview with a representative of the Lord Advocate's office; we were advised by a representative of the Crown Office & Procurator Fiscal Service (COPFS) Policy and Engagement Division⁶² that any interview would be confined to discussion of COPFS's general approach to forced marriage, as set out in the COPFS and Police Service of Scotland published Joint Guidance (2022) on the 'investigation, reporting and prosecution of offences of forced marriage or with a background of forced marriage'.⁶³ Since these parameters were too narrow to enable us to address the themes and issues being addressed in the other planned interviews, the decision was taken not to proceed to interview.

Qualitative data analysis of the interview transcripts was undertaken using NVivo software.

The findings from the qualitative interviews are set out in Chapter 8 of this Report.

61 We are grateful to the Lord President/Lord Justice General for granting our Scottish Courts and Tribunals Service Research Access Request, and nominating four judicial office holders to take part in interviews.

62 E-mail dated 16 March 2023 from the National Procurator Fiscal for Domestic Abuse and Head of Victims and Witnesses Policy Team, Crown Office and Procurator Fiscal Service Policy and Engagement Division.

63 <<https://www.copfs.gov.uk/publications/forced-marriage-joint-guidance-with-police-scotland/html/>>. The purpose of this guidance is to inform and assist the Police Service of Scotland ('PSoS') and COPFS regarding (a) the investigation, reporting and prosecution of offences of forced marriage contrary to s 122 of the 2014 Act; (b) the investigation, reporting and prosecution of a range of offences where there is a background of forced marriage; and (c) assessing the need to seek a FMPO under the 2011 Act. This guidance was jointly produced and approved by PSoS and COPFS in consultation with key stakeholders within the Scottish Government Forced Marriage Network and is intended to supplement, rather than replace, any internal guidance produced by either organisation.

4. LEGISLATION REPORT

This Chapter collates international legislative measures pertaining to capacity to marry and consent to marry, and assembles Scottish and associated UK legislation pertaining to forced marriage (and forced civil partnership), and in respect of capacity to marry and consent to marry. The purpose is to map, for Scotland, all relevant legislation affecting these topics, as a backdrop to understanding how effectively the Scottish legislation is working in practice and in light of international standards.

a) International instruments⁶⁴

1) Universal Declaration of Human Rights

The right to marry is enshrined in human rights law. Article 16 of the Universal Declaration of Human Rights⁶⁵ establishes that,

1. *Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
2. *Marriage shall be entered into only with the free and full consent of the intending spouses.*

2) European Convention on Human Rights

The European Convention on Human Rights⁶⁶ provides as follows:

Article 8 – Right to respect for private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

64 For commentary, see JM Carruthers and FA Belton, 'Child, Early and Forced Marriage – Protecting Rights and Freedoms in the International Context' in JM Carruthers and BWM Lindsay, *Research Handbook on International Family Law*, Edward Elgar Publishing (2024), 193.

65 Proclaimed by the United Nations General Assembly in Paris on 10 December 1948. cf. 1966 United Nations International Covenant on Civil and Political Rights, art 23.

66 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.

3) 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

The 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages⁶⁷ is an international treaty that underscores the consensual nature of marriage. It reaffirms in the Preamble that “all States ... should take all appropriate measures with a view to ... ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary ...”.

The fundamental importance of full and free party consent to marry is set out in article 1:

1. *No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.*
2. *Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.*

As well as highlighting the critical role of party consent to marry, the 1962 Convention, in article 2, emphasises the significance of age:

States parties ... shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

The UK acceded to the 1962 Convention on 9 July 1970, subject to a conflict of laws declaration and reservation.⁶⁸

4) 1979 United Nations Convention on the Elimination of all Forms of Discrimination against Women

The 1979 United Nations Convention on the Elimination of all Forms of Discrimination against Women (‘CEDAW’)⁶⁹ recognises women’s rights as human rights. It defines discriminatory practices and establishes measures to eliminate discrimination against women in all its forms and manifestations.⁷⁰ Its adoption by the UN General Assembly was followed, in 1982, by the creation of the UN Committee on the Elimination of Discrimination against Women (‘the Committee’), composed of 23 international experts on women’s rights. The Committee’s purpose is to monitor the behaviour of States Parties to the Convention in their implementation thereof, and to make general recommendations regarding States’ acts or omissions on any issue affecting women.

67 Entry into force on 9 December 1964. See status table at:

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-3&chapter=16&clang=_en.

68 “(a) ... (b) It is the understanding of the Government of the United Kingdom that paragraph (1) of article 1 and the second sentence of article 2, of the Convention are concerned with entry into marriage under the laws of a State Party and not with the recognition under the laws of one State or territory of the validity of marriages contracted under the laws of another State or territory; nor is paragraph (1) of article 1 applicable to marriages by cohabitation with habit and repute under the law of Scotland; (c) Paragraph (2) of article 1 does not require legislative provision to be made, where no such legislation already exists, for marriages to be contracted in the absence of one of the parties; ...” <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-3&chapter=16&clang=_en>.

69 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol 1249, p 13.

70 CEDAW, arts 1 and 2.

In 1999, to increase the effectiveness of the Committee, an Optional Protocol ('OP') was introduced, empowering the Committee to deal with complaints submitted by or on behalf of individuals, or groups of individuals, "claiming to be victims of a violation of any of the rights set forth in the Convention".⁷¹

The Committee also received powers to examine and report on "grave or systematic violations by a State party of rights set forth in the Convention."⁷² Such powers, however, are limited in their effect since States Parties are not bound to remedy violations⁷³ (although the Committee is able to follow-up on their own recommendations,⁷⁴ and can adopt such interim measures as are deemed necessary to prevent irreparable harm to victims of alleged violations⁷⁵).

CEDAW is concerned with eliminating discrimination against women and ensuring the enjoyment of rights by women equally with men; it addresses only the matter of 'discrimination', and not the possibility of gendered violence or coercion in the process of marriage. In 1992, however, the Committee indicated that the definition of 'discrimination against women' in article 1 includes gender-based violence.⁷⁶

Within CEDAW, the primary reference to marriage concerns the taking by States Parties of all appropriate measures to eliminate discrimination against women in all matters relating to marriage,⁷⁷ including, in particular, the right to enter into marriage,⁷⁸ and freedom to choose a spouse and to enter into marriage only with free and full consent.⁷⁹ In respect of child and early marriage, CEDAW provides that,

*The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*⁸⁰

In 2019, the Committee (acting jointly along with the UN Committee on the Rights of the Child) examined, among other things, forced marriage in the context of harmful practices grounded in discrimination based on sex, gender and age,⁸¹ and observed that harmful practices, such as forced marriage, persist among practising communities.⁸² Social norms and customs among cultural groups migrating or seeking asylum may support harmful practices, particularly as a means of maintaining cultural identity in a new environment.⁸³

71 Art 2, UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (6 October 1999) United Nations, Treaty Series, vol 2131, p 83: <<https://www.refworld.org/docid/3ae6b3a7c.html>>.

72 OP, art 8.

73 OP, art 8(4).

74 OP, art 9.

75 OP, arts 5(1) and 11.

76 UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No 19: Violence against Women (1992) ('CEDAW General Recommendation No 19') [1]: <<https://www.refworld.org/docid/52d920c54.html>>.

77 Art 16.

78 Art 16(a).

79 Art 16(b).

80 Art 16(2).

81 Joint General Recommendation No 31 of the Committee on the Elimination of Discrimination against Women/General Comment No 18 of the Committee on the Rights of the Child (2019) on harmful practices (<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/42/PDF/G1913442.pdf?OpenElement>>) ('Joint General Recommendation No 31'), [7].

82 *ibid* [18].

83 *ibid* [18].

Accordingly, the Committee made detailed recommendations that States Parties to the Convention, inter alia, should adopt or amend legislation with a view to addressing and eliminating harmful practices, including forced marriage.⁸⁴ Specifically, the Committee recommended that States Parties should ensure that legislation complies with the obligations outlined in CEDAW and other international human rights standards that prohibit harmful practices,⁸⁵ and that all legislation condoning, allowing or leading to harmful practices should be repealed.⁸⁶

The UK acceded to CEDAW on 7 April 1986, subject to certain declarations and reservations;⁸⁷ and accepted the individual complaints procedure set out in the OP on 17 December 2004,⁸⁸ and the inquiry procedure set out in articles 8 and 9 of the OP on 17 December 2004.⁸⁹

5) 1989 United Nations Convention on the Rights of the Child

Significantly, the 1989 United Nations Convention on the Rights of the Child ('UNCRC')⁹⁰ (which, in article 1, defines 'a child' as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier"⁹¹) does not specifically address the subject of marriage, nor stipulate any minimum age for marriage.

In 2003, however, in the context of consideration of adolescent health and development, the UN Committee on the Rights of the Child (the body of independent, international experts that monitors implementation of the UNCRC) stated that States Parties should take all appropriate legislative, administrative and other measures to fulfil, among other things, the obligation "[t]o protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation."⁹² The Committee declared that:

States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for ... marriage These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity (arts. 5 and 12 to 17).⁹³

84 ibid [55].

85 ibid [55](b).

86 ibid [55](c).

87 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en> and <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#EndDec>

88 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185&Lang=en>.

89 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185&Lang=en>.

90 United Nations, Treaty Series, vol 1577, p 3.

91 UNCRC, art 5 expressly recognises the 'evolving capacities of the child'.

92 UN Committee on the Rights of the Child (CRC), 'General Comment No 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child', 1 July 2003, CRC/GC/2003/4 ('General Comment No 4') [35(g)]: <<https://www.refworld.org/docid/4538834f0.html>> .

93 ibid [5].

Acknowledging the very low, legal minimum age of marriage (and actual age of marriage), for girls especially, in several States Parties to the UNCRC,⁹⁴ the UN Committee emphasised the negative impact of early marriage on sexual and reproductive health, as well as the adverse, non-health-related consequences of early marriage pertaining to education and exclusion from the protections conferred by UNCRC.⁹⁵

The UN Committee recommended, therefore, that, “States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”⁹⁶

The UK acceded to UNCRC on 16 December 1991, subject to certain declarations and reservations.⁹⁷

In 2019, the joint recommendation of the CEDAW and UNCRC Committee described ‘child marriage’ (or ‘early marriage’) as “any marriage where at least one of the parties is under 18 years of age.”⁹⁸ In 2023, the UN Committee, in its ‘Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland’,⁹⁹

while welcoming the various measures taken in the UK to implement the UNCRC, including the prohibition of marriage under 18 years of age in England and Wales,¹⁰⁰ expressed concern that children who are 16 and 17 years of age do not always receive protection as children, and that marriage under 18 years of age remains permissible in Scotland (as well as in Northern Ireland, the overseas territories and the Crown dependencies of Guernsey and the Isle of Man).¹⁰¹

Accordingly, the UN Committee recommended that the State party:

- a. *Ensure that all children, including those who are 16 and 17 years of age, are defined as children in law and receive protection as children in practice, including by undertaking a review of age-based legislation throughout all jurisdictions of the State party;*
- b. *Prohibit all marriages of children under 18 years of age, without exception, in Scotland, Northern Ireland and all overseas territories and the Crown dependencies of Guernsey and the Isle of Man.*¹⁰²

94 See ‘child marriage atlas’ at <<https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/>>.

95 General Comment No 4 (n 92) [16]. See further UN Report A/HRC/52/50: ‘Adverse Impact of Forced Marriage on the Full and Effective Enjoyment of all Human Rights by all Women and Girls - Report of the Office of the United Nations High Commissioner for Human Rights’ (2023) <<https://www.ohchr.org/en/documents/thematic-reports/ahrc5250-adverse-impact-forced-marriage-full-and-effective-enjoyment-all>>; and UN Report A/HRC/50/44 ‘Progress, Gaps and Challenges in Addressing Child, Early and Forced Marriage, and Measures to Ensure Accountability at the Community and National Levels, including for Women and Girls at Risk of and those Subjected to this Harmful Practice - Report of the United Nations High Commissioner for Human Rights’ (2022) <<https://www.ohchr.org/en/documents/thematic-reports/ahrc5044-progress-gaps-and-challenges-addressing-child-early-and-forced>>.

96 General Comment No 4 (n 92 above) [16]: <<https://www.refworld.org/docid/4538834f0.html>> ; also [20] and [27]. See also Joint General Recommendation No 31 (n 81 above), [55(f)].

97 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185&Lang=en> and <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec>.

98 Joint General Recommendation No 31 (n 81), [20].

99 CRC/C/GBR/CO 6-7 (22 June 2023) (GE.23-10524 (II)), para 4.

100 See Chapter 4.b.7, below.

101 CRC/C/GBR/CO 6-7 (22 June 2023) (GE.23-10524 (B)), para 18.

102 *ibid.*

The Committee further recommended that the State party:

*Develop national strategies aimed at eliminating and preventing harmful practices affecting children, including child marriage, female genital mutilation and violence committed in the name of so-called 'honour', and ensure that they include effective measures for raising public awareness, training relevant professional groups, identifying victims and addressing data gaps and low rates of reporting and prosecution.*¹⁰³

6) 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence

The 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ('Istanbul Convention')¹⁰⁴ explicitly recognises gender-based violence against women as a violation of human rights and a form of discrimination. It tackles violence against women and domestic violence by way of four main pillars ('4 Ps') – integrated policies, including data collection; prevention; protection; and prosecution¹⁰⁵ – and aims, among other things, to “protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence” (article 1.1.a); “promote substantive equality between women and men” (article 1.1.b); and “to provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence” (article 1.1.e).

An independent, expert body known as 'GREVIO' (Group of Experts on Action Against Violence Against Women and Domestic Violence) is tasked with monitoring Parties' implementation of the Convention,¹⁰⁶ while the 'Committee of the Parties' (a political body comprising representatives of the Parties to the Convention) fulfils a separate, supervisory function and is able to adopt recommendations to implement GREVIO conclusions.¹⁰⁷

The Istanbul Convention addresses forced marriage in article 32 ('Civil consequences of forced marriages'), and stipulates that Parties “shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.”

Separately, article 37 ('Forced marriage') requires 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.*

103 CRC/C/GBR/CO 6-7 (22 June 2023) (GE.23-10524 (E)) para 35(a).

104 Council of Europe Treaty Series, No 210 (<<https://rm.coe.int/168008482e>>).

105 N Meurens, H D'Souza, S Mohamed, E Leye, N Chowdhury, S Charitakis and K Regan, 'Tackling Violence against Women and Domestic Violence in Europe. The Added Value of the Istanbul Convention and Remaining Challenges' European Parliament Committee on Women's Rights and Gender Equality FEMM, PE 658.648 (2020), paras 15, 21, 92 and 185.

106 Art 66.

107 Art 67.

Importantly, the Istanbul Convention requires States parties to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by its scope, “culture, custom, religion, tradition or so-called ‘honour’ shall not be regarded as justification for such acts.”¹⁰⁸

Unlike CEDAW, the Istanbul Convention does not generally permit States parties to enter reservations to its provisions.¹⁰⁹

The UK ratified the Istanbul Convention on 21 July 2022,¹¹⁰ and the instrument entered into force in the UK on 1 November 2022.¹¹¹

7) Charter of Fundamental Rights of the European Union

For EU citizens, the Charter of Fundamental Rights of the European Union¹¹² provides in article 9 (‘Right to marry and right to found a family’) that,

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

8) UN 2030 Agenda for Sustainable Development

The UN Sustainable Development Goals (‘SDGs’)¹¹³ have some impact on the topics of child, early and forced marriage.

Of primary relevance is SDG 5, which aims to achieve gender equality and empower all women and girls. Specifically, Target 5.3 seeks to “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation”. The ‘indicators’ of achievement of this target are “5.3.1 Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18”, and “5.3.2 Proportion of girls and women aged 15-49 years who have undergone female genital mutilation/cutting, by age”.¹¹⁴

Of related, but secondary, relevance are SDGs 4 and 16.

SDG 4 aims to “[e]nsure inclusive and equitable quality education and promote lifelong learning opportunities for all”, and is supported by accompanying Targets 4.1, 4.3, 4.4, and 4.5, which are concerned with eliminating gender disparities in education.

108 Art 42(1).

109 Art 78(1), subject to narrow exceptions specified in art 78(2) and (3).

110 Despite the considerably earlier creation of the statutory offences of forced marriage in UK law in 2014 (Anti-social Behaviour, Crime and Policing Act 2014, ss 121 and 122).

111 See, in the EU, Council Decision (EU) 2017/866 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to asylum and non-refoulement OJ L 131 (20.5.2017), pp 13–14; and Council Decision (EU) 2017/865 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters OJ L 131 (20.5.2017), pp 11–12 (and, for background, Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM/2016/111/final)).

112 OJ 2012/C 326/02.

113 UN General Assembly, Resolution, ‘Transforming our World: The 2030 Agenda for Sustainable Development’ A/RES/70/1 (21 October 2015) <<https://sdgs.un.org/2030agenda>>. The Agenda comprises 17 Sustainable Development Goals and 169 targets, forming part of the UN “plan of action for people, planet and prosperity ... to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.” (Preamble).

114 The progress report for 2023 states that, “Target 5.3: One in five young women worldwide (19%) were [sic] married in childhood in 2022. Globally, the prevalence of child marriage has declined from 21% in 2016. However, the profound effects of COVID-19 are threatening this progress, with up to 10 million additional girls at risk of child marriage over the course of a decade from the onset of the pandemic.” <https://sdgs.un.org/goals/goal5#progress_and_info>.

SDG 16 seeks to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, and is supported by accompanying Targets 16.2, 16.3, 16.6, 16.7, which are concerned with ending all forms of violence against children and promoting and strengthening access to justice.

b) Scottish/UK legislation

1) Marriage (Scotland) Act 1977

The Marriage (Scotland) Act 1977 (‘1977 Act’) makes provision for the law relating to the constitution of marriage, and addresses all aspects of marriage in Scots law, including capacity, consent and ceremonies. The Act does not utilise the term ‘forced marriage’ or ‘child marriage’, but nonetheless provides protection against such marriages in provisions dealing with minimum age of marriage, objections to marriage including incapacity and absence of consent, and void marriages.

Minimum age of marriage

Section 1 establishes the rules in relation to the minimum age of marriage for parties domiciled in Scotland, and in relation to marriages in Scotland, providing that,

- 1. No person domiciled in Scotland may marry before he attains the age of 16.*
- 2. A marriage solemnised in Scotland between persons either of whom is under the age of 16 shall be void.*

Children are viewed as vulnerable in Scots law and not capable of giving consent to marriage, and the 1977 Act seeks to prevent children from being forced into marriage.

The effect of section 1 is that no person domiciled in Scotland may marry, in Scotland or overseas, before he or she attains the age of 16. A marriage solemnised in Scotland between persons either of whom is under the age of 16 shall be void, even if a party to the purported marriage has capacity to marry by the law of his or her domicile. The effect of section 1(2) is to insist on legal capacity by the Scots law of the place of marriage, as well as by the law of the relevant party’s domicile.

Parties intending to marry in Scotland must submit to the district registrar their birth certificates (along with other documents) before a marriage schedule can be issued to permit a marriage to take place.¹¹⁵ If a party to the planned marriage is unable to submit a birth certificate, s/he may make a declaration in lieu, stating that, for the reasons specified, it is impracticable for them to submit the birth certificate, and providing the relevant information and such supporting documentary evidence as the district registrar may require.¹¹⁶ If a birth certificate is not produced and a declaration (with satisfactory evidence and explanation) is not made, the district registrar will not issue a marriage schedule.

115 s 3(1).

116 s 3(2).

Objections to marriage

Following the requirements set out in the 1977 Act, the district registrar will make public relevant information regarding an intended marriage.¹¹⁷ This enables any person who may have an objection to the marriage to access relevant information. At any time before the solemnisation of a marriage in Scotland, any person may submit to the district registrar an objection to the marriage.¹¹⁸ On receipt of an objection, if it is anything other than “a misdescription or inaccuracy in the marriage notice or approved certificate”,¹¹⁹ the district registrar will notify the Registrar General of the objection, suspend the completion or issue of the marriage schedule in respect of the marriage and, where it has already been issued to the parties in the case of a marriage to be solemnised by an approved celebrant, advise the celebrant not to proceed until the objection has been considered.¹²⁰ If the Registrar General finds that there is a legal impediment to the marriage, he shall direct the district registrar to take all reasonable steps to ensure that the marriage does not take place and shall notify the parties accordingly.¹²¹

Legal impediment to marriage

There is a legal impediment to a marriage where one or both of the parties will be under the age of 16 on the date of solemnisation of the intended marriage,¹²² or where one or both of the parties is or are incapable of understanding the nature of a marriage ceremony or of consenting to marriage.¹²³

There are safety measures, overseen by the district registrar and Registrar General, that bar from entering into a marriage in Scotland any person under the age of 16; and also any person, aged 16 years or over, who is not capable of understanding the nature of a marriage ceremony or of consenting to a marriage.

Grounds on which marriage void

Section 20A outlines situations in which a marriage solemnised in Scotland shall be void.

Such a marriage shall be void if, at the time of the marriage ceremony, a party to the marriage who was capable of consenting to the marriage purported to give consent, but did so by reason only of duress or error.¹²⁴

Further, a marriage solemnised in Scotland shall be void if, at the time of the marriage ceremony, a party to the marriage was incapable of (a) understanding the nature of marriage; and (b) consenting to the marriage.¹²⁵

Such marriages have no legal standing and may be declared null.

Religious or belief celebrants

An ‘approved celebrant’¹²⁶ in a prescribed religious or belief body may solemnise a religious or belief marriage.¹²⁷

Persons in non-prescribed religious or belief bodies may be nominated to the Registrar General and registered as empowered to solemnise marriages.¹²⁸

117 s 4.

118 s 5(1).

119 s 5(2)(a).

120 s 5(2)(b).

121 s 5(3)(a).

122 s 5(4)(c).

123 s 5(4)(d).

124 s 20A(2).

125 s 20A(3).

126 ss 26(2)(a) and 8(2)(a).

127 s 8. See also s 12 (‘Temporary authorisation of celebrants’).

128 s 9.

2) Civil Partnership Act 2004; Civil Partnership (Scotland) Act 2020

Civil partnership was introduced throughout the UK in 2004. When the Civil Partnership Act 2004 ('2004 Act') was introduced, civil partnership was available only to same sex couples.¹²⁹ Section 1(1) of the 2004 Act defined a civil partnership as a relationship between two people of the same sex. This was amended, however, by the Civil Partnership (Scotland) Act 2020 ('2020 Act'), section 1(1) of which removes the requirement that the two people be of the same sex and thereby extends civil partnership to mixed sex couples.

The 2004 Act (as amended) is in 8 parts and has 30 Schedules. Part 1 establishes the requirements for the creation of a valid civil partnership. Separate provision is laid down for the different jurisdictions of the UK: Part 2 (England and Wales), Part 3 (Scotland), and Part 4 (Northern Ireland). Part 5 applies when two people register as civil partners of each other outside the UK.

Civil partnerships registered in Scotland

The rules in Part 3 of the 2004 Act (as amended) apply to all civil partnership registrations taking place in Scotland, and to all persons registering a civil partnership in Scotland, regardless of their domicile(s).

Civil partnerships registered in Scotland must comply with the formal requirements set out in the 2004 Act (as amended).¹³⁰

Legal capacity to enter a civil partnership is placed under the heading of 'eligibility'. Eligibility to register a civil partnership in Scotland depends only upon compliance with the provisions set out in section 86; the law of a party's domicile is not relevant. To be eligible to enter a civil partnership in Scotland, the parties must not be related in a forbidden degree; must each have attained the age of 16; must not be married or already in civil partnership; and must be capable of understanding the nature of civil partnership and of validly consenting to its formation.¹³¹

Civil partnerships formed abroad

The 2004 Act (as amended) makes provision in Part 5, Chapter 1 for registration of a civil partnership outside the UK under Order in Council.

The rules in Part 5, Chapter 2 pertain to overseas relationships treated as civil partnerships. The same sex requirement that originally applied (to the effect that two people were not treated in UK law as having formed a civil partnership upon the registration of an overseas relationship if, at the date of registration, they were not of the same sex under UK law) was removed by section 2(5) of the 2020 Act.

Certain mandatory rules apply in cases where at least one of the parties to an overseas relationship was domiciled in a part of the UK at the date of registration.¹³² A person domiciled in Scotland shall not be treated as having formed a civil partnership as a result of having entered into an overseas relationship if, at the date of registration, (a) the parties were within the prohibited degrees of relationship; or (b) either party had not attained the age of 16 years.¹³³

129 ss 1(1) and 86(1)(a).

130 s 85.

131 s 86(1).

132 s 217.

133 s 217(2), amended by the Marriage and Civil Partnership (Minimum Age) Act 2022, makes corresponding provision with regard to English domiciliaries, viz.: a person domiciled in England and Wales shall not be treated as having formed a civil partnership if, at the date of registration, (a) the parties were within the prohibited degrees of relationship; or (b) either party had not attained the age of 18 years.

In this way, Part 5 imposes upon persons domiciled in Scotland the eligibility requirements that would apply if they were to seek to register a civil partnership in Scotland. This means that a Scottish domiciliary cannot evade Scots rules of age of legal capacity by going abroad to register a partnership.

Separately, two people are not to be treated as having formed a civil partnership as a result of having entered into an overseas relationship if it would be manifestly contrary to Scots public policy to recognise the capacity, under the law of the country where the relationship was registered (including its rules of private international law), of one or both parties to enter into the relationship.¹³⁴

The 2004 Act (as amended) does not make any reference to forced civil partnership.

The 2020 Act, in section 13, amends the Anti-social Behaviour, Crime and Policing Act 2014 to create the offence of forced civil partnership in Scotland.

3) Family Law (Scotland) Act 2006

The Family Law (Scotland) Act 2006 ('2006 Act') makes provision, among other things, for certain rules of international private law relating to family law.

Section 38 sets out choice of law rules pertaining to the validity of marriages. These rules apply when there is a foreign or cross-border dimension to a marriage, either because the marriage takes place, or has taken place, abroad, or where one or both spouse(s) is/are domiciled in a country different from that in which the marriage takes/took place.

Section 38 replicates the important distinction, well established at common law, between the formal validity of a marriage and its essential validity.

The formal validity of a marriage pertains to matters such as the length of residence that needs to be satisfied in the country where a marriage takes place; any notice period that must be complied with; the nature of the marriage ceremony, including permitted celebrants; the need for witnesses, and the determination of competent witnesses; irregular forms of marriage; and the permissibility of marriage by proxy or marriage that takes place in the absence of either party to the purported marriage.

The essential validity of a marriage concerns the question whether the parties have legal capacity to marry (e.g. in terms of age; sanity; and relationship to the purported spouse), and whether they consented to the marriage.

Subject to section 13 of, and Schedule 6 to, the Marriage (Same Sex Couples) Act 2013 (which enable same sex couples to marry in consulates or on armed forces bases overseas), the question whether a marriage is formally valid is determined by the law of the place where the marriage was celebrated.¹³⁵

The nature and extent of freewill necessary to create a valid marriage are matters of substance for decision by the parties' personal law(s). The question whether a person who enters into a marriage had legal capacity to do so is determined by the law of the place where, immediately before the marriage, that person was domiciled. Likewise, the question whether a person who enters into a marriage consented to do so is determined by the law of the place where, immediately before the marriage, that person was domiciled.¹³⁶ Consent includes mental capacity to consent and also freewill (i.e. entering marriage with a willing mind).

134 s 218.

135 s 38(1). See EB Crawford and JM Carruthers, *International Private Law – A Scots Perspective* (W.Green) 4th ed. (2015), 11-19 et seq.

136 s 38(2).

If, however, a marriage entered into in Scotland is void under a rule of Scots internal law (e.g. if a party to the marriage, capable of so doing by the law of his or her domicile immediately before the marriage, nonetheless lacks capacity to marry by Scots domestic law) then, notwithstanding section 38(2), the rule of Scots internal law shall prevail over any other law in terms of which the marriage would be valid.¹³⁷ This means that, where a marriage takes place in Scotland, the parties to the marriage must have legal capacity to marry by Scots internal law, in addition to there being no impediment by the law of each party's domicile.

Moreover, the capacity of a person to enter into a marriage shall not be determined under the law of the place where, immediately before the marriage, the person was domiciled insofar as it would be contrary to public policy in Scotland for such capacity to be so determined.¹³⁸

Thus, a Scots court has discretion not to require capacity by, or to deny effect to, a provision of the party/ies' personal law(s), if that foreign provision is offensive to public policy.

Finally, cases in which the validity of a marriage is dependent upon the consent of a third party, and of a parent, in particular, require special consideration. If, by the law of the place in which an individual is domiciled, s/he must obtain parental consent to marry (as a result, for example, of being under a certain age), that requirement shall not be taken to affect the capacity of a person to enter into a marriage in Scotland unless failure to obtain such third party consent would render invalid any marriage that the person purported to enter into in any form anywhere in the world.¹³⁹

4) Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011

The aim of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 ('2011 Act') was to make legislative provision to protect people from being forced to enter into marriage without their free and full consent and to protect those who have been forced to enter into marriage without such consent. Additionally, in order to increase access to justice, the Act amended the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage.

The 2011 Act came into force on 28 November 2011.

Forced marriage protection order

Part 1 of the 2011 Act enables the Court of Session or sheriff court to make a forced marriage protection order ('FMPO') for the purposes of protecting a person (a 'protected person') (a) from being forced into a marriage or civil partnership or from any attempt to force the person into a marriage or civil partnership, or (b) who has been forced into a marriage or civil partnership.¹⁴⁰

The protected person is any individual (adult or child) who has been forced into a marriage or civil partnership; or who may be forced into a marriage or civil partnership; or who may be the subject of an attempt to force them into a marriage or civil partnership.¹⁴¹

137 s 38(3).

138 s 38(4).

139 s 38(5).

140 s 1(1).

141 ss 1(1) and 14.

Protection equivalent to that which exists in respect of forced marriage was extended to forced civil partnership (both same sex and mixed sex) under the power set out in section 10 of the 2011 Act.¹⁴²

'Marriage', for the purposes of the 2011 Act, means any religious, belief (e.g. humanist) or civil ceremony of marriage, wherever carried out and whether or not legally binding under the law of Scotland or any other place.¹⁴³

'Civil partnership', for the purposes of the 2011 Act, includes (a) a civil partnership which exists by virtue of the Civil Partnership Act 2004 (as amended), and (b) a purported civil partnership.¹⁴⁴

Definition of force

A person ('A') is regarded as forced into a marriage or civil partnership if another person ('B') forces A to enter into a marriage or civil partnership (whether with B or another person) without A's free and full consent.¹⁴⁵

'Force' is defined as including coercion, by physical, verbal or psychological means, threatening conduct, harassment or other means; and knowingly taking advantage of a person's incapacity to consent to marriage or civil partnership or to understand the nature of the marriage or civil partnership.¹⁴⁶

The conduct which forces a person to marry or enter a civil partnership need not necessarily be directed against them personally; it may be conduct directed against them, or against the perpetrator of the force, or against another person.¹⁴⁷

Relevant considerations

In deciding whether to make a FMPO and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person.¹⁴⁸

In ascertaining the protected person's well-being, the court must have such regard, in particular, to that person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding.¹⁴⁹ Taking account of the protected person's wishes and feelings will be tempered by the court's opinion of his/her age and understanding of the situation.

Contents of FMPO

A FMPO may contain such prohibitions, restrictions or requirements, and other terms, as the court considers appropriate for the purposes of the order.¹⁵⁰

142 See the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Application to Civil Partnerships and Consequential Provision) Order 2023 (SSI 2023/194) (in force 30 November 2023). For background, see 'Policy Note', Scottish Government Justice Directorate (May 2023); and, earlier, Civil Partnership (Scotland) Bill (SP Bill 57) (2019): Policy Memorandum, paras 127-132 and, particularly, 128-129. The policy was that these measures were to be in place to counter the perceived increased risk of forced civil partnership when it "crystallises upon the introduction of mixed sex civil partnership" (para 129).

143 s 14, as amended by SSI 2023/194, reg 2(6)(b). The Order amends the definition of 'marriage' in the 2011 Act to include belief marriages as well as religious and civil marriages.

144 *ibid.*

145 s 1(4).

146 s 1(6).

147 s 1(5).

148 s 1(2).

149 s 1(3).

150 s 2(1).

The terms of a FMPO may relate to persons who force or attempt to force, or may force or attempt to force, a protected person to enter into a marriage or civil partnership, and/or to persons who are, or may become, involved in other respects¹⁵¹ (such as aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage or civil partnership; or conspiring to force, or to attempt to force, a person to enter into a marriage or civil partnership).¹⁵²

A FMPO may incorporate wide-ranging powers,¹⁵³ including taking the protected person to a place of safety designated in the order; bringing the protected person to a court at such time and place as the court making the order may specify; requiring that the subject of the order refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person); requiring disclosure of a person's whereabouts; requiring that the subject of the order refrain from taking the protected person from, or to, such place as the court may specify; facilitating or otherwise enabling the protected person or another person to return or go to such place (whether in Scotland or another part of the UK) as the court may specify within such period as may be so specified; requiring submission to the court of such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify; and requiring that the subject of the order provide the court with such other information as it may specify.

The terms of a FMPO will depend on the facts and circumstances of the case and on what the court considers appropriate for the purposes of the order.

The burden of proof lies on an applicant to show, on the balance of probabilities, that a FMPO is required.

The duration of a FMPO is for the period specified within the order, failing which until the order is recalled.¹⁵⁴

Applicant

A court may make a FMPO on an application made to it by the protected person or by a relevant third party,¹⁵⁵ namely, a local authority, the Lord Advocate, or a person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.¹⁵⁶

To date, the only additional person specified is the chief constable of the Police Service of Scotland.¹⁵⁷ An application may be made by any other person only with the leave of the court.¹⁵⁸

The Policy Note accompanying SSI 2017/461 makes clear that adding the chief constable of the Police Service of Scotland to the list of relevant parties will,

*allow Police Scotland to apply directly to a court as required, without first having to seek permission before making the application. This will remove a step from the application process and may help in securing an order quickly when there may be a need to act promptly to keep a person who is at risk safe.*¹⁵⁹

151 s 2(2)(b) and (c).

152 s 2(4).

153 s 2(3).

154 s 6.

155 s 3(1).

156 s 3(7).

157 Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Relevant Third Party) Order SSI 2017/461, reg 2.

158 s 3(2).

159 Policy Note accompanying SSI 2017/461, p 1.

With regard to the statutory responsibilities, the Policy Note also makes clear that, “Whilst Police Scotland are being included under Section 3(1), it should be recognised that the need for others named under that section to act in line with their statutory responsibilities has not been reduced.”¹⁶⁰

Moreover, the Policy Note states that, “It must be acknowledged that this process for streamlining of the application process is designed to act for those at risk and not to move the financial cost of application to another agency.”¹⁶¹

Alternatively, a court may make a FMPO without an application being made to it where civil proceedings are before the court; the court considers that such an order should be made to protect any person (whether or not a party to the civil proceedings); and a person who would be a party to any proceedings for the FMPO (other than as the protected person) is a party to the civil proceedings.¹⁶²

Where criminal proceedings are before the sheriff, the Sheriff Appeal Court or the High Court, and the sheriff, the Sheriff Appeal Court or the High Court considers that a FMPO should be made to protect a person (whether or not a party to the criminal proceedings), the sheriff, the Sheriff Appeal Court, or, as the case may be, the High Court may refer the matter to the Lord Advocate who, in turn, may apply for a FMPO, or take such other steps as s/he considers appropriate.¹⁶³

Interim orders

Orders under the 2011 Act may be both made and discharged *ex parte*.

Where it considers that it is equitable to do so, a court may make an interim FMPO, that is, one granted in the absence of a person who is, or would be, a party to proceedings for the order.¹⁶⁴ The court can exercise this power regardless of whether or not the person has been given such notice of the application for the order as otherwise would be required by rules of court.

In deciding whether to make an interim order, the court must have regard to all the circumstances, including any risk of significant harm to the protected person or to another person if the order is not made immediately.¹⁶⁵

The duration of an interim FMPO is for the period specified within the order, failing which until the order is recalled.¹⁶⁶

Variation, recall and extension of orders

There is provision for variation and recall of FMPOs,¹⁶⁷ and for extension of orders.¹⁶⁸

The court may vary or recall a FMPO on an application by any person who was a party to the proceedings for the order; ¹⁶⁹ the protected person (if not such a person); any other person affected by the order; or, with the leave of the court, any other person.¹⁷⁰ In addition, in certain circumstances, the court may vary or recall a FMPO even though no application has been made to the court.¹⁷¹

160 *ibid*, p 4.

161 *ibid*.

162 s 4(1).

163 s 4(3).

164 s 5(1).

165 s 5(3).

166 s 6.

167 s 7.

168 s 8.

169 Or, in the case of an order made by virtue of s 4(1) or s 5(1), who would have been party to the order.

170 s 7(1).

171 s 7(4).

Where a FMPO specifies a period for which it is to have effect, before the expiry of that period, application to the court for an extension of the order may be made by any person who was a party to the proceedings for the order;¹⁷² the protected person (if not such a person); any other person affected by the order; or, with the leave of the court only, any other person.¹⁷³

An order may be extended on more than one occasion.¹⁷⁴

Offence of breaching FMPO

Any person who, knowingly and without reasonable excuse, breaches a FMPO commits an offence and is subject to criminal penalties.¹⁷⁵ This is one of the most significant provisions of the 2011 Act.

A person guilty of such an offence is liable on summary conviction to imprisonment for a period not exceeding 12 months and/or to a fine not exceeding the statutory maximum; and, on conviction on indictment, to imprisonment for a period not exceeding 2 years and/or to a fine.¹⁷⁶

Associated remedies

The Act does not affect any other protection or assistance that is available to a person who is being, or may be, forced into a marriage; who is being, or may be, subjected to an attempt to force the person into a marriage; or who has been forced into a marriage.¹⁷⁷

In particular, it does not affect the equitable jurisdiction of the High Court or the Court of Session; any criminal liability; any civil remedy under the Protection from Harassment Act 1997; any right to an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 relating to occupancy rights, or an exclusion order under that legislation; any protection or assistance under the Children (Scotland) Act 1995 or the Children's Hearings (Scotland) Act 2011; or any claim in delict, or the law of marriage.¹⁷⁸ Any matrimonial or other civil remedy to be sought by the protected person must be pursued separately.

The international dimension

Account must be taken of the territorial extent of statutory rules. The 2011 Act is intended to have extra-territorial effect insofar as the terms of a FMPO (including an interim FMPO) may relate to conduct outwith, as well as, or instead of, conduct within Scotland.¹⁷⁹ For example, a FMPO may be sought to protect a girl living in Scotland, who fears that she may be forcibly taken by her parents from Scotland to a destination elsewhere in the UK or overseas, for the purpose of marriage.

By section 2(3)(g) of the 2011 Act, a FMPO may require, among other things, a person "to facilitate or otherwise enable the protected person or another person to return or go to such place (whether in Scotland or another part of the United Kingdom) as the court may specify within such period as may be so specified, ...".

172 Or, in the case of an order made by virtue of s 4(1) or s 5(1), who would have been party to the order.

173 s 8.

174 s 8(7).

175 s 9(1); ss 9(2) and (3) were repealed by the Criminal Justice (Scotland) Act 2016, s 117(2), sch 2, para 25, and the power of arrest of a constable was placed in s 1(1) of that Act.

176 s 9(4).

177 s 12(1).

178 s 12(2).

179 s 2(2)(a). The Forced Marriage (Civil Protection) Act 2007, applicable in England & Wales, is intended to have extra-territorial import insofar as the terms of a FMPO may relate to conduct outside England and Wales as well as (or instead of) conduct within England and Wales (s 1 inserting s 63B(2)(a) into the Family Law Act 1996). See, in relation to the international dimension of the offence of forced marriage, s 122(3) of the Anti-social Behaviour, Crime and Policing Act 2014 (discussed in Chapter 4.b.6, below).

Although the list in section 2(3) is not intended to be comprehensive, this provision does not explicitly extend beyond the territory of the UK and the court's powers, at least in terms of enforcement, may be territorially restricted to the UK.¹⁸⁰

In terms of jurisdiction to grant a FMPO, summary application to a sheriff should be made (a) to the sheriff in whose sheriffdom the protected person is ordinarily resident or (b) where the protected person is not ordinarily resident in Scotland, to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.¹⁸¹ This ensures that protection can be extended to persons who are, and also to those who are not, ordinarily resident in Scotland.¹⁸²

In addition to the jurisdiction conferred by section 3(6)(b) of the 2011 Act, there is a basis of protective, emergency jurisdiction within Chapter III (Jurisdiction of Courts in Scotland) of the Family Law Act 1986. By section 12 of the 1986 Act, notwithstanding that any other court, whether within or outside Scotland, has jurisdiction to entertain an application for an order under Part I ('Child Custody') of the 1986 Act, the Court of Session or the sheriff shall have jurisdiction to entertain such an application if (a) the child¹⁸³ concerned is present in Scotland or, as the case may be, in the sheriffdom on the date of the application; and (b) the Court of Session or sheriff considers that, for the protection of the child, it is necessary to make such an order immediately.

Section 38 of the Family Law (Scotland) Act 2006¹⁸⁴ sets out the Scots choice of law rules pertaining to the validity of marriages.

180 An equivalent to s 2(3) of the 2011 Act is not found in Part 4A ('Forced Marriage') of the Family Law Act 1996.

181 s 3(6).

182 cf. in England, *P v Q* [2023] EWHC 195 (Fam), [2023] Fam 165, [179], in which Gwynneth Knowles J in the English High Court held that jurisdiction to make a FMPO is not limited by reference to the physical presence, habitual residence or nationality of the applicant. The English court considered itself competent in proceedings concerning an applicant who alleged that, while visiting Pakistan, she had been forced into marrying her cousin, of dual British and Pakistani nationality and resident in England. In deciding whether or not to grant a FMPO, the judge held that consideration of "all the circumstances" was appropriate, including, where relevant, the connection and/or nationality of both parties. The judge opined that the court was likely to exercise its jurisdiction to make a FMPO in circumstances where, e.g., either the applicant or a respondent has a connection with the UK, by way of nationality, habitual residence, or physical presence in the UK, albeit that such connections do not constitute a formal 'threshold filter'. The court held that an order could be made in England in respect of the female applicant (of Pakistani descent and a citizen of, and resident in, the USA), who was neither physically present nor resident in the UK and not a British citizen. Gwynneth Knowles J remarked at [180] that victims abroad who are forced into marriage with a British national or with someone who is habitually resident in the UK, and victims who are neither habitually resident in the UK nor a British national, are entitled to protection. Such an expansive interpretation of the English court's jurisdiction was deemed, at [178], to go "with the grain of the legislation" and to be compatible with the rights guaranteed by the ECHR, in particular arts 3 (prohibition of torture) and 8 (right to respect for private and family life). Taking a purposive interpretation of the 2007 Act, the judge made clear that English courts should "exercise their protective jurisdiction to safeguard victims, wherever they are based and whatever their nationality" ([181]). cf. *In re KBH (Forced Marriage Protection Order: Non-resident British Citizen)* [2018] EWHC 2611 (Fam), [2018] 4 WLR 137; *Al-Jeffery v Al-Jeffery (Vulnerable Adult: British Citizen)* [2016] EWHC 2151 (Fam), [2018] 4 WLR 136; and *In re K* [2020] EWCA Civ. 190, [2020] Fam 283. See S Jahangir and N Asif, 'The Wide Jurisdiction in Forced Marriage Cases - can it be applied to other areas too?' [2023] International Family Law 88; and R Gaffney-Rhys, 'Forced marriage protection orders: assisting non-British victims who are not present in the UK' (2023) 53 Family Law 825.

183 For this purpose, a person who has not attained the age of 16: s 18(1), Family Law Act 1986.

184 See Chapter 4.b.3, above.

5) Children's Hearings (Scotland) Act 2011

For the purposes of the Children's Hearings (Scotland) Act 2011 ('CHS Act 2011'),¹⁸⁵ a child is a person who is under 16 years of age.¹⁸⁶

The CHS Act 2011 establishes, in section 67, an exhaustive list of grounds upon which a child may be referred to a children's hearing. Where the Principal Reporter receives information regarding a section 67 ground and it appears to him/her that a child might be in need of protection, guidance, treatment or control, s/he must determine if they consider that a section 67 ground applies and, if so, if it is necessary for a compulsory supervision order to be made in respect of the child.¹⁸⁷ If the Principal Reporter determines that both tests are satisfied, s/he must arrange a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.¹⁸⁸

Among the section 67 grounds is the fact that the child has been, is being or is likely to be forced into a marriage, or is, or is likely to become, a member of the same household as such a child.¹⁸⁹

Likewise, it is a ground of referral that the child has been, is being or is likely to be subjected to physical, emotional or other pressure to enter into a civil partnership, or is, or is likely to become, a member of the same household as such a child.¹⁹⁰

Any compulsory supervision order that is made in respect of a child will sit alongside any FMPO (including interim FMPO) that is made under the 2011 Act.

6) Anti-social Behaviour, Crime and Policing Act 2014

Since 30 September 2014,¹⁹¹ forcing someone into any religious or civil ceremony of marriage (whether or not legally binding) has been a criminal offence in Scotland by virtue of section 122 of the Anti-Social Behaviour, Crime and Policing Act 2014 ('2014 Act').¹⁹² The offence was extended by the Civil Partnership (Scotland) Act 2020 to forcing someone into a civil partnership.¹⁹³

185 The 2011 Act received Royal Assent on 6 January 2011 and came into force on 24 June 2013 (Children's Hearings (Scotland) Act 2011 (Commencement No. 9) Order SSI 2013/195).

186 s 199(1), CHS Act 2011, subject, however, to ss 199(2) to (9).

187 s 66(2), CHS Act 2011.

188 s 69(2), CHS Act 2011.

189 s 67(2)(q), as amended by s 13(3)(b) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011.

190 s 67(2)(p), as amended by s 13(3)(a) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 and the Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (SSI 2013/211), reg 1, Sch 1 para 20(8).

191 The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement) (Scotland) Order 2014 (SSI 2014/221), reg 2.

192 For England and Wales, ss 120 and 121, respectively, create the offence of breaching a forced marriage protection order and the offence of forced marriage.

193 ss 13(2). The Civil Partnership (Scotland) Act 2020 (Commencement No 5) Regulations 2023 (SSI 2023/146), reg 2, brought into force on 30 November 2023 s 13 of the Civil Partnership (Scotland) Act 2020, which amends s 122 of the 2014 Act to extend the forced marriage offence to civil partnership. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Application to Civil Partnerships and Consequential Provision) Order 2023 (SSI 2023/194) amends Part 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 so that FMPOs can be granted in respect of forced civil partnerships.

A person commits the offence of forced marriage or forced civil partnership if s/he (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage or civil partnership, and (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage or civil partnership without free and full consent.¹⁹⁴ The coercive conduct does not need to be directed at the victim and can be addressed to another person, such as threats made to a family member.¹⁹⁵

In relation to a victim who is incapable of consenting to marriage or civil partnership by reason of mental disorder, the section 122 offence may be committed by any conduct carried out for the purpose of causing the victim to enter into a marriage or civil partnership, whether or not the conduct amounts to violence, threats or any other form of coercion.¹⁹⁶

Further, a person commits an offence if s/he practises any form of deception with the intention of causing another person to leave the UK, and intends the other person to be subject to conduct outside the UK that is an offence under section 122(1), or would be such an offence if the victim were in Scotland.¹⁹⁷

In terms of territorial scope of application, a person commits an offence under section 122 only if, at the time of the conduct or deception, (a) that person and/or the victim 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 UK but at least one of them is a UK national.¹⁹⁸

A person guilty of an offence under section 122 is liable on summary conviction, to imprisonment for a term not exceeding 12 months and/or to a fine; or on conviction on indictment, to imprisonment for a term not exceeding 7 years and/or to a fine.¹⁹⁹

This criminal law provision adds another layer of protection for those at risk of forced marriage or civil partnership, and sits alongside existing protections in the 2011 Act and elsewhere. Victims of forced marriage or civil partnership may invoke civil law remedies, including applying for a FMPO, in tandem with criminal proceedings being instituted under the 2014 Act.

Importantly, the consent of a victim is not a prerequisite for criminal proceedings in Scotland. The views of the victim are only one factor for the prosecution service to consider when deciding whether or not to bring criminal proceedings, and the decision in any case to prosecute, or not, must take account of public interest considerations.

7) Marriage and Civil Partnership (Minimum Age) Act 2022

The Marriage and Civil Partnership (Minimum Age) Act 2022, which entered into force in England and Wales on 27 February 2023,²⁰⁰ raised the minimum age of marriage and civil partnership to 18 years in all circumstances in England and Wales, thereby ending provision permitting 16- and 17-year-olds to marry, or enter a civil partnership, in England with parental or judicial consent.

194 s 122(1).

195 s 122(6)

196 s 122(2).

197 s 122(3).

198 s 122(7).

199 s 122(9).

200 Marriage and Civil Partnership (Minimum Age) Act 2022 (Commencement and Transitional Provisions) Regulations 2023 (SI 2023/88).

The 2022 Act amended section 2 of the Marriage Act 1949 ('1949 Act') to provide that,

*A marriage solemnized between persons either of whom is under the age of eighteen shall be void.*²⁰¹

There is no explicit territorial restriction within the wording of this provision. Importantly, however, the introductory text to the 1949 Act expressly states that the legislation relates (only) to the "solemnization and registration of marriages *in England*."²⁰² The legislation has the effect, therefore, that a marriage solemnized in England between persons either of whom is under the age of eighteen shall be void – even if each party, by his/her own personal law (i.e. the law of his/her domicile immediately before the marriage), has legal capacity to marry, and consented to enter into marriage.

Likewise, by virtue of section 3 of the Civil Partnership Act 2004, as amended, two people are not eligible to register as civil partners of each other in England and Wales if (among other conditions) either of them is under 18 years.²⁰³

By section 49 of the 2004 Act, as amended, where two people register as civil partners of each other in England and Wales, the civil partnership is void if, at the time when they do so, they are not eligible to register as civil partners of each other under section 3.

This means that the statutory rule as to minimum age of marriage and civil partnership has become a mandatory rule of the English *lex loci celebrationis/lex loci registrationis*, i.e. where parties marry or enter into a civil partnership in England, the rule of English domestic law applies, irrespective of the law(s) of the parties' domicile(s).

It is noteworthy, however, that section 2 of the 1949 Act, as amended, makes no reference to the parties' domiciles.²⁰⁴ This is in contrast to the position in Scots law. Section 1 of the Marriage (Scotland) Act 1977 provides that:

1. *No person domiciled in Scotland may marry before he attains the age of 16.*
2. *A marriage solemnised in Scotland between persons either of whom is under the age of 16 shall be void.*

201 s 3 of the 2022 Act ('Civil partnership: increase of minimum age to 18') amends the Civil Partnership Act 2004 to equivalent effect (s 3(1)(c)).

202 Emphasis added. See also the Explanatory Notes to the 2022 Act, which, in the 'Overview of the Act' provide that, "The purpose of the Act is to address the practice of child marriage *in England and Wales*." [1] (Emphasis added).

203 Civil Partnership Act 2004, s 3 ('Eligibility').

204 The only reference in the 2022 Act to 'domicile' in the context of marriage is in s 2, regarding the 'Offence of conduct relating to marriage of persons under 18' (s 121 of the Anti-social Behaviour, Crime and Policing Act 2014).

A question left unaddressed in the English marriage legislation is whether or not an English domiciliary, aged sixteen or seventeen years, may validly marry abroad,²⁰⁵ in a form of ceremony that is permitted by the law of the place of celebration, and that is valid as to essentials by the personal law of the other intended spouse. By contrast, section 54 of the Civil Partnership Act 2004 ('Validity of civil partnerships registered outside England and Wales') states explicitly that a civil partnership registered outside England and Wales is void if it was registered when (a) one of the two people was domiciled in England and Wales, and (b) one of the two people was under 18.²⁰⁶

In spite of the statutory lacuna in the marriage legislation, the Explanatory Memorandum to the 2022 Act speculates that,

*The anticipated effect of this change on the common law means that any marriages which take place overseas, or in Scotland or Northern Ireland, involving under 18s where one of the parties is domiciled in England and Wales, will not be legally recognised in England and Wales. This change to recognition also applies to civil partnerships. This does not affect the validity of any marriages or civil partnerships entered before the Act comes into force.*²⁰⁷

While it may have been the drafting hope, or even intention, that no person domiciled in England and Wales may marry in *any* country before s/he attains the age of eighteen, that is not expressly provided for in the 2022 Act.

Separately, the marriage legislation does not expressly address the question whether or not a marriage entered into by a foreign domiciliary, when s/he is under eighteen years, and permitted by the law of his/her domicile and by the foreign law of the place of celebration, would be recognised as a valid marriage in England.²⁰⁸ Ultimately, this would be a question to be determined by English choice of law rules,²⁰⁹ including the public policy safeguard.

By contrast, section 215(1) of the Civil Partnership Act 2004 expressly provides that two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, under the relevant law (that is, the law where the partnership was registered), they (a) had capacity to enter into the relationship, and (b) met all requirements necessary to ensure the formal validity of the relationship. Section 218 of the 2004 Act, however, establishes a public policy exception to this rule: two people are not to be treated as having formed a civil partnership as a result of having entered into an overseas relationship if it would be manifestly contrary to public policy to recognise the capacity, under the relevant law, of one or both of them to enter into the relationship.

205 Or even in Scotland, where, subject to s 38(2) of the Family Law (Scotland) Act 2006, there is no prohibition on the marriage or civil partnership of 16- and 17-year-olds. By s 38(2), the question whether a person who enters into a marriage (a) had capacity; or (b) consented, to enter into it shall (subject to s 38 (3) and (4), and to s 50 of the Family Law Act 1986) be determined by the law of the place where, immediately before the marriage, that person was domiciled.

206 s 54(1)(aa)(ii) (applicable where two people register as civil partners of each other in Scotland); s 54(2)(aa)(ii) (applicable where two people register as civil partners of each other in Northern Ireland); s 54(2A)(aa)(ii) (applicable where two people convert, or purport to convert, their marriage into a civil partnership under Part 3, 4 or 5 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020); and s 54(7) operating in conjunction with ss 217(1) and (2)(a) (applicable where two people have registered an apparent or alleged overseas relationship).

207 Explanatory Memorandum to the 2022 Act, [2]. See also [8].

208 e.g. the marriage in Syria of a Syrian-domiciled couple, male and female, aged, respectively, 21 years and 14 years at the time of their marriage.

209 See Lord Collins and J Harris (Gen. eds), *Dicey, Morris & Collins on the Conflict of Laws* (16th edn. 2022), chapter 17.

8) United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

The purpose of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ('2024 Act') is to incorporate in Scots law the rights and obligations set out in the United Nations Convention on the Rights of the Child and to make related provision to ensure compliance with duties relating to the Convention.

The 2024 Act imposes duties on public authorities (including the Scottish Ministers, a court or tribunal, and any person certain of whose functions are functions of a public nature²¹⁰), and provides in section 6(1) that it is unlawful²¹¹ for a public authority to act, or fail to act, in connection with a relevant function in a way that is incompatible with the UNCRC requirements.

"Relevant function" means a function that (a) it is within the legislative competence of the Scottish Parliament to confer on the authority, and (b) is conferred by (i) an Act of the Scottish Parliament, (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power, (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either – (A) originally made under the relevant enabling power, or (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or (iv) a rule of law not created by an enactment.²¹²

Insofar as it is possible to do so, primary and subordinate legislation of the Scottish Parliament must be interpreted in a way that is compatible with the UNCRC requirements.²¹³

210 s 6(5).

211 Subject to s 6(4).

212 s 6(2).

213 s 24.

5. CASE DIGEST

Since the entry into force of the 2011 Act, there have been only three²¹⁴ reported cases concerning applications under section 1 of the Act:

- *City of Edinburgh Council v S* (2015);²¹⁵
- *B v D* (2021);²¹⁶ and
- *C v T* (2021).²¹⁷

a) *City of Edinburgh Council v S*

The first reported case on interpretation and application of the 2011 Act called in March 2015 before Sheriff W A Sheehan in Edinburgh Sheriff Court.

1) Factual background

Following a referral in February 2012, by the public protection unit of Lothian and Borders Police to Edinburgh City Council social work department, the local authority ('the applicant') applied, in July 2013, as a relevant third party,²¹⁸ under section 1 of the 2011 Act, for a FMPO in relation to a 15-year-old girl, AS (born 31 January 2000²¹⁹).

The applicant sought to have the court ordain, for an indefinite period, that AS's father and mother, MS and NS (the first and second respondents, respectively), refrain from forcing or attempting to force AS to enter into a marriage; from aiding, abetting, counselling, procuring, encouraging or assisting another person to force or attempt to force AS to enter into a marriage; and from violent, threatening or intimidating conduct towards AS.

Additionally, the applicant sought measures, effective until AS's 21st birthday, ordering the respondents to disclose to the court information regarding travel plans made by them for AS; to refrain from taking AS outwith the UK; to submit to the court any passport, birth certificate or other travel document relating to AS; and to allow AS's social workers access to her for the purposes of monitoring her wellbeing.

At the time of the application, no plans had been made for the marriage of AS, and no putative spouse had been identified for her.²²⁰ AS, who spoke English and Urdu fluently and was considered by the court to be a "mature and articulate child",²²¹ opposed the granting of a FMPO.²²²

214 In *A v B* (also known as *ZA and MN v B, A, Advocate General for Scotland, M, AI v F85/20*) [2022] CSOH 38, 2022 GWD 16-238, in which specific issue orders were sought regarding a 13-year-old girl, the issue of forced marriage was not raised directly, albeit there was incidental, indirect reference in the case to an actual or threatened forced marriage.

215 2015 SLT (Sh.Ct.) 69, 2015 SCLR 631 (and B1183/13 - 2015SCEDIN20 <<https://www.scotcourts.gov.uk/search-judgments/judgment?id=87a9cca6-8980-69d2-b500-ff0000d74aa7>>); also known as *The City of Edinburgh Council v MS and NS re AS (protected person)*. See J M Carruthers, 'City of Edinburgh Council v S. Forced Marriage in Scotland: The Legal Response' (2016) *Edinburgh Law Review* Vol 20, 86 – 94.

216 Also known as *AB v CD and DD and EF – or – B v CD, DD and EF* (Note) [2021] SC GLW 15, 2021 SLT (Sh.Ct.) 347, 2022 Fam LR 26.

217 Also known as *C v DT, GT and HF in respect of RT* [2021] SC GLA 37, 2021 GWD 19-269, 2022 Fam. L.R. 39.

218 ss 3(1)(b) and 3(7)(a), 2011 Act.

219 AS was aged 13 years when the proceedings were raised.

220 2015SCEDIN20, Finding in Fact [5].

221 Finding in Fact [4].

222 Finding in Fact [4] and (62).

2) Arguments

The applicant's arguments

The applicant averred that there was a risk that AS would be forced into marriage by the respondents, or that they would attempt to force her into marriage. The applicant also averred that there was a clear evidential basis from which that risk could be inferred,²²³ namely, from evidence of the respondents' behaviour in relation to AS's siblings, KS (born 5 April 1991) and FS (born 23 May 1985) and, materially, from their marriages.²²⁴

The initial referral and subsequent police and social work department investigations into the circumstances concerning AS followed police statements in which KS alleged that her parents had forced her into marriage when she was aged 16 years. Separately, evidence was led of two prior incidents involving FS, when FS sought police assistance regarding her parents purportedly arranging her marriage against her will. The relevant Scottish Government statutory guidance on forced marriage²²⁵ urged professionals to be alert to any family history of the putative protected person's siblings being forced to marry. In the sheriff's view, "The cornerstone of the applicant's case [was] the assertion that KS was forced to marry [her second cousin] by the respondents."²²⁶

The applicant further averred that there was a history of forced marriage, violence and threatening conduct within the first respondent's wider family, which impacted on the assessment of risk to AS.²²⁷ Moreover, the applicant averred

that the respondents behaved in a controlling manner in respect of the parenting of their children and in particular with regard to FS and KS.²²⁸

Given the serious consequences of forced marriage for the protected person and the level of risk to be inferred from the evidence, the applicant averred that the orders sought (in particular in relation to the surrender of AS's passport until reaching the age of 21) were necessary to protect her, and were proportionate in all the circumstances of the case.²²⁹

The applicant further averred, with regard to AS's wishes and feelings, that section 1(3)²³⁰ of the 2011 Act gave the court discretion as to the weight to be given to the evidence in relation to the protected person's wishes and feelings depending on the facts and circumstances of the particular case.

The applicant submitted that the protected person had a close relationship with her parents and siblings, and that her understanding of the facts and circumstances would have been influenced by her family. In particular, it was submitted that AS strongly identified with her parents' narrative of events and had an incomplete knowledge and understanding of the risks posed to her. Against that background – and although AS had had regular contact with social work professionals and advocacy workers (including on a private, one-to-one basis, apparently beyond the reach of family influence) and had instructed her own solicitor to oppose the grant of the FMPO – the applicant argued that the court was required to carefully consider what weight to attach to the protected person's views.²³¹

223 (2).

224 The 'cornerstone' of the application was KS's police statements: (3) and (68).

225 Produced in accordance with s 11, 2011 Act. See Chapter 2.d, above.

226 (33).

227 (7).

228 (8).

229 (81).

230 "(3) In ascertaining the protected person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding."

231 (86) and (87).

The protected person's arguments

AS's wishes and feelings were clearly articulated to the court. Opposing the grant of a FMPO, she considered such an order to be unnecessary, intrusive and unwelcome,²³² and wished for her passport to be returned to her.²³³

Counsel for AS submitted that it was at odds with the protected person's legal capacity for a FMPO to be made against her wishes, unless there was some compelling evidence that she had not been afforded an opportunity to make her views properly known, or that she suffered some form of incapacity – neither of which was said to be the case.

Counsel further submitted that the 2011 Act was intended to protect individuals from coercion, but not, where they have sufficient capacity, from their own decision-making. Counsel argued that the policy intention of the legislation is to allow relevant third parties to step in and take forward the process of having an order put in place where victims are not at liberty to do so, nor freely able to express their views; but that the legislation is not intended to be used to obtain an order against the wishes of a person with full capacity.²³⁴

Counsel for AS submitted that, while the definition of force in section 1(6) of the 2011 Act is very widely drawn, there must be evidence to support an apprehension of force or coercion.²³⁵

The respondents' arguments

While being alert to potential familial pressure, it is important for a court to distinguish between a culture of arranged marriages, and evidence of forced marriage. While, within the first

respondent's family, there was a culture of arranged marriages to members of the extended family,²³⁶ the marriage between the first and second respondents was found to be a 'love marriage', entered into in the face of opposition from the first respondent's family.²³⁷

The respondents sought to minimise and distance themselves from the conduct of the first respondent's family and averred that they had been resistant to threats and pressure brought to bear by members of the paternal family regarding the marriages of two of their children.²³⁸ They denied that they had forced their daughter, KS, to marry, averring that KS married her second cousin in 2008 of her own free will, and that she had determined the timing of her wedding, which they arranged and paid for at her request.

With regard to their daughter, FS, police records disclosed two incidents, on 31 January 2007 and 27 February 2007, where FS sought police assistance regarding her parents arranging a marriage for her when she did not want to get married, and in terms of which she alleged controlling and abusive behaviour on the part of the respondents towards her to pressurise her into marrying. The respondents averred that they respected FS's decision not to marry and that no pressure was brought to bear upon her.

Counsel for the first respondent highlighted the availability of a criminal law sanction under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014, a provision that imposes criminal penalties in excess of those set out in the 2011 Act. In resisting the grant of a FMPO, counsel argued that, even in the absence of a FMPO, criminal penalties were available.²³⁹

232 Finding in Fact [4] and (62).

233 (85).

234 (86).

235 (84).

236 Finding in Fact [8].

237 Findings in Fact [7].

238 (7).

239 (80).

3) Outcome

The application was dismissed. The court held that AS had not been forced into a marriage, nor had any attempt been made to force her into a marriage. That being the case, a FMPO was not required to secure AS's health, safety and well-being.

Although AS's referral was instigated by her sister, KS, and the applicant alleged a history of forced marriage and threatening conduct within the wider family, impacting therefore on the assessment of risk to AS, there was no evidence to support the contention that an attempt was made to force any of AS's siblings into marriage.²⁴⁰ Specifically, the court concluded that there was no evidence supporting KS's account of events;²⁴¹ and no reliable and credible evidence that the respondents had attempted to force FS to marry her cousin.²⁴²

4) Salient points

It is noteworthy that the first reported case on interpretation of the 2011 Act resulted in a dismissal of the application for a FMPO. Although the 2011 Act empowers relevant third parties to act on behalf of a vulnerable person, *City of Edinburgh Council v S* shows that it is difficult for a court to act against the unequivocal and sustained wishes of a mature and articulate teenager.

Evidence of a planned marriage and/or putative spouse

Sheriff Sheehan noted that, "a literal interpretation of section 1 would require the court to establish the existence of an actual marriage planned for the protected person in order to

conclude that the order should be granted", but that such an interpretation "would thwart the policy intention of the legislation."²⁴³

Were such an interpretation taken, "Many applications would fail where applicants were unable to adduce evidence of a planned marriage but where otherwise the evidence clearly pointed to there being a requirement to protect the protected person from and attempt at forced marriage being made. The purpose of the legislation is to create a protective remedy and it should be interpreted accordingly."²⁴⁴

The sheriff concluded that, absent any statutory direction to the contrary, it is competent for a court to make a FMPO, even without evidence of an actual planned marriage for the protected person.

The evidential threshold test for granting a FMPO

Section 1(2) of the 2011 Act provides that, "In deciding whether to make [a FMPO] and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person."

The assessment of the credibility and reliability of witnesses and, in turn, the assessment of risk to the putative protected person, is particularly difficult. In cases of this nature, witnesses may be subject to particular pressure "including distress, anxiety, pressure, shame or family honour".²⁴⁵

Over the 15 months following AS's referral to the social work department, enquiries were conducted, in line with Scottish Government statutory guidance, with relevant professionals being on the alert for "warning signs".²⁴⁶ No such signs had been observed in relation to AS.²⁴⁷

240 (88) – (90); and, for background, (26)-(30), (32)-(46), (51)-(57).

241 (37).

242 (30).

243 (82).

244 *ibid.*

245 (37).

246 (5) (e.g. "a change in the protected person's peer relationships, in their dress and appearance, they may appear isolated or there may be issues such as self-harm, depression, eating disorders or attempted suicide").

247 (5) and (65).

In assessing risk to the protected person, it is hard to know how interventionist the authorities, including the courts, ought to be. The 2011 Act does not incorporate any guidance such as is contained in section 11(7)(a) of the Children (Scotland) Act 1995 (to the effect that a court shall not make any order unless it considers that it would be better for the child that the order be made than that none should be made at all). A question arises as to how serious the risk to the putative protected person ought to be before the court will grant a FMPO.

In relation to the evidential threshold required to persuade a court that an order is required, Sheriff Sheehan observed that “There is nothing in the legislation which requires the court to apply any given criteria.”²⁴⁸

Sheriff Sheehan rejected the argument that, in order to grant a FMPO, the court must be satisfied of a “a genuine and serious risk” or that the risk must be “substantial” or of “a very high level”. The sheriff made clear that,

*“[a]ll that is required is for the court to find that on the balance of probabilities the evidence supports the granting of orders which are needed to protect [the putative protected person] from being forced into a marriage and that the orders would secure [that person’s] health, safety and wellbeing.”*²⁴⁹

However, in view of the outcome in the instant case, it may be unlikely, in practice, that sufficient risk to the putative protected person will be shown if no putative spouse has been identified, or where there is no clear evidence that an actual marriage has been planned, especially if the putative protected person is opposed to the grant of a FMPO.

The grant of an interim order

In deciding whether to make an interim order under section 5(1) of the 2011 Act, “the court must have regard to all the circumstances including *any risk of significant harm* to the protected person or to another person if the order is not made immediately.”²⁵⁰

Notably, the threshold test set out in section 5 of the 2011 Act in respect of interim orders is not applicable to the assessment of evidence at proof or to the application of section 1 of the 2011 Act (that is, the granting of an order after evidence has been heard).²⁵¹

In the instant case, the action was raised on 18 July 2013. Interim orders were granted on an *ex parte* basis.²⁵² No motion for recall of said orders had been made by the time of the judgment.²⁵³

The protected person’s wishes and feelings

When deciding whether or not an order should be granted, appropriate weight must be given, in terms of section 1(3) of the 2011 Act, to the wishes and feelings of the protected person.²⁵⁴

In the instant case, Sheriff Sheehan held that AS was sufficiently mature and articulate to express her wishes and feelings; that she had had independent access to a number of professionals and was legally represented; and that she had given evidence outwith the presence of other members of her family. Very significantly, AS did not want an order to be granted; her evidence was clear and unequivocal in that regard, and had remained consistent in every context since the raising of proceedings.

248 (83).

249 *ibid.*

250 s 5(3) (emphasis added).

251 *ibid.*

252 The respondents were ordered to refrain from forcing or attempting to force the protected person into a marriage and were required to disclose to the court information regarding any travel plans for her, to refrain from taking her out of the UK, and to submit her passport, birth certificate and any travel documents to the court. They were also required to allow social workers to have access to the protected person for the purposes of monitoring her wellbeing.

253 (10).

254 (87).

The sheriff acknowledged that the consideration of an application in the context of opposition by the protected person would be liable to differentiate it from many cases which could arise under the 2011 Act.²⁵⁵ Against that, however, Sheriff Sheehan noted that an individual's wishes and feelings may have been articulated against a background of an incomplete understanding of risks,²⁵⁶ in which event caution must be exercised in attaching weight to those wishes and feelings.

Duration of orders and procedure for review

Sheriff Sheehan noted that, were a referral to have been made in respect of the protected person to the Reporter to the children's hearing under section 67(2)(q) of the CHS Act 2011, then, in terms of section 199(6) and (7) of that Act, the protected person could be subject to a compulsory supervision order only until attaining 18 years of age.

By contrast, the orders sought in the instant case would have required the protected person to be subject to social work monitoring until her 21st birthday, meaning that the protected person and her parents would have been unable to travel as a family without prior discussion with a social worker. Moreover, the protected person's passport would have been held by the court until her 21st birthday, and she would have been precluded from leaving the UK without first applying to the court to obtain the release of her passport.²⁵⁷

The sheriff noted that, although it is competent under section 7 of the 2011 Act for a court to vary or recall a FMPO on the application of the protected person, the applicants or the respondents, no procedure has been devised for review of such an order.

Likewise, if the protected person should wish to seek the release of her passport to travel outside the UK for a particular purpose, summary application to the court would be necessary.

Sheriff Sheehan noted that there is no provision in the rules of court for variation of any orders by motion or minute after the conclusion of the case; a written application for variation, recall or release of the protected person's passport for a particular purpose would have been required, with a separate application for legal aid. On the sheriff's view, such a procedure is cumbersome and expensive.²⁵⁸

Proportionality: the availability of criminal penalties

The effect of the 2014 Act is that criminal penalties in excess of those set out in the 2011 Act are available, even in the absence of a FMPO granted under section 1 of the 2011 Act.²⁵⁹ This may have a bearing, as in the instant case, on whether or not the sheriff will accept an applicant's submission that a FMPO is necessary and proportionate in all the circumstances of the case.

It may be that the penalties for committing an offence under section 122 of the 2014 Act do not go far enough, or that undertakings from the respondents are insufficient to protect the individual in question. Notably, certain acts that may be prohibited by a FMPO granted under the 2011 Act may not constitute an offence in terms of section 122 (e.g. to refrain from obtaining a travel document on behalf of the protected person; or to refrain from trying to obtain information regarding the protected person, including her whereabouts).

255 *ibid.*

256 *ibid.*

257 (76).

258 (77).

259 (80).

Proportionality: referral to a children's hearing

Sheriff Sheehan noted that an alternative course of action would have existed in the instant case, namely, to refer the case to the Reporter to the children's hearing under section 67(2)(q) of the CHS Act 2011. Unfortunately, the court found the social work evidence on this aspect of the case to be unsatisfactory.²⁶⁰

Importantly, the sheriff held that, when deciding whether the orders sought are needed to secure the health, safety and well-being of the protected person, the evidence must be carefully scrutinised to determine possible infringement of rights attaching to the protected person and/or to the respondents. The court must consider whether the order sought is proportionate and, in particular, must consider the impact of an order on the article 8 ECHR rights (right to respect for private and family life) of the protected person and the respondents, respectively, not least because criminal penalties arise in the event of breach of an order.²⁶¹ It may be that referral to the Reporter to the children's hearing in terms of section 67(2)(q) of the CHS Act 2011 will offer adequate protection to the individual at risk and be a proportionate alternative to a FMPO.

In the instant case, Sheriff Sheehan noted that the orders, if granted, would have had a significant impact on AS's private life insofar as she would have been under social work supervision until attaining 21 years, and would have been required to disclose information to social workers regarding her private life, and to seek social workers' approval for any travel within the UK. The orders would also have had a significant impact on the private life of the respondents.²⁶²

In certain cases, however, interference with an individual's article 8 rights will be necessary to protect their article 12 right to marry.²⁶³

Expenses

In the instant case, at a hearing on expenses, the applicants sought disposal of the case on the basis of no expenses being payable due to or by any party.²⁶⁴ The sheriff referred to the court's inherent power to dispose of questions of expenses in summary applications.²⁶⁵

The sheriff was invited to follow the general rule that an unsuccessful party should be ordered to pay the expenses of the successful party(ies).²⁶⁶ In the instant case, however, the sheriff concluded that there should be no award of expenses due to or by any party.²⁶⁷ The nature of the proceedings, the novelty of the subject matter, and the complexity of the factual matrix mitigated against the application of the general principle that expenses should follow success in circumstances where the orders sought ultimately were not granted after proof.

b) *B v D*²⁶⁸

The second reported case on interpretation and application of the 2011 Act called in April 2017 before Sheriff A M Mackie in Glasgow Sheriff Court, and is the first reported case in which a FMPO was granted.

1) Factual background

The pursuer, B, aged 21 years at the time the action was raised, sought an order under section 1 of the 2011 Act, against her father and mother, the first and second defenders, respectively, and against her mother's cousin, the fourth defender.

260 (72).

261 (18) and (79)].

262 (76).

263 (78).

264 (93).

265 (94).

266 (95).

267 (97).

268 Also known as *AB v CD and DD and EF – or – B v CD, DD and EF* (Note) [2021] SC GLW 15, 2021 SLT (Sh.Ct.) 347, 2022 Fam LR 26.

She sought orders that the defenders should refrain from forcing her into a marriage, from trying to obtain information about her, and from impersonating her for the purpose of obtaining such information.²⁶⁹

Proceedings against a third defender, a solicitor who had assisted the first defender in trying to trace B's location, were dismissed in May 2016, on a 'no expenses' basis, in light of undertakings not to force or attempt to force B to enter into a marriage, nor to aid, abet, counsel, procure, encourage or assist another person to force or attempt to force B into a marriage.

B and her parents were Indian nationals and adherents to the Catholic faith (Syrian rite). B grew up in her parental home in India, alongside her younger brother. Aged 16 years, she left home to pursue university studies in south-east Asia and then, three years later, transferred to a university in the UK to continue engineering studies there. In summer 2014, B was informed about a marriage proposal, which she refused. Thereafter, her mother, the second defender, exerted pressure on B to agree to marriage, suggesting that she would not be permitted to travel to the UK without so agreeing. Anxious about returning to India for Christmas in December 2014, and anticipating a meeting in connection with the proposed marriage, B decided to travel to Liverpool, with the intention of taking her own life. Unable to do so, however, she decided to travel to Glasgow.

B's father, the first defender, repeatedly tried to contact her, and sought assistance from a relative in the UK, who reported B missing. Located by police and having a suicide note in her possession, B was taken to hospital in Glasgow for assessment, where she advised that she did not want any information to be passed to her parents. The first defender travelled to Glasgow and made extensive inquiries as to B's whereabouts; on locating the hospital where B

was a patient, her parents repeatedly sought contact with her, which B refused. While in hospital, B applied for asylum in the UK and, ultimately, upon discharge from hospital in May 2015, B was provided with accommodation by the National Asylum Support Service.

The summary application for a FMPO was lodged at Glasgow Sheriff Court on 7 October 2015. The first and second defenders offered to provide an undertaking that they would refrain from contacting, approaching, attempting to communicate with, or obtain information regarding the pursuer, including her whereabouts. The offer was refused by the pursuer. Interim orders against the first, second and fourth defenders were granted on 9 October 2015. The defenders made no further attempts to contact the protected person following the interim orders being served on them.

2) Arguments

The applicant's arguments

Notably, the applicant was not a relevant third party, but rather the individual – an adult – who was personally at risk of forced marriage.

B submitted that she was at risk from attempts to force her into marriage in terms of section 1(1) of the 2011 Act, and that the order sought was required to secure her health, safety and well-being in terms of section 1(2) of the Act.

B's averments referred to the verbal and psychological pressure exerted upon her, principally by her mother, but with the support of her father; and to repeated attempts by her parents and other family members to contact B and ascertain her whereabouts, despite having been advised by the authorities of B's wishes to the contrary. The averments referred to the widely drawn definition of 'force' in section 1(6) of the 2011 Act, and to the need for evidence to support an apprehension of force or coercion.²⁷⁰

269 2021 SLT (Sh.Ct.) 347, Appendix [32].

270 [26]. 'Force' includes "coerce by physical, verbal or psychological means, threatening conduct, harassment or other means". See *City of Edinburgh Council v S* (discussed at Chapter 5.a, above), (84).

Moreover, it was submitted by the applicant that there does not need to be evidence of an actual planned marriage to enable a FMPO to be granted.²⁷¹

The defenders' arguments

The first defender argued that his conduct in contacting various agencies after B had been reported as a missing person in December 2014 was that of a concerned and loving parent and that, against that background, the orders sought by B were not proportionate.²⁷² Moreover, it was argued that, given B's parents' residence in India, the practical effect of any order granted would be restricted; an order would operate, and the police could exercise their powers of detention or arrest, only if the defenders were physically within the UK.²⁷³ The first defender submitted that his offer of an undertaking constituted a more proportionate alternative that would adequately protect B.²⁷⁴

The second defender argued that, in respect of the issue of whether an order should be granted or an undertaking accepted, in either case the pursuer would have to contact a solicitor or the police to alert them to the fact that the undertaking or the order was about to be breached. It was argued, therefore, that, from the perspective of the pursuer, there was no practical difference whether an order was granted or an undertaking was accepted.²⁷⁵ It was further argued by the defenders that, if the police were to receive information that a crime was about to be committed, protective action would be taken, irrespective of whether there was a potential breach of an undertaking or breach of an order.

In respect of this submission, the pursuer argued that it is clear that the 2011 Act allows a court to make orders in relation to conduct outwith (as well as, or instead of, conduct within) Scotland.²⁷⁶ In the event of an order being granted, and in the event of such an order being breached outwith the UK, police forces within the UK would have power to detain the defenders upon their entry to the UK if it were to be alleged that they had breached the order. The pursuer argued that this would have more force than any undertaking offered by the defenders.

3) Outcome

Having regard to the definition of 'force' in section 1(6), Sheriff Mackie was satisfied that, by their conduct, the first and second defenders had sought to coerce their daughter to enter into a marriage and that, in the absence of a FMPO, they would continue in their attempts to do so. On the basis of the available evidence, the first defender was aware of the attempts by the second defender to coerce the pursuer into the proposed marriage and he had, at least, acquiesced in those attempts. Having determined, therefore, that B was a person at risk from attempts by the defenders to force her into a marriage, the sheriff further concluded that the order sought by B against her parents was required to protect her from being forced into a marriage and to secure her health, safety and well-being in terms of section 1(2).

271 [82].

272 [38].

273 [45].

274 [46].

275 [72].

276 [90].

The sheriff granted a FMPO for a period of five years from the date of the order (7 April 2017), and made detailed orders constraining the behaviour of the applicants' parents. The first and second defenders were ordained to refrain from conspiring to force or attempting to force the protected person to enter into a marriage; to refrain from aiding, abetting, counselling, procuring, encouraging or assisting another person to force or attempt to force the protected person to enter into a marriage; to refrain from violent, threatening or intimidating conduct against the protected person; to refrain from obtaining any travel document(s) on behalf of the protected person, and from taking the protected person outside of the UK; to refrain from trying to obtain information regarding the protected person, including her whereabouts, and from impersonating the protected person to the UK Government, statutory or voluntary organisations for the purposes of obtaining information concerning her.

Despite significant reservations about the conduct of the fourth defender, B's mother's cousin, the action against her was dismissed.

4) Salient points

The circumstances of *B v D* are noteworthy, namely, that the applicant was not a relevant third party, but an adult, personally at risk of forced marriage, with autonomy over her own decision-making regarding contact with the first and second defenders.²⁷⁷ In this respect, the case is distinguishable from *City of Edinburgh Council v S*, where the application related to a child. Moreover, the applicant in *B v D* wished the FMPO to be granted, in contrast to the circumstances in *City of Edinburgh Council v S*, where the individual at risk of harm was opposed to the granting of an order.

Evidence of a planned marriage and/or putative spouse

Under reference to Sheriff Sheehan's judgment in *City of Edinburgh Council v S*, Sheriff Mackie in *B v D* accepted the applicant's submission that there does not need to be evidence of an actual planned marriage to enable a FMPO to be granted.²⁷⁸ However, in the instant case, the applicant led evidence of a proposed marriage dating from the summer of 2014, and of the intentions of the first and second defenders that she would be married upon completion of her studies in the UK.²⁷⁹

The evidential threshold test for granting a FMPO

Having regard to the definition of 'force' in section 1(6) of the 2011 Act, Sheriff Mackie assessed that there was an ongoing risk to the pursuer of being forced into a marriage by the first and second defenders. The sheriff concluded that, in the event of the interim orders being recalled and no order being granted in respect of the applicant's parents, the applicant would have been in a vulnerable position and her well-being adversely affected.²⁸⁰

In making the assessment of ongoing risk to the pursuer, the sheriff took into account not only the conduct of B's mother in respect of the specific marriage proposal conveyed to B in summer 2014, but also the persistence of B's parents in seeking to contact her and to discover her whereabouts, despite her wishing to have no contact with them.²⁸¹

277 [86].

278 [82].

279 [82].

280 [80].

281 [71].

Echoing the approach of Sheriff Sheehan in *City of Edinburgh v S*, Sheriff Mackie applied a 'balance of probabilities' test, holding that, on a balance of probabilities, the evidence supported the grant of the order sought.²⁸²

The grant of an interim order

The summary application in *B v D* was lodged at Glasgow Sheriff Court on 7 October 2015,²⁸³ and interim orders against the first, second and fourth defenders were granted on 9 October 2015. There was compliance with the interim orders from 7 October 2015 to the date of the hearing in April 2017, a period of some 15 months.²⁸⁴

Despite having significant reservations about the conduct of the fourth defender, B's mother's cousin, Sheriff Mackie dismissed the action against her. The interim FMPO relative to her was recalled and substituted with an undertaking by her to refrain from contacting the protected person.²⁸⁵

The protected person's wishes and feelings

It was highly significant in *B v D* that, in terms of section 1(3), the applicant wished a FMPO to be granted. Sheriff Mackie concluded that the applicant showed a good appreciation of the differences between arranged marriage (which was common in the culture of the first and second defenders²⁸⁶) and forced marriage, and that B had no doubt in her mind that her parents had attempted to force her into marriage on the basis that they did not accept her decision to reject the specific marriage proposal received during the summer of 2014, or her decision that

she did not wish to marry at all.²⁸⁷ By contrast, the defenders demonstrated that they did not respect the express wishes of their daughter.

Duration of orders and procedure for review

Sheriff Mackie made the order against the applicant's parents for a period of five years, with detailed measures constraining their behaviour throughout. It was held that, while the granting of indefinite orders would not be proportionate,²⁸⁸ an initial period of five years would be proportionate to afford the applicant the protection she required, and to allow the first and second defenders an opportunity to consider and reflect upon the terms of the court's judgment and their future conduct. The sheriff noted, however, the existence of statutory provisions²⁸⁹ to permit the extension of orders, if necessary.

Proportionality: the availability of criminal penalties

Sheriff Mackie held that the existence of penalties for committing an offence under section 122 of the 2014 Act, even with defenders' undertakings, did not provide the protection to the pursuer that would be afforded by a FMPO.²⁹⁰ In particular, certain acts prohibited by a FMPO would not constitute an offence in terms of section 122,²⁹¹ e.g. refraining from obtaining a travel document(s) on behalf of the protected person; or refraining from trying to obtain information regarding the protected person, including her whereabouts; or refraining from impersonating the protected person for the purposes of obtaining information about her.

282 In the course of the evidential hearing, the pursuer led evidence from five witnesses: herself, a social worker, a representative of Glasgow Rape Crisis Centre, a consultant psychiatrist and an officer of the Police Service of Scotland. The first defender led evidence from himself and from a family friend. The second and fourth defenders led evidence from themselves only ([2]).

283 [69].

284 [58].

285 [48].

286 [55].

287 [78]; and Finding in Fact [6].

288 The sheriff accepted the defenders' submissions in that regard: [85].

289 ss 6 ('Duration of orders') and 8 ('Extension of orders') of the 2011 Act.

290 [83] – [88].

291 [87].

The sheriff concluded that, although there are criminal penalties in section 122 for the conduct described there, the criminal law does not have the protective qualities which civil orders under the 2011 Act have; the orders sought in *B v D* included orders to prevent the defenders trying to ascertain the pursuer's whereabouts; taking the pursuer outside the UK; and impersonating the pursuer to the authorities to try to find out information about the pursuer. These actions themselves would not constitute a criminal offence under section 122 of the 2014 Act.²⁹²

Proportionality and undertakings

A court must consider whether the orders sought by the applicant are proportionate and whether there is any more proportionate, alternative remedy that can afford adequate protection.²⁹³

B v D is notable insofar as the defenders each offered undertakings in place of any order under the 2011 Act.

The first defender argued that his conduct in contacting various agencies after B had been reported as a missing person in December 2014 was that of a concerned and loving parent and that, against that background, the orders sought by B were not proportionate.²⁹⁴ The submission on his behalf was that the offer of undertakings constituted a more proportionate alternative that would adequately protect B.²⁹⁵

Similarly, the second defender argued that, if the police should receive information that a crime was about to be committed, protective action would be taken in respect of the pursuer, irrespective of whether there was a potential breach of undertaking or breach of order.²⁹⁶

It is significant that the offer of undertakings made by B's parents, the first and second defenders, that they would refrain from contacting, approaching, attempting to communicate or obtain information regarding the pursuer, including her whereabouts, was refused by the pursuer as offering inadequate protection.²⁹⁷ The pursuer submitted that, if granted, any breach of a FMPO would constitute an offence under section 9(1) of the 2011 Act. In terms of section 9(2), a constable may arrest, without warrant, any person the constable reasonably believes is committing or has committed an offence under section 9(1). By contrast, while breach of an undertaking may amount to contempt of court giving rise to further court proceedings, the pursuer submitted that it would not allow a constable to detain or arrest the party in breach of the undertaking.

The offer of undertakings by the first and second defenders was rejected by the court. Undertakings cannot provide the immediacy of response that may be provided by the police in the event of an alleged breach of a FMPO.²⁹⁸ The sheriff accepted that the terms of the order sought against the first and second defenders were reasonable and appropriate for the purposes of the order in terms of section 2 of the 2011 Act,²⁹⁹ and proportionate with regard to the parties' article 8 rights to family life.³⁰⁰

The position in relation to the third and fourth defenders was different. Proceedings against a third defender, a solicitor who had assisted the first defender in trying to trace B's location, were dismissed in May 2016, on the basis of undertakings not to force or attempt to force B to enter into a marriage, nor to aid, abet, counsel, procure, encourage or assist another person to force or attempt to force B into a marriage.

292 [34].

293 [31].

294 [38].

295 [46].

296 [72].

297 [70].

298 [88].

299 [84].

300 [86].

Similarly, despite significant reservations about the conduct of the fourth defender, B's mother's cousin, the action against her was dismissed. Sheriff Mackie recalled the interim FMPO insofar as it applied to the fourth defender, allowing the undertaking that she offered to the court (that she would refrain from contacting the pursuer) to be given in substitution³⁰¹ – even though the offer of this undertaking was rejected by the pursuer.³⁰²

Where an undertaking is sufficient in the view of the judge to mitigate the risk to the pursuer, that is likely to be accepted by the court.

Extraterritorial application of the legislation

The first defender argued that the practical effect of any order granted would be restricted, given B's parents' residence in India; the order would operate, and the police could exercise their powers of detention or arrest, only if the defenders were physically within the UK.³⁰³

In respect of this submission, however, the pursuer argued that it is clear that the 2011 Act allows the court to make orders in relation to conduct outwith (as well as, or instead of, conduct within) Scotland.³⁰⁴ In the event of orders being granted, and in the event of such orders being breached outwith the UK, police forces within the UK would have power to detain the defenders upon their entry to the UK if it were to be alleged that they had breached such orders.

c) C v T³⁰⁵

The third reported case on interpretation and application of the 2011 Act called in February 2021 before Sheriff A M Mackie in Glasgow Sheriff Court, and is the second reported case in which a FMPO was granted.

1) Factual background

The relevant local authority applied under section 1 of the 2011 Act for a FMPO in respect of RT, a British national born on 8 April 2003. The applicant sought to have the court make orders against the first respondent, DT (RT's father); the second respondent, GT (RT's paternal uncle);³⁰⁶ and the third respondent, HF (a friend of the first respondent).

In 2003, RT's father (from Pakistan) and mother (from Kyrgyzstan) were living in Glasgow, where they remained until 2010. In 2010, RT's mother, MT, was persuaded to travel to Pakistan on the pretext of attending a wedding. Once there, however, MT was assaulted by the first respondent and made to remain within the family home. When MT's mother in Kyrgyzstan became ill, MT was allowed to travel there. Refusing to return to Pakistan, MT returned to Glasgow, leaving RT and her brother with the first respondent in Pakistan.

Subsequently, in 2017/2018, the first respondent offered RT in marriage to her cousin, NT (the son of the second respondent), and thereafter barred RT from attending school. RT, not wanting to marry her cousin, contacted her mother in Glasgow, who enlisted help from the British consulate in Islamabad to secure RT's return to Scotland.

In November 2018, RT was interviewed by police and social workers in Scotland, in a joint investigative interview. RT disclosed that she was going to be forced to marry NT and had been told that, if she refused, she would be killed.

301 [48].

302 [71].

303 [45].

304 [90].

305 Also known as *C v DT, GT and HF in respect of RT* [2021] SC GLA 37, 2021 GWD 19-269, 2022 Fam. L.R. 39.

306 On the basis that the applicant was unable to serve the application (and the interim order granted on 2 August 2019) on the second respondent, the sheriff dismissed the application in respect of that party [140].

The first and second respondents travelled to Scotland to try to coerce RT's return to Pakistan. The second respondent, having pled guilty to the offence of stalking MT under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010, returned to Pakistan. The first respondent remained in Glasgow, and maintained telephone contact with RT, stating that, if she returned to Pakistan, she would not be forced to marry.

Against this background, the local authority applied for, and was granted, a child protection order, prohibiting the removal of RT from the care of her mother.

Through the children's hearing system, RT was made the subject of an interim compulsory supervision order, with a condition attached that required her to reside with her mother.

The first respondent having rejected the grounds for referral to the children's hearing system, the matter was referred to the sheriff court for proof. Grounds of referral were established on the basis that RT was likely to be forced into marriage. Thereafter, the children's panel made a compulsory supervision order, directing that RT should reside with her mother and that there should be no contact with the first respondent. The first respondent returned to Pakistan.

In July 2019, without MT's knowledge, but with the assistance and support of the third respondent, RT boarded a flight from Glasgow to Dubai, with a view to meeting her older half-brother there, to travel with him to Pakistan. Despite protestations from RT to the effect that she wanted to return to the family home in Pakistan (and that she wanted to marry NT and had been given assurances that, when married, she would be free to travel to the UK to see her mother), RT was removed from the flight, and returned to her home, by the British Transport Police.

The local authority then applied for a FMPO and, on 2 August 2019, secured an interim order.

RT wanted to travel to Pakistan, and became angry and abusive towards her mother. In August 2019, the first respondent returned to Scotland. RT spent a period in foster care, having supervised contact with her father. Subsequently, RT returned to live with her mother.

RT vacillated about returning to Pakistan. She was subjected to pressure from the first respondent and members of his family. RT reasonably believed that she would be forced to marry her paternal cousin. Were RT to have returned to Pakistan, she would have been unable to leave the country of her own volition.

Both RT and her father resisted the grant of the final FMPO.

2) Outcome

Sheriff Mackie granted a FMPO in terms of section 1 of the 2011 Act, effective until 8 April 2024, the protected person's 21st birthday (a duration of just over three years).

The order constrained the behaviour of the first and third respondents by prohibiting them from removing, seeking to remove or instructing or encouraging any other person to remove, the protected person from Scotland; and ordaining them to refrain from aiding, abetting, counselling, procuring, encouraging or assisting another person to force or attempt to force the protected person to enter into a marriage.

The involvement of HF, the third respondent (a friend of RT's father), was judged to be limited but significant.³⁰⁷ HF had assisted RT in navigating Glasgow airport and boarding the flight to Dubai where she had planned to meet her older half-brother, who was to have accompanied her on the next leg of her journey from Dubai to Pakistan.

In this way, having regard to section 2(4)(a) of the 2011 Act,³⁰⁸ the third respondent had assisted RT's father and uncle, the first and second respondents, in their attempts to secure her return to Pakistan, where they intended to force her to marry her cousin.

The FMPO further constrained RT's father by prohibiting him from applying for a passport or other travel documents for the protected person; ordaining him to refrain from coercing RT by physical, verbal or psychological means from entering into marriage or returning to Pakistan; and ordaining him to refrain from forcing or attempting to force RT to enter into a marriage.

Significantly, the order constrained the behaviour of RT herself, by prohibiting her from travelling to Pakistan. Sheriff Mackie made this order in light of RT's attempt to travel there in July 2019 and on the basis of evidence in her affidavit that she would like to visit certain 'safe' cities in Pakistan in the company of her mother. The sheriff expressed concern that, as recently as October 2020, RT continued to contemplate travelling to Pakistan, notwithstanding the dangers that would have posed.³⁰⁹ However, the sheriff took into account RT's wish to be free to travel out of the UK if she so chose, and concluded that there was no need for a provision in the order requiring a third party to retain her passport.

3) Salient points

The circumstances of *C v T* are interesting insofar as it is the first case in which a FMPO was granted in circumstances where the applicant was a relevant third party³¹⁰ and not the individual in need of protection. Moreover, it is the first case in which a FMPO was granted in the face of opposition from the protected person.

Evidence of a planned marriage and/or putative spouse

In line with the decisions in *City of Edinburgh v S* and *B v D*, Sheriff Mackie accepted the applicant's submission that there does not need to be an actual, planned marriage to enable a FMPO to be granted.³¹¹ Nonetheless, it was clear in the instant case that there were attempts to secure the protected person's return to Pakistan, where the first respondent intended to uphold the traditions of his community in Peshawar by having the protected person marry her paternal cousin, whatever the protected person's wishes might be.³¹²

The evidential threshold test for granting a FMPO

Having regard to the definition of 'force' in section 1(6) of the 2011 Act, Sheriff Mackie was satisfied that the first and third respondents had sought to coerce the protected person to enter into a marriage and that they would continue to do so in the absence of the order sought by the applicant.³¹³ Denials by the protected person's father that he had sought to force her into marriage were not credible and reliable.³¹⁴ The order sought by the applicant was required to protect the protected person from being forced into a marriage and to secure her health, safety and wellbeing.³¹⁵

308 Involvement by way of "(a)aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage,".

309 [156].

310 ss 3(1)(b) and 3(7)(a), 2011 Act.

311 [160].

312 [138] and [153].

313 [138].

314 [142] and [149].

315 [135], [151] and [154].

Echoing the approach of Sheriff Sheehan in *City of Edinburgh v S*, Sheriff Mackie applied a 'balance of probabilities' test, holding that, on a balance of probabilities, the evidence supported the grant of the order sought in respect of the first and third respondents.³¹⁶ Were she to have returned to Pakistan, the protected person had genuine reasons to be fearful of harm befalling her at the hands of her paternal family.³¹⁷

The protected person's wishes and feelings

It is noteworthy that the protected person, at the time of the evidential hearing, was an adult.

As was the case in *City of Edinburgh v S* (but unlike the situation in *B v D*), the protected person in *C v T* did not wish a FMPO to be granted. Her wishes and feelings in this respect were consistent from the point at which the interim order was granted in 2019.³¹⁸ Nonetheless, Sheriff Mackie held that, although the protected person was sufficiently mature and articulate to express her wishes and feelings in the matter, her wishes and feelings were not determinative of the outcome of the application.

In terms of section 1(2) of the 2011 Act, the court must have regard, among other things, to the need to secure the well-being of the protected person. By section 1(3) of the 2011 Act, in ascertaining that well-being, the court, in particular, must "have such regard to the person's wishes and feelings ... as the court considers appropriate on the basis of the person's age and understanding."

The sheriff concluded that the protected person's wishes and feelings, though clearly and forcefully expressed, were influenced by a number of factors (including the desire to be considered a dutiful daughter and to please her father, and the emotional pressure previously brought to bear on her by members of her paternal family³¹⁹), and that her views were formed through an incomplete and unreliable understanding of the significant risks that she would have continued to face had she returned to Pakistan.³²⁰ Despite the protected person repeatedly stating that she did not wish an order to be granted, the sheriff was satisfied that it was more likely than not that she was expressing such a wish because she knew it was the outcome that her father desired and she had been influenced by him.³²¹

Duration of orders and procedure for review

The interim order remained in force at the date of the evidential hearing. The sheriff granted a FMPO on 5 February 2021, effective until the protected person's 21st birthday on 8 April 2024.

The sheriff did not consider that an order of seven years' duration, as initially sought by the applicant, would be proportionate.³²² Careful consideration was given to the protected person's submission that the duration of any order granted should be limited to one year, particularly in light of the period during which she was the subject of an interim order.

Ultimately, however, and recognising that, in the past, the protected person had been susceptible to the influence, persuasion and pressure exerted upon her by members of her paternal family, and that she had acted on this contrary to her best interests,³²³ the sheriff determined that the appropriate and proportionate duration for the order was a period of just over three years.

316 [140].

317 [136] and [150].

318 [151].

319 [152].

320 [152].

321 [137]. See also [151] and [152].

322 [162].

323 [163].

This duration was intended to give the protected person time and space to mature, and the opportunity fully to understand the risks that would be posed to her health and safety as a consequence of visiting Pakistan.³²⁴ A three-year period was considered sufficient to enable her understanding of the risks to develop and evolve.

Proportionality: referral to a children's hearing

Notably in *C v T*, on 9 January 2019, prior to applying for a FMPO, the local authority had applied for, and was granted, a child protection order, prohibiting the removal of RT from the care of her mother.³²⁵ Moreover, through the children's hearing system, RT was made the subject, first, of an interim compulsory supervision order (with a condition attached that required her to reside with her mother), and then a compulsory supervision order (directing that RT should reside with her mother and that there should be no contact with the first respondent).³²⁶

An application for a FMPO was not made until 2 August 2019, when the local authority secured an interim order.

The sheriff was troubled by the fact that the protected person had been persuaded to leave Glasgow and to travel to her former home in Pakistan in July 2019, at a time when she was the subject of a compulsory supervision order with a condition of residence with her mother and a condition of no contact with the first respondent. The existence of that order had not prevented the first respondent or other members of the paternal family from persuading RT to leave her mother's home in Glasgow with the intention of travelling to her father's home in Peshawar.

That being the case, it was clear that a FMPO was necessary and that, without such an order, the protected person would be in a vulnerable position and her well-being adversely affected.³²⁷

Proportionality and ECHR implications

Although it was recognised that the order would infringe upon the article 8 ECHR rights (right to respect for private and family life) of the protected person and her father, it was judged (in line with the approach taken in *City of Edinburgh v S*³²⁸) that interference with those rights was necessary to protect the article 12 ECHR right of the protected person to marry freely (or not marry at all), and to protect her health.³²⁹

Extraterritorial application of the legislation

As in *B v D*, the factual circumstances of *C v T* disclose a cross-border dimension. The sheriff held that some provision in the order was required to prohibit the protected person from travelling to Pakistan, as she continued to contemplate travelling there, notwithstanding the dangers that would have posed.³³⁰

d) Summary case analysis

Of the three cases to be reported since the entry into force of the 2011 Act, only two have resulted in the grant of a FMPO (*B v D* and *C v T*).

In only one of the three cases reported (*B v D*) was the individual who was personally at risk of forced marriage the applicant in the proceedings brought under section 1 of the 2011 Act. In the other two cases, the applicant was the relevant local authority. There is no reported instance of a relevant third party³³¹ other than a local authority having sought an order under the 2011 Act.

324 [162] – [164].

325 [28].

326 [146].

327 [159].

328 See *City of Edinburgh Council v S* (discussed in Chapter 5.a, above), (78).

329 [155].

330 [156].

331 ss 3(1)(b) and 3(7), 2011 Act.

In terms of the characteristics of the individual in respect of whom an application was made, *City of Edinburgh v S* concerned a 15-year-old girl, who was a UK national with a Muslim religious background. The applicant in *B v D* was a 21-year-old woman, an Indian national with a Catholic (Syrian rite) religious background. *C v T* concerned a 17-year-old female who was a British national with a paternal family from Pakistan.

The protected person's parents were involved in all three cases. The proceedings in *City of Edinburgh v S* were raised in respect of the conduct of the protected person's parents. In *B v D*, proceedings were raised against the protected person's father and mother and also against an extended family member (her mother's cousin). After the evidential hearing in *B v D*, orders were granted against the protected person's father and mother (their offers of undertakings having been rejected), while the action against the protected person's mother's cousin was dismissed (her undertaking having been accepted by the court). Proceedings in *B v D* against a solicitor who had assisted the protected person's father in trying to trace her location, also were dismissed on the basis of undertakings. In *C v T*, proceedings were raised against the protected person's father, a friend of her father's, and her paternal uncle. Since service of the application and the interim order could not be served on her uncle, however, the application against him was dismissed.

In *City of Edinburgh v S*, there was no evidence of any imminent likelihood of the individual in question being forced into a marriage, and no putative spouse had been identified for her. In *B v D*, there was evidence of a proposed marriage dating from the summer of 2014 (which the protected person had refused), and of continuing parental intention that she be married upon completion of her studies in the UK. In *C v T*, there was evidence that the protected person's father had previously offered her in marriage to her cousin, and the prospect of that marriage persisted.

With regard to interim measures of protection, an interim order was granted in *City of Edinburgh v S*, in the face of objection by the protected person, who regarded it as intrusive and as causing difficulties and restrictions to her life. In *B v D*, interim orders were granted against the protected person's father and mother and also against an extended family member (her mother's cousin). In *C v T*, the local authority secured an interim order against the protected person's father, her paternal uncle, and a friend of her father's, but since service could not be effected on the uncle, the application in respect of him was dismissed.

Following the full hearing of evidence, a FMPO was granted in two of the three reported cases. In *B v D*, a FMPO was granted for a period of five years from the date of the order. In *C v T*, a FMPO was granted until the protected person's 21st birthday (a duration of just over three years). In *C v T*, as well as constraining the behaviour of the protected person's father and that of a friend of his, the order constrained the behaviour of the protected person herself, by prohibiting her from travelling to Pakistan. In *City of Edinburgh v S*, the application for a FMPO was dismissed, it being held that such an order was not required to secure the individual's health, safety and well-being.

In two of the cases (*City of Edinburgh v S*, in which the application for a FMPO was unsuccessful, and *B v D*, in which a FMPO was granted), the outcome reflected the wishes of the individual at risk of forced marriage. In *C v T* (in which a FMPO was granted), the court made the order in the face of objection expressed by the individual who was at risk of forced marriage.

While *City of Edinburgh Council v S* (concerning a girl who, at the date of the application, was 15 years of age) shows that it is difficult for a court to act against the unequivocal and sustained wishes of a mature and articulate teenager, *C v T* (concerning a girl who, at the date of the application, was 17 years of age) demonstrates that the wishes and feelings of the individual who is personally at risk of forced marriage are not determinative of the outcome of an application for an order under the 2011 Act, not least because their views may be based on an incomplete and unreliable understanding of the risks. By contrast, the applicant in *B v D* (a 21-year-old adult who wished the FMPO to be granted) was successful in securing the remedy that she herself wished.

In *City of Edinburgh Council v S*, the court noted that an alternative course of action of referring the case to the reporter to the children's hearing under section 67(2)(q) of the CHS Act 2011 was an option that could have been taken by the social work department. Social work evidence on this aspect of the case, however, was found to be unsatisfactory, albeit the social work department had noted the warning in the statutory guidance to the effect that addressing the matter by way of a referral to the Reporter carried the risks of alerting the protected person's family and of the protected person being removed. In *C v T*, prior to applying for a FMPO, the local authority had applied for, and was granted, a child protection order prohibiting the removal of the child in question from the care of her mother. Likewise, through the children's hearing system, the child at risk was the subject of an interim compulsory supervision order with a condition of residence with her mother; and later (when grounds of referral were established), the subject of a compulsory supervision order, with a condition of residence with her mother and a condition of no contact with her father. Since *B v D* concerned an adult, the children's hearing dimension was not relevant.

In *City of Edinburgh Council v S*, the availability of criminal penalties via section 122 of the 2014 Act was held to constitute a proportionate alternative to the grant of a FMPO. By contrast, the sheriff in *B v D* considered that a FMPO was necessary for the applicant's protection where the penalties for committing an offence under section 122 did not go far enough, and the defenders' undertakings were insufficient. The court held that the existence of those penalties did not provide the protection to the pursuer that would be afforded by an order granted in proceedings under the 2011 Act, and that certain conduct prohibited by a FMPO would not constitute an offence in terms of section 122. The section 122 dimension was not raised by the parties in *C v T*.

6. FINDINGS FROM THE FREEDOM OF INFORMATION REQUESTS AND RECORDED STATISTICS

In order to capture relevant data concerning instances of, and complaints about, forced marriage in Scotland, Freedom of Information ('FOI') requests were submitted to various Scottish public authorities in terms of the Freedom of Information (Scotland) Act 2002, and all responses were analysed. Specifically, FOI requests were submitted to all Scottish local authorities;³³² Police Scotland; the Crown Office & Procurator Fiscal Service; the Scottish Courts and Tribunals Service ('SCTS'); and the Scottish Children's Reporter Administration ('SCRA').

The Freedom of Information requests are set out in Appendix A of this Report.

Responses to the FOI requests were mixed. Some public authorities provided detailed information regarding the types of cases encountered. Other public authorities stated that they had no relevant information to provide. Others still explained that, while they had information relevant to the FOI request, for reasons of costs, resources (including lack of staff), GDPR, and/or confidentiality, information would not be released.

Separately, relevant searches were conducted of recorded statistics published by SCRA,³³³ and by the Forced Marriage Unit ('FMU'),³³⁴ and of relevant information collated by Scotland's Domestic Abuse and Forced Marriage Helpline, Scottish Government Justice Directorate and National Records of Scotland.

Details of the responses received in respect of the Freedom of Information requests and regarding the statistical analysis are set out below.

a) Scottish local authorities

Responses received from Scottish local authorities can be categorised as follows:

- Negative response: a response confirming that there were no reports of forced marriage and/or proceedings under the 2011 Act, and no referrals or involvement in proceedings under the CHS Act 2011 concerning forced marriage.
- Positive response: a response confirming one or more report(s) of forced marriage and/or proceedings under the 2011 Act, and/or referral(s) or involvement in proceedings under the CHS Act 2011 concerning forced marriage
- Qualified positive response: a response confirming that relevant information is held by the local authority, but that disclosure thereof is refused for reasons stated.

332 < <https://www.mygov.scot/organisations#scottish-local-authority> >.

333 < https://www.scra.gov.uk/resources_articles_category/official-statistics/ >.

334 < <https://www.gov.uk/government/collections/forced-marriage-unit-statistics> >. Statistics are recorded and are available for each year from 2012 to 2023.

1) Negative responses

The following 19 local authorities issued a negative response to the FOI request:

- Aberdeenshire Council
- Angus Council
- Argyll and Bute Council
- Clackmannanshire Council
- Comhairle nan Eilean Siar
- East Ayrshire Council
- East Dunbartonshire Council
- East Renfrewshire Council
- Falkirk Council
- Fife Council
- Moray Council
- North Lanarkshire Council
- Orkney Islands Council
- Renfrewshire Council
- Scottish Borders Council

- Shetland Islands Council
- Stirling Council
- South Ayrshire Council
- West Dunbartonshire Council

2) Positive responses

The following 7 local authorities issued a positive response to the FOI request:

- Aberdeen City Council
- City of Edinburgh Council
- Dumfries and Galloway Council
- Dundee City Council
- Glasgow City Council
- Midlothian Council
- South Lanarkshire Council

These 'positive' responses are set out in Appendix A of this Report, and a summary is set out in Table (a) below.

Table (a)

<i>Local authority</i>	<i>Number of FM investigations/reports</i>	<i>Number of FMPO applications and outcomes</i>	<i>FM referral to Children's Hearing Scotland</i>	<i>Additional information provided</i>
Aberdeen City Council	5 investigations; 1 child at risk of FM; 4 children did not require protective measures after initial investigation.	1 FMPO application: FMPO granted for 2 years. No need for renewal when application lapsed.	No information provided.	The successful application was in regard to a protected person within school age, who disclosed to the local authority details of marriage arrangements being entered into by the protected person's parents without that person's consent.
City of Edinburgh Council	No reports were submitted, or investigations undertaken, but 2 concerns were raised with the Registrars Service by an interested party to the marriage. The first concern was reported to UK Home Office and Police Scotland. The second concern was reported to the Social Work Department and Police Scotland.	4 applications. Interim FMPO granted in all cases though one was later dismissed.	No information provided.	4 applications for FMPOs in respect of girls under 16 years. In 3 of the cases, interim orders were granted shortly after the applications were lodged. These cases were subsequently sisted, and ultimately dismissed. The 4th case went to proof. The application was unsuccessful.

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Local authority	Number of FM investigations/reports	Number of FMPO applications and outcomes	FM referral to Children's Hearing Scotland	Additional information provided
Dumfries and Galloway Council	No reports were submitted, or investigation undertaken.	2 successful FMPO applications were made in 2019.	No referral made.	No further information disclosed.
Dundee City Council	Investigations into the circumstances of 9 children and young people.	No legal action taken.	No legal action taken.	All 9 cases were investigated. In 6 cases, markers were put on passports, but none met the threshold for a FMPO application. Other interventions included harassment order, arrest, the family moving house, support from women's aid, and monitoring by schools.
Glasgow City Council	Refusal to disclose.	Glasgow City Council legal services raised 3 actions. In 2 cases, an FMPO was granted. The 3rd case was ongoing at the time of response.	Refusal to disclose.	Disclosure of information refused on account of costs. Opinion stated that although forced marriage is more commonly associated with younger individuals and typically would be a child protection matter, it may also be an issue concerning adults.
Midlothian Council	In 2018, inter-agency referral discussion took place under child protection procedures in respect of a family of 5 siblings, and safety-planning was agreed. In 2017, inter-agency referral discussion took place under child protection procedures, and safety-planning was agreed.	In 2019, 5 FMPOs were granted in respect of siblings, and remained in force at the date of response. Separately, an interim FMPO was granted in 2017 and was subsequently dismissed after an agreed position was reached.	No referral made.	No further information disclosed.
South Lanarkshire Council	None.	One, which was not insisted upon.	Council involvement in one case concerning a possible referral to CHS under s 67, CHS Act 2011. Member of school staff was cited as a witness to court.	No further information disclosed.

3) Qualified positive responses

The following 6 local authorities issued a qualified positive response to the FOI request:

- East Lothian Council
- Highland Council
- Inverclyde Council

- North Ayrshire Council
- Perth and Kinross Council
- West Lothian Council

These 'qualified positive' responses are set out in Appendix A of this Report, and a summary is set out in Table (b) below.

Table (b)

Local authority	FM investigations/ reports	FMPO application and outcome	FM referral to CHS	Additional information provided
East Lothian Council	Refusal to disclose.	Refusal to disclose.	Refusal to disclose.	Disclosure of information refused on account of exemption relating to personal data.
Highland Council	Refusal to disclose.	Refusal to disclose.	Refusal to disclose.	Disclosure of information refused on account of exemption relating to personal data.
Inverclyde Council	1 investigation	Refusal to disclose.	Refusal to disclose.	Disclosure of information refused on account of exemption relating to confidentiality.
North Ayrshire Council	Refusal to disclose.	No proceedings commenced.	No reportable information available.	Disclosure of information refused on account of exemption relating to personal data.
Perth and Kinross Council	Fewer than 3.	Fewer than 3.	Fewer than 3.	Disclosure of information refused on account of exemption relating to personal data.
West Lothian Council	Refusal to disclose.	Refusal to disclose.	Refusal to disclose.	Disclosure of information refused on account of costs.

4) Summary analysis of responses from local authorities

Responses received from local authorities in respect of FOI requests show that, between 2011 and 2022, there have been 24 disclosed instances³³⁵ of investigations into, or reports of, forced marriage across Scotland's 32 local authority areas. The FOI responses, however, indicate that there are additional instances of investigations into, or reports of, forced marriage, details of which have not been disclosed. Six local authorities³³⁶ have disclosed that they hold relevant information about instances of forced marriage investigation within their area, but did not make disclosure of any detail.

Responses received from local authorities regarding disclosed instances of investigations into, or reports of, forced marriage across Scotland's 32 local authority areas, also reveal that, between 2011 and 2022, 19 applications for a FMPO (including interim FMPOs) were made.³³⁷

With regard to referrals to a children's hearing under the CHS Act 2011 concerning forced marriage, 22 local authorities confirmed³³⁸ that there were no such referrals or any other involvement in proceedings under the CHS Act 2011. Of the remaining 10 local authorities, 8 either refused to disclose³³⁹ relevant information or stated that no reportable information was available. Only 2 local authorities³⁴⁰ disclosed the existence of one or more referral of a child to a children's hearing on the basis of section 67(2) (q) of the CHS Act 2011.

Only one local authority³⁴¹ disclosed additional information regarding other action or interventions taken in respect of forced marriage in their local authority area.³⁴²

b) Other public authorities

The full responses received from other public authorities are set out in Appendix A of this Report, and a summary is set out in this section.

335 Disclosed by Aberdeen City Council, City of Edinburgh Council, Dundee City Council, Midlothian Council, Inverclyde Council, and Perth and Kinross Council.

336 East Lothian Council, Highland Council, Inverclyde Council, North Ayrshire Council, Perth and Kinross Council and West Lothian Council

337 Disclosed by Aberdeen City Council, City of Edinburgh Council, Dumfries and Galloway Council, Glasgow City Council, Midlothian Council, South Lanarkshire Council and Perth and Kinross Council.

338 Aberdeenshire Council, Angus Council, Argyll and Bute Council, Clackmannanshire Council, Comhairle an Eilean Siar, Dumfries and Galloway Council, Dundee City Council, East Ayrshire Council, East Dunbartonshire Council, East Renfrewshire Council, Falkirk Council, Fife Council, Midlothian Council, Moray Council, North Lanarkshire Council, Orkney Islands Council, Renfrewshire Council, Scottish Borders Council, Shetland Islands Council, Stirling Council, South Ayrshire Council and West Dunbartonshire Council.

339 Aberdeen City Council, City of Edinburgh Council, East Lothian Council, Glasgow City Council, Highland Council, Inverclyde Council, North Ayrshire Council and West Lothian Council.

340 South Lanarkshire Council and Perth & Kinross Council.

341 Dundee City Council.

342 Nine cases were investigated. In six cases, markers were put on passports. No case, however, met the threshold for a FMPO application. Other interventions included the making of a harassment order, arrest, the family moving house, support from women's aid, and monitoring by schools.

1) Other public authorities – Police Scotland³⁴³

The number of ‘recorded crimes’³⁴⁴ logged by Police Scotland in respect of the 2011 Act or the 2014 Act, in the period 2011-2022, consists of one instance for each of the years 2019, 2020 and 2021, respectively, totalling 3 cases.

There were no detected crimes³⁴⁵ logged by Police Scotland in respect of the 2011 Act or the 2014 Act, in the period 2011 – 2022.

Police Scotland advised that they hold no information pertaining to any report made to them, and/or investigation carried out by them, or any further proceedings in Scottish courts or tribunals, involving the CHS Act 2011 section 62(5)(n), (o) or (p) or section 67(2)(q) in the 2011-2022 period.

Police Scotland further advised that information regarding the content of cases and case names is held by them, but is subject to non-disclosure for GDPR exemption reasons.

2) Other public authorities – COPFS³⁴⁶

Five reports were made to COPFS under the 2011 Act in the period 2011 – 2022.

No reports were made to COPFS under the 2014 Act in the period 2011 – 2022.

No reports were made to COPFS under CHS Act 2011 section 62(5)(n), (o) or (p) or section 67(2)(q) in the period 2011 – 2022.

3) Other public authorities – SCTS³⁴⁷

22 cases involving a FMPO were registered on the SCTS case management system in the period between 1 March 2011 and 24 August 2022. SCTS reported, however, that this figure does not include any case in which a FMPO was made by the sheriff *ex proprio motu*. Further, SCTS reported that this figure may include multiple cases against the same defender.

No cases for breach of a FMPO were registered on the SCTS case management system in the period 2011 – 2022.

No cases under section 122 of the 2014 Act were registered on the SCTS case management system in the period 2011 – 2022.

No information is available from SCTS regarding referrals to a children’s hearing under sections 62(5)(n), (o) or (p) 67(2)(q) of the CHS Act 2011, for the period 2011 – 2022. This does not mean that such cases do not exist, but rather that SCTS case management system lacks the functionality to generate this information.

Disclosure of further information was refused on account of the GDPR exemption relating to resources.

4) Other public authorities – SCRA³⁴⁸

SCRA advised that, since 2013, 24 children have been subject to section 67(2)(q) grounds of referral. Six of these referrals resulted in a children’s hearing. SCRA advised that further information regarding these hearings is subject to non-disclosure for reasons of cost.

343 Police Scotland FOI Response 2022 – 1589 (1 September 2022).

344 ‘Recorded crime’ refers to a reported potential breach of a FMPO where, after investigation, it is found that there is insufficient evidence to report the matter to the Procurator Fiscal, i.e. no ‘detected crime’ was logged (explanation from Police Scotland representative when questioned by the authors on 6 March 2023).

345 ‘Detected crime’ means that there is a sufficiency of evidence such as to justify the matter being reported to the Procurator Fiscal (explanation from Police Scotland representative when questioned by the authors on 6 March 2023).

346 COPFS FOI Response R06582-22 (27 October 2022).

347 SCTS FOI Response 2022 143 (30 August 2022).

348 SCRA FOI Response (15 November 2022).

c) Summary analysis of FOI responses

The non-disclosure, or incomplete disclosure, of information by public authorities, justified (or not) by GDPR considerations and/or an inability to retrieve the relevant information from information management systems, limits the accurate and comprehensive mapping of instances of forced marriage across Scotland.

The FOI responses reveal that the reasons given by public authorities to justify the non-disclosure of information are not always consistent. The responses reveal discrepancies in approach to responding to FOI requests about forced marriage, with reasons for non-disclosure varying among the following: the costs arising from processing FOI requests, potentially arising as a result of the inaccessibility of information;³⁴⁹ personal data reasons including risk of personal identification of (alleged) victims and/or perpetrators, especially in smaller local authority areas; legislative obligations in respect of confidentiality; and lack of consent to disclosure from affected parties.

Additionally, public authorities' information retention and/or disposal practices can act as a limitation on information-gathering, such as Police Scotland's 'weeding out' of information and non-retention after 6 months of interim Vulnerable Persons Database ('iVPD') information.³⁵⁰

It seems that the relevant legislative provisions pertaining to Freedom of Information are not being consistently interpreted and applied across all public authorities, with some authorities being prepared to release information and others refusing to do so, depending upon the legislative interpretation taken (e.g. the interpretation of 'public interest' by Highland Council leading to its reluctance to disclose information,³⁵¹ as against, e.g. the willingness of Aberdeen City Council³⁵² to release information).

Separately, there are apparent anomalies in the information provided by different public authorities, e.g., as between the reported breaches of FMPOs disclosed by Police Scotland,³⁵³ and the number of reports made to the Procurator Fiscal service under the 2011 Act, as disclosed by COPFS.³⁵⁴

Ultimately, the non-disclosure, or incomplete disclosure, of information by public authorities results in an incomplete picture of the number of reports that have been submitted, and legal proceedings that have been commenced, across Scotland regarding the 2011 Act, the 2014 Act and the CHS 2011 Act.

d) Recorded statistics

In addition to FOI requests, relevant searches were conducted of recorded statistics published by SCRA,³⁵⁵ and by the FMU,³⁵⁶ and of relevant information collated by Scotland's Domestic Abuse and Forced Marriage Helpline, and National Records of Scotland.

349 e.g. West Lothian Council, SCTS and SCRA.

350 See Police Scotland FOI Response 2022 – 1589 (1 September 2022). See Appendix A (text at n 453)

351 FOI Response 512700245 (31 May 2023). See Appendix A (text at n 448).

352 FOI Response 491323954 (21 March 2023). See Appendix A (text at n 440).

353 Police Scotland FOI Response 2022 – 1589 (1 September 2022): the response states that the number of 'recorded crimes' logged by Police Scotland in respect of the 2011 Act or the 2014 Act, in the period 2011-2022, consists of one instance for each of the years 2019, 2020 and 2021, respectively, totalling 3 cases.

354 COPFS FOI Response R06582-22 (27 October 2022): the response states that 5 reports were received over the relevant period under the 2011 Act.

355 <https://www.scra.gov.uk/resources_articles_category/official-statistics/>.

356 <<https://www.gov.uk/government/collections/forced-marriage-unit-statistics>>. Statistics are recorded and are available for each year from 2012 to 2022.

These searches disclosed the following information:

1) Scottish Children's Reporter Administration

A child (meaning, in the context of children's hearings, a person who is under 16 years of age, subject, however, to section 199(2) to (9) of the CHS Act 2011) is referred to a children's hearing when a children's reporter determines that the child is in need of protection, guidance, treatment or control, and that it might be necessary for a compulsory supervision order to be made in relation to the child.³⁵⁷ The 'grounds for referral' are set out in section 67(2) of the Children (Scotland) Act 2011.³⁵⁸

Official annual statistics generated for the Scottish Children's Reporter Administration ('SCRA') reveal information about the number of referrals received over the relevant period (from 1 April in a given year to 31 March the following year) and analyse, among other things, the types of referral, the source of referrals, and whether or not a child was subject to compulsory measures of supervision when the referral was received.

Official annual statistics are available to view on the SCRA website for the periods from 2015-16 to 2023-24.

The figures reported in 2023/24,³⁵⁹ 2022/23³⁶⁰ and 2021/22³⁶¹ count children with referrals decided in the relevant period whereas, prior to 2021/22, the figures relate to referrals received.³⁶²

Searches of official statistics published by the SCRA disclose the information set out in Table (c) regarding forced marriage and forced civil partnership.

357 CHS Act 2011, Part 6.

358 See Ch 4.b.5 in respect of forced marriage/civil partnership grounds of referral.

359 SCRA Statistical Analysis 2023/24 – SCRA, p 16. <<https://www.scra.gov.uk/wp-content/uploads/2024/06/SCRA-full-statistical-analysis-2023-24.pdf>>.

360 SCRA Statistical Analysis 2022/23 – SCRA, p 16. <<https://www.scra.gov.uk/wp-content/uploads/2023/07/SCRA-full-statistical-analysis-2022-23.pdf>>.

361 SCRA Statistical Analysis 2021/22 – SCRA, p 16. <<https://www.scra.gov.uk/wp-content/uploads/2022/09/SCRA-full-statistical-analysis-2021-22.pdf>>.

362 SCRA Statistical Analysis 2020/21 – SCRA, p 13. <<https://www.scra.gov.uk/wp-content/uploads/2021/09/SCRA-Full-Statistical-Analysis-2020-21.pdf>>.

Table (c)

Reporting period	Referral decided/referrals received under section 67(2) (p) – number of children [CP]	Referral decided/referrals received under section 67(2) (p) – number of referrals [CP]	Referral decided/referrals received under section 67(2) (q) – number of children [Marriage]	Referral decided/referrals received under section 67(2) (q) – number of referrals [Marriage]	Total children referred/total referrals³⁶³
1.4.23 – 31.3.24 ³⁶⁴	0	0	0	0	10,390/20,265
1.4.22 – 31.3.23 ³⁶⁵	0	0	<5	<5	10,748/19,572
1.4.21 – 31.3.22 ³⁶⁶	0	0	<5	<5	10,295/18,312
1.4.20 – 31.3.21 ³⁶⁷	0	0	<5	<5	9,665/17,082
1.4.19 – 31.3.20 ³⁶⁸	0	0	5	5	12,849/22,157
1.4.18 – 31.3.19 ³⁶⁹	0	0	<5	<5	12,869/23,140
1.4.17 – 31.3.18 ³⁷⁰	0	0	<5	<5	13,240/25,131
1.4.16 – 31.3.17 ³⁷¹	0	0	<5	<5	15,118/26,840
1.4.15 – 31.3.16 ³⁷²	0	0	0	0	15,329/27,340

363 A child may be referred to the Reporter more than once in the year on the same and/or different grounds and may be on a Compulsory Supervision Order at the point of referral at one time and not on a Compulsory Supervision Order at another. These totals count every child referred to the Reporter during the year once (SCRA Statistical Analysis 2023/24, p 17, Table 3.3).

364 SCRA's Online Statistics from 1st April 2023 to 31st March 2024; Summary table 1f - Children with Reporter's decisions by grounds of referral: Ground of referral q.

365 SCRA's Online Statistics from 1st April 2022 to 31st March 2023; Summary table 1f - Children with Reporter's decisions by grounds of referral: Ground of referral q.

366 SCRA's Online Statistics from 1st April 2021 to 31st March 2022; Summary table 1f - Children with Reporter's decisions by grounds of referral: Ground of referral q.

367 SCRA's Online Statistics from 1st April 2020 to 31st March 2021; Summary table 1b - Children referred by grounds of referral: Ground of referral q.

368 SCRA's Online Statistics from 1st April 2019 to 31st March 2020; Summary table 1b - Children and young people referred by grounds of referral: Ground of referral q.

369 SCRA's Online Statistics from 1st April 2018 to 31st March 2019; Summary table 1b - Children and young people referred by grounds of referral: Ground of referral q.

370 SCRA's Online Statistics from 1st April 2017 to 31st March 2018; Summary table 1b - Children and young people referred by grounds of referral: Ground of referral q.

371 SCRA's Online Statistics from 1st April 2016 to 31st March 2017; Summary table 1b - Children and young people referred by grounds of referral: Ground of referral q.

372 The figures for referrals received under section 67(2)(p) and (q), respectively, are not listed un SCRA Online Statistics 2015/16 Summary table 1b (Children and young people referred by grounds of referral), but the relevant data is set out in SCRA Statistical Analysis 2015/16

In the reporting periods from 2015/16 – 2023/24, there were no referrals decided, or referrals received, under section 67(2)(p) (forced civil partnership).

Significantly, any statistical counts in the reports between figures 1 and 4 are replaced by the indicator '<5'. This is to ensure the anonymity of the data. Typically, due to the low number of referrals on ground 67(2)(q), the numbers have been anonymised by using the '<5' marker.

With the exception of 2019/20, in each of reporting periods from 2015/16 – 2023/24, there were fewer than 5 referrals decided, or referrals received, under section 67(2)(q) (forced marriage). The 2019/20 figures are reported as '5'. Only two local authorities are listed that year³⁷³ as having made a referral on the basis of section 67(2)(q), namely, Dumfries and Galloway, and Glasgow, both reporting '<5'. The total report under that ground of referral for 2019/20 is listed as '5'.

In the reporting periods from 2016/17 – 2022/23, the ages of the child(ren) referred are not recorded in respect of referrals made under section 67(2)(q).³⁷⁴

In the reporting periods 2018/19, 2019/20, 2020/21, 2021/22 and 2022/23, as regards the sex of children in referrals decided, or referrals received, under section 67(2), there is no listing in respect of referrals under section 67(2)(q).³⁷⁵

In the reporting periods 2016/17 and 2017/18,³⁷⁶ as regards referrals decided, or referrals received, under section 67(2)(q) (<5), the child(ren) referred is/are female.³⁷⁷

2) Forced Marriage Unit

Since 2012, the UK Government's Forced Marriage Unit ('FMU') – a joint Foreign, Commonwealth and Development Office and Home Office unit which leads on the government's forced marriage policy, outreach and casework³⁷⁸ – has generated annual statistical reports of forced marriage on a regional basis, including 'Scotland'.³⁷⁹

Annual statistics are recorded and are available to view on the FMU website for the years from 2012–2023. The annual statistics reflect only those cases that have been referred to the FMU and do not reflect the true scale of forced marriage, which is often a hidden crime.

373 SCRA Online Statistics (2019-20) Table 5 ('Children and young people referred by source, grounds of referral and local authority area').

374 SCRA Online Statistics 2016-17 (Summary table 1f - Children and young people referred by age and grounds of referral); SCRA Online Statistics 2017-18 (Summary table 1f - Children and young people referred by age and grounds of referral); SCRA Online Statistics 2018-19 (Summary table 1f - Children and young people referred by age and grounds of referral); SCRA Online Statistics 2019-20 (Summary table 1f - Children and young people referred by age and grounds of referral); SCRA Online Statistics 2020-21 (Summary table 1f - Children referred by age and grounds of referral); SCRA Online Statistics 2021-22 (Summary table 1h - Children with Reporter's decisions by age and grounds of referral); and SCRA Online Statistics 2022-23, Summary table 1h (Children with Reporter's decisions by age and grounds of referral).

375 SCRA Online Statistics 2018-19 (Summary table 1j - Children and young people referred by sex and grounds of referral); SCRA Online Statistics 2019-20 (Summary table 1j - Children and young people referred by sex and grounds of referral); SCRA Online Statistics 2020-21 (Summary table 1j - Children referred by sex and grounds of referral); SCRA Online Statistics 2021-22 (Summary table 1k - Children with Reporter's decisions by sex and grounds of referral); and SCRA Online Statistics 2022-23 (Summary table 1k - Children with Reporter's decisions by sex and grounds of referral).

376 There is no summary table of 'Children and young people referred by gender and grounds of referral' or 'Children and young people referred by sex and grounds of referral' in SCRA Online Statistics 2015-16.

377 SCRA Online Statistics 2016-17 (Summary table 1j - Children and young people referred by gender and grounds of referral); and SCRA Online Statistics 2017-18 (Summary table 1j - Children and young people referred by sex and grounds of referral).

378 <<https://www.gov.uk/guidance/forced-marriage>>. The FMU operates both inside the UK, where support is provided to any individual; and overseas, where consular assistance is provided to British nationals, including dual nationals.

379 <<https://www.gov.uk/government/collections/forced-marriage-unit-statistics>>.

The annual statistics release details of the number and characteristics of cases reported to the FMU via its public helpline and e-mail in-box from 1 January to 31 December in a given year. The FMU logs all calls and e-mails received, to ensure the accuracy and reliability of the records.

Some callers wish to remain anonymous, but where information is volunteered, the main categories of data that are captured by the FMU case log include sources of referral; gender, age, nationality and sexual orientation of victims; focus countries;³⁸⁰ victims with mental capacity concerns; status of the marriage (actual or potential); and supported repatriations.

Significantly, the annual statistics also record the UK region where a victim lives.³⁸¹ Relative to other 'UK regions' (London, West Midlands, North West, Yorkshire & The Humber, South East, East, East Midlands, South West, North East, Wales, Northern Ireland and 'unknown'³⁸²), Scotland consistently accounts for a very small percentage of referrals.

Searches of annual statistics published by the FMU disclose the information set out in Table (d).

380 i.e. the country to which the risk of forced marriage relates: the country where the forced marriage is due to take place; the country where it has taken place; and/or the country in which a spouse is residing.

381 Although forced marriage is a devolved matter, the FMU provides support and advice regardless of where in the UK a victim/potential victim is based.

382 Where the caller wished to remain anonymous and no relevant information was volunteered.

Table (d)

Year	Total number of referrals in which the FMU gave advice or support	Number of Scottish referrals in which the FMU gave advice or support	Percentage of Scottish referrals
2023 ³⁸³	283	6	2
2022 ³⁸⁴	302	[x] ³⁸⁵	[x]
2021 ³⁸⁶	337	7	2
2020 ³⁸⁷	759	12	2
2019 ³⁸⁸	1,355	22	2
2018 ³⁸⁹	1,507	25	2
2017 ³⁹⁰	1,196	18	1.5
2016 ³⁹¹	1,428	28	2
2015 ³⁹²	1,220	22	2
2014 ³⁹³	1,267	29	2.3
2013 ³⁹⁴	1,302	38	2.9
2012 ³⁹⁵	1,485	15	1

Over the period from 2012 – 2021, the average percentage of Scottish referrals is 1.97%.

383 Forced Marriage Unit Statistics 2023, Table 5 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2023/forced-marriage-unit-statistics-2023#forced-marriage-unit-statistics>>). Of the 67 cases involving someone with mental capacity concerns, an unknown percentage pertains to Scotland (Table 7: Number of cases involving a victim with mental capacity concerns in which the Forced Marriage Unit gave advice or support, 2023).

384 Forced Marriage Unit Statistics 2022, Table 5 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2022>>). Of the 62 cases involving someone with mental capacity concerns, an unknown percentage pertains to Scotland (Table 7: Number of cases involving a victim with mental capacity concerns in which the Forced Marriage Unit gave advice or support, 2022).

385 Categories containing data relating to fewer than 5 cases were recorded as '[x]' to preserve the anonymity of victims.

386 Forced Marriage Unit Statistics 2021, Table 5 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2021>>). Of the 66 cases involving someone with mental capacity concerns, an unknown percentage pertains to Scotland (Table 7: Number of cases involving a victim with mental capacity concerns which the Forced Marriage Unit gave advice or support to, 2021).

387 Forced Marriage Unit Statistics 2020, Table 5 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2020>>).

388 Forced Marriage Unit Statistics 2019, Table 4 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2019>>).

389 Forced Marriage Unit Statistics 2018, Table 4 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2018>>).

390 Forced Marriage Unit Statistics 2017, Table 2.2 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2017>>).

391 Forced Marriage Unit Statistics 2016, Table 2.2 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2016>>).

392 Forced Marriage Unit Statistics 2015, Table 2.2 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2015>>).

393 Forced Marriage Unit Statistics 2014 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2014>>).

394 Forced Marriage Unit Statistics 2013 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2013>>).

395 Forced Marriage Unit Statistics 2012 (<<https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2012>>).

3) Scotland’s Domestic Abuse and Forced Marriage Helpline³⁹⁶

Information received from Scotland’s Domestic Abuse and Forced Marriage Helpline (‘SDAFMH’) regarding contacts concerning forced marriage is set out in Table (e) below.

Table (e)

<i>Year</i>	<i>Total contacts</i>	<i>Contacts referring to forced marriage</i>	<i>Percentage of total contacts</i>
2023/24	14,249	80	0.6
2022/23	12,517	66	0.5
2021/22	10,837	51	0.5
2020/21	11,087	36	0.3
2019/20	8,528	37	0.4
2018/19	6,440	27	0.4
2017/18	[Not provided]	[Not provided]	[Not provided]
2016/17	3,210	Not known	Not known

4) Scottish Government Justice Directorate³⁹⁷

Information provided by the Justice Directorate of the Scottish Government in the Policy Note on The Forced Marriage Etc. (Protection And Jurisdiction) (Scotland) Act 2011 (Application to Civil Partnerships and Consequential Provision) Order 2023¹ is as follows:

The statistics on forced civil marriage orders show that in 2017/18, there were two applications to the courts for these orders; in 2018/19, there were six applications; in 2019/20, 2020/21 and 2021/22 there was one application in each of these years.

Section 9 of the 2011 Act makes it a criminal offence to breach a forced marriage protection order. Up to and including 2020/21, there have been no prosecutions for breaching a forced marriage protection order.

No source is cited for these figures.

396 Provided, upon request, by the Helpline Operations Co-ordinator, Scotland’s Domestic Abuse and Forced Marriage Helpline, Scottish Women’s Aid (19 March 2024).

397 SSI 2023/194 (<https://www.legislation.gov.uk/ssi/2023/194/pdfs/ssipn_20230194_en_001.pdf> (May 2023).

5) National Records of Scotland

The National Records of Scotland do not disclose specific information about marriages of 16-17 year olds; rather, the category in respect of whom data is provided are individuals in the age group 16–19 years.

Table (f), below, sets out statistics in respect of the marriages in Scotland, over the period 2011-2022, of individuals aged 16-19 years. The number of marriages in Scotland involving 16 and 17 year olds is statistically very small (less than 1% of the total number of marriages per year in Scotland).

In 2022, 31 males and 61 females aged 16-19 years inclusive, were married in Scotland.

Table (f) ³⁹⁸

Year	Total number of marriages in Scotland (Males)	Marriages 16 – 19 years (Males)	Total number of marriages in Scotland (Females)	Marriages 16 – 19 years (Females)
2011	29,135	72	29,135	227
2012	30,534	59	30,534	252
2013	27,547	53	27,547	186
2014	29,048	60	29,090	176
2015	29,412	55	29,970	142
2016	29,013	43	29,445	112
2017	28,272	52	28,608	93
2018	27,344	29	27,706	97
2019	25,789	33	26,225	85
2020	11,831	19	12,507	66
2021	24,061	30	24,507	71
2022	29,723	31	30,342	61

398 Information extracted from National Records of Scotland, 'Vital Events Reference Tables', Section 7: Marriages and Civil Partnerships -Table 7.01(b): Marriages, by sex and age, Scotland, 1974 to 2022 <<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2022/list-of-data-tables#section7>>.

7. FINDINGS FROM THE ONLINE SURVEY

This Chapter reports on the key findings from the online survey, drawn from the responses of the 19 individuals who completed the survey. The online survey is set out in Appendix B.

a) Respondents

The survey was completed by five judges (Senators of the College of Justice/sheriffs principal/sheriffs); six practising solicitors; one advocate; one Reporter to the children's hearing; and six legal academics, from across six different areas of Scotland (Glasgow and Strathkelvin; Grampian, Highland and Islands; Lothian and Borders; North Strathclyde; South Strathclyde, Dumfries and Galloway; and Tayside, Central and Fife).

84.2% of respondents indicated that their legal practice includes family law; 42.1% indicated that their legal practice includes human rights law; and 36.8% indicated that their legal practice includes criminal law.

b) Awareness of forced marriage and associated legislation

78.9% of respondents considered themselves to have comprehensive or satisfactory knowledge of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 ('2011 Act'); 73.7% of respondents considered themselves to have comprehensive or satisfactory knowledge of the Children's Hearings (Scotland) Act 2011 ('CHS Act 2011'), section 67(2)(c) (forced marriage ground of referral to children's hearing); and 57.9% of respondents considered themselves to have comprehensive or satisfactory knowledge of the Anti-social Behaviour, Crime and Policing Act 2014, section 122 (offence of forced marriage: Scotland).

c) Experience of legal proceedings concerning forced marriage and forced civil partnership

47.4% of respondents had practical experience of legal proceedings concerning forced marriage. 18.2% of respondents had practical experience of giving legal advice on forced marriage to an alleged victim of forced marriage. 10% of respondents had practical experience of giving legal advice on forced marriage to an alleged perpetrator of forced marriage. 45.5% of respondents had practical experience of giving legal advice to a third party applicant in relation to proceedings under 2011 Act. 30% of respondents had practical experience of presiding over legal proceedings concerning forced marriage.

No respondent had experience of legal proceedings concerning forced civil partnership, and no respondent was aware of any difficulty arising from application of the 2011 Act in the context of civil partnership.

d) Evaluation of legal remedies/sanctions available in Scotland in respect of forced marriage

1) Definition of force

73.7% of respondents considered the definition of force contained in section 1(6) of the 2011 Act³⁹⁹ to be adequate.

One respondent (99756050) commented that the term can be interpreted so as to encompass a wide range of circumstances, and that the difficulty in any given case is likely to be the availability of evidence to support an allegation of force, rather than the legal definition itself.

399 'Force' includes (a) coercion by physical, verbal or psychological means, threatening conduct, harassment or other means, and (b) knowingly taking advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage.

Two respondents (99920777 and 1000297585) doubted if the statutory definition of force adequately reflects the ‘coercive control’ elements of force, and wondered if the definition could be made clearer so as to demonstrate that such forms of duress fall within the definition.

2) Legal test for grant of a FMPO

With regard to interpretation of the 2011 Act, 78.9% of respondents supported an approach whereby the remedy of FMPO is competent irrespective of whether or not the applicant has adduced evidence of an actual, planned marriage (see, for example, *City of Edinburgh Council v S*⁴⁰⁰). As one respondent put it,

“Young people may be at real and immediate risk of being forced into a marriage even before a marriage is planned, or a potential spouse is identified.” (99754650)

Another respondent felt that,

“Without that interpretative approach it would be almost impossible to meet the legal test for an order to be granted.” (99920777)

Yet another respondent (101449249) noted that, since victims often are excluded from the planning process, if the interpretative approach were otherwise, it would be difficult for victims to obtain sufficient documentary evidence to satisfy the threshold test for the making of a FMPO.

In deciding whether to make an order for the purpose of protecting a person from forced marriage and, if so, what order to make, the court must find that, on the balance of probabilities, the evidence supports the granting of the order.

Section 5 of the 2011 Act, which concerns interim orders, provides that in deciding whether to make an interim order “the court must have regard to all the circumstances including any risk of significant harm to the protected person or to another person if the order is not made immediately”. This provision is not repeated in section 1 of the 2011 Act, which concerns final orders.

Section 1(2) is widely drawn, providing that “the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person”.

With regard to interim orders, 73.7% respondents thought that the test set out in section 5 of the 2011 Act represents the correct legal test, and 78.9% considered it to be the correct evidential threshold/standard of proof.

One respondent (103157596) remarked that,

“The threshold for an interim order requires immediacy and significant risk, while final orders allow for a more measured, holistic approach akin to the considerations for the protection of children under the Children’s (Scotland) Act 1995.”

By contrast, however, another respondent (102681734) commented that the interim order threshold, in referring to ‘significant harm’, presents too high a test:

“The starting point should proceed on the basis that a forced marriage would be harmful as it takes place in the absence of consent and accordingly the threshold test for an interim order should be related to and/or stated in terms of there being a prima facie case made out that there is such a risk of a forced marriage taking place.”

With regard to final orders, 78.9% respondents thought that the test set out in section 1 of the 2011 Act represents the correct legal test, and 84.2% considered it to be the correct evidential threshold /standard of proof.

3) Contents of orders

By section 2 of the 2011 Act, a FMPO may contain such prohibitions, restrictions, requirements or other terms as the court considers appropriate for the purposes of the order. 78.9% of respondents thought that the wording and ambit of section 2 is appropriate, enabling an order to be tailored to the circumstances of the case.

37.5% of respondents stated that they had encountered issues or difficulties affecting an alleged victim of forced marriage arising from conduct outwith Scotland, such as a Scottish domiciled individual who was forced, or was at risk of being forced, into marriage elsewhere in the UK or overseas; or a foreign domiciled individual who was forced or was at risk of being forced into marriage in Scotland.

One respondent (99756050) remarked that, with regard to a Scottish individual who was already abroad and who seemed to be able to be forced into marriage,

“It was very difficult to see what a FMPO could do to prevent marriage, and difficult also to know whether it would do more harm than good to obtain one while the young woman remained [abroad].”

Another respondent (99920777) commented that,

“In a case where threats are being made not just by relatives [in Scotland] but by others abroad, it is challenging to address in a FMPO application. Sometimes that might be due to lack of information about perpetrators. [The] [m]ost effective or only way to deal with [sic] is to seek orders that the relatives here should not encourage or procure others abroad to make threats or contact the protected person. Often practical steps to address this are more effective e.g. change of phone/email.”

A further respondent (102710439) explained that,

“[T]he particular issue was the difficulty in having proceedings intimated upon a party domiciled outwith Scotland where it was alleged that party had had a role in an attempt to force a Scottish domiciled individual into marriage - the issue was never resolved.”

4) Applications for orders

41.2% of respondents indicated that the enabling of relevant third party applicants has been a positive step in helping victims of forced marriage overcome some of the barriers encountered in seeking legal remedies/sanctions. However, 58.8% of respondents indicated that they did not know. One respondent (99756050) said that,

“In my experience the police won’t pursue a FMPO, and will ask the local authority to do so.”

Another respondent (102710439) remarked that,

“I have dealt with applications by the protected person as well as with several applications made by local authorities. Police Scotland have been closely involved in several of these applications but have not, as far as I am aware, made an application in this jurisdiction.”

A further respondent (103157596) commented on the challenges facing a victim who brings an application on their own behalf:

“By definition, protected persons are vulnerable individuals who require the protection of the court; being vulnerable, they have practical difficulties in accessing that protection without the availability of real assistance from a responsible third party to take up arms on their behalf.”

Only 5.6% of respondents indicated that additional individuals or bodies should be specified as a relevant third party. One suggestion was that ‘other family members’ could be added to the existing list (99754650).⁴⁰¹

Another respondent (100945299), however, indicated that,

“Since the court can permit any third party to bring a case, there seems to be no need to expand the list of those named save, perhaps, to include the Principal Reporter.”

A further respondent (102710439) said that,

401 At present, such persons can make an application with leave of the court (s 3(2), 2011 Act).

“[P]erhaps consideration should be given to permitting certain charitable organisations who specialise in providing support to victims to make applications especially in emergency situations where a victim is reluctant to engage with the police or the local authority and is unwilling to raise proceedings personally?”

5) Interim orders

82.4% of respondents answered that it was appropriate, in a case where a court considers that it is equitable to do so and having regard to all the circumstances, that the court has power to make an interim FMPO in the absence of a person who is or would be a party to the proceedings for the order, and that it may do so whether or not that person has received requisite notice.

One respondent (99920777) commented that,

“This can be very important to ensure quick, effective protection on an urgent basis, pending full consideration of the case.”

Another respondent (102681734) said that,

“The priority has to be the protection of potential victim [sic]. If the basis upon which an interim order is sought is flawed that can [sic] addressed/ reviewed in early course at a second hearing (or on motion/application) at which all parties with an interest can be represented.”

6) Duration of orders

By section 6 of the 2011 Act, a FMPO has effect (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is recalled under section 7 or extended under section 8), and (b) where no such period is specified, until the order is recalled under section 7.

Responses to the questions whether or not there should be statutorily prescribed minimum and maximum permitted durations for a FMPO were mixed. However, most respondents (52.9%) did not think that there should be a statutorily prescribed minimum permitted duration. Likewise, most respondents (72.2%) did not think that there should be a statutorily prescribed maximum permitted duration. Two respondents, however, commented favourably on the idea of having a minimum permitted duration:

“I think having a minimum period for authorities to carry out initial assessments and put into place safety plans would be appropriate.” (100482770)

“Until the potential victim is 18.” (102681734)

Responses were mixed to the question whether or not there should be a mandatory review date for a FMPO. However, most respondents (55.6%) thought that there should be no such mandatory review, and that the matter should be one for judicial discretion.

7) Variation and recall, and extension, of orders

83.3% of respondents thought that the wording and ambit of section 7 of the 2011 Act, empowering the Court of Session or sheriff court to vary or recall an interim FMPO or a FMPO, is appropriate.

Likewise, most respondents (94.1%) thought that the wording and ambit of section 8 of the 2011 Act (by which the Court of Session or sheriff court, before expiry of the specified period for which a FMPO or interim FMPO is to have effect, may extend the order) is appropriate.

One respondent (103157596) commented that,

“The court must have discretion to make or adapt the necessary orders to fit the circumstances/risk of each individual situation.”

8) Wishes and feelings of the protected person

All respondents considered it appropriate that, for the purposes of the 2011 Act, a court must have such regard to the protected person's wishes and feelings, so far as they are reasonably ascertainable, as the court considers appropriate on the basis of the person's age and understanding. However, one respondent (99754650) stated that,

"The protected person's wishes and feelings are paramount and I should prefer a stronger requirement on the court to take them into account. Whenever the order is sought by a relevant third party the protected person loses some control over the process – and it is not out of the question that the protected person would not want the order made when sought by a third party. To ensure the centrality of the protected person's own wishes I should prefer the court to have a positive obligation to take these wishes and feelings fully into account, bolstered by a presumption that the order will reflect these wishes and feelings, unless its terms need to be modified for other good reason (for example the court's belief that the protected person's expressed wishes are not genuinely and freely their own)."

9) Offence of breaching FMPO

All respondents considered it appropriate that, by section 9(1) of the 2011 Act, any person who, knowingly and without reasonable excuse, breaches a FMPO commits an offence. As one respondent (100945299) commented, imposing a criminal penalty for breach of the civil order "gives the civil order teeth".

73.7% of respondents considered it appropriate that, by section 9(4)(a) of the 2011 Act, a person who is guilty of the offence of breaching a FMPO is liable on summary conviction to imprisonment for a period not exceeding 12 months and/or a fine not exceeding the statutory maximum.

Three respondents, however, (99805694; 99921192; 100928888) expressed the view that, in forced marriage cases where an individual has posed a real danger to the protected person, a longer sentence may be appropriate.

57.9% of respondents considered it appropriate that, by section 9(4)(b) of the 2011 Act, a person who is guilty of the offence of breaching a FMPO is liable on conviction on indictment to imprisonment for a period not exceeding 2 years and/or a fine. One respondent (103157596), however, said that,

"I can see no reason why the sanction is not 5 years. The effect of a breach may have a far-reaching effect on the protected person and other forms of abuse that merit prosecution on indictment will normally have the full powers of the sheriff available. The lesser power effectively devalues the breach as being in some way not as serious as other forms of abuse, such as domestic abuse."

Responses to the question on whether or not the mechanisms for policing and enforcing a FMPO are adequate, were mixed. Only 22.2% indicated that they were adequate; 5.6% indicated they were inadequate; and 72.2% didn't know. One respondent (99756050) said,

"It's a difficult question. Where the local authority are the applicants, the mechanisms for policing and enforcing after the order has been made are non-existent [sic]. If the protected person is not determined to resist the pressure to marry (which will likely be ongoing, whatever the order says), it is difficult to know what can be done."

Another respondent (99920777) said,

"my experience has been that the order combined with support and protection plans from public agencies has achieved the desired outcome."

10) Overview of 2011 Act

Overall, 73.7% of respondents thought that the introduction of the 2011 Act has strengthened the protection in Scots law of victims of forced marriage. The following comments were made:

*“any attempt to stop FM is worth doing”
(99734486)*

“In my case, we did at least manage to help to delay the marriage until the young person reached adulthood.” (99756050)

“In theory yes but I think the law is only one of the tools which is needed to offer survivors protection.” (99921192)

“albeit that there is much more to be done. Especially education about the remedies that are available.” (100928888)

“The introduction of criminal sanctions for breaching protective orders goes far beyond those that might otherwise be available for a contempt of court, which must be a good thing.” (103157596)

Although 38.9% of respondents said that the remedy of a FMPO is very or quite effective in protecting persons from being forced into marriage without their free and full consent, 61.1% said they didn't know.

Although 16.7% of respondents said that the criminal penalty for breach of a FMPO was very or quite effective in protecting persons from being forced into marriage without their free and full consent, 5.6% said it was not effective and 77.8% said they didn't know.

Although 11.2% of respondents said that the remedy of a FMPO was very or quite effective in penalising perpetrators of forced marriage, 22.2% said it was not effective and 66.7% said they didn't know.

27.8% of respondents said that the remedy of a FMPO is quite effective as a deterrent to forced marriage, but 72.2% of respondents said that they didn't know if it was effective. As one respondent (99756050) commented,

“Overall I think that the 2011 Act is better than nothing – it allows victims and authorities a resort to the civil courts. However the embedded nature of the societal and cultural issues are extremely powerful.”

e) Criminalisation of forced marriage

22.5% of respondents said that section 122 of the 2014 Act is quite effective in protecting persons from being forced into marriage without their free and full consent. 77.8% of respondents said that they didn't know.

Likewise, 22.5% of respondents said that section 122 of the 2014 Act is quite effective in penalising perpetrators of forced marriage. 77.8% of respondents said that they didn't know.

22.5% of respondents said that section 122 of the 2014 Act is quite effective as a deterrent to forced marriage. 77.8% of respondents said that they didn't know.

68.4% of respondents thought that section 122 of the 2014 Act is a useful addition to the offence of breaching a FMPO set out in section 9 of the 2011 Act, but one respondent (100945299) couched their response as follows:

“This is a tentative ‘Yes’ and I remain somewhat conflicted on the criminalisation in the context of forced marriage – solely because of my concern that it might make potential victims less likely to seek help.”

f) Other protection against, or assistance in respect of, forced marriage

23.5% of respondents indicated that, in their experience of legal proceedings concerning forced marriage, another protective legal measure had been sought in addition to, or as an alternative to, a FMPO. Respondents' comments referred to compulsory supervision orders, child protection orders, banning orders,⁴⁰² interdicts and non-harassment orders.

402 s 19 of the Adult Support and Protection (Scotland) Act 2007.

11.8% of respondents had been involved in a professional capacity in a children's hearing where the ground of referral was section 67(2)(q) of the CHS Act 2011.

27.8% of respondents said that section 67(2)(q) of the CHS Act 2011 is very or quite effective in working alongside the 2011 Act in strengthening the protection available to victims of forced marriage. 72.2% of respondents said that they didn't know. One respondent (99920777) commented that,

"Prior to this ground being introduced it could be more difficult to easily fit FM cases into the grounds of referral – this option allows for this to be more easily taken forward to a children's hearing and places FM on a similar footing to children in a household where there has been domestic abuse."

g) Access to legal aid

The vast majority of respondents (94.1%) was not aware of any alleged victim of forced marriage having encountered difficulty in accessing legal aid in respect of forced marriage proceedings.

5.9% of respondents, however, were aware of difficulties having been encountered, with one respondent (100928888) commenting:

"more than one example: geography – no agents taking legal aid clients; complexity – multi-jurisdiction matter and [Scottish Legal Aid Board] wouldn't give sanction for counsel."

h) Potential for reform

In response to a question about whether or not any legislative reform and/or supplementary measures is/are needed to improve the availability and effectiveness of legal remedies and sanctions against forced marriage in Scotland, 5.9% of respondents answered 'no' and 94.1% answered 'not sure'. The following comments were made:

"I'm not sure what can be done: I think there's a problem with policing and enforcing, but don't think it would be appropriate to extend the local authority's powers in that regard." (99756050)

"From a public protection point of view it can be difficult to deal with risks around honour based violence as the protective orders in the Adult Support and Protection Act may not be accessible depending on the case." (99920777)

"I would tend to favour stronger supplementary measures, such as education and training, and engagement with community groups, for professionals working in the field." (100297585)

"In my experience such orders are so little used it is difficult to see reform or supplementary measures as a priority." (102592134)

1) Minimum age of marriage

There was a mixed response to a question about whether or not legislative reform should be considered in Scotland to increase the minimum age for marriage to 18 years: 47.4% of respondents thought reform should be considered; 26.3% thought that reform should not be considered; and 26.3% was unsure.

Three respondents considered the Scottish rule against the background of the international legal landscape:

"[W]e are seriously out of step with the world on this." (100928888)

"The age of consent for marriage at 16 in Scotland now looks quite anomalous and archaic, given the UN Convention on the Rights of a Child." (103157596)

"It may be noted that one of the targets of Goal Five of the UN Sustainable Development Goals is to end 'early and forced' marriage. The UNCRC provides protections and rights until age 18, so it can be assumed that 'early' marriage is marriage before that age." (99754650)

However, one respondent pointed to the relatively small number of marriages in Scotland involving 16 and 17 year olds:

"In truth, however, the number of 16 and 17 year olds marrying is low in Scotland and these problems may be more apparent than real. But to avoid the risk of infantilising (treating as 'children') 16 and 17 year olds, I should much prefer the justification for raising the age to focus on the risks (predominantly felt by female spouses in opposite-sex marriages) of 'early' as opposed to 'child' marriages – restriction of educational and employment opportunities." (99754650)

The same respondent expressed an opinion in respect of minimum age and same-sex relationships:

"[UN Sustainable Development] Goal 5 is about gender equality. I have little doubt that any Scottish legislation raising the age of marriage will follow the English model of raising the age of civil partnership also, and insofar as both institutions are accessible by opposite-sex couples then that is appropriate. But gender equality within relationships needs less attention of the law when dealing with same-sex relationships. The arguments to raise the age have, in my view, less purchase when dealing with same-sex marriages and same-sex civil partnerships." (99754650)

Various comments sounded opposition to reform of the law on minimum age of marriage:

"Scotland has a well-established legal framework which recognises that children become adults at age 16. Great care should be taken with any measure that erodes that – a more appropriate response is to provide effective remedies to protect vulnerable young adults." (99920777)

"I find this a difficult and challenging issue. 'Avoiding child marriages' by raising the age of marriage and civil partnership to 18 suggests that 16 and 17 year olds are 'children', and I consider that to be a mistaken view." (99754650)

"This is a very much debated issue. On balance, I would tend towards a 'no' on this one – although I am mindful of the comments of the UN Committee on the Rights of the Child." (100297585)

"Without evidence of a significant trend in this direction I don't see the need for legislation." (103248787)

"If anything 'children' seem to be growing up sooner rather than later so an upward shift would seem counter intuitive." (102592134)

Some respondents highlighted a possible tension that would be likely to arise from a change to the law on minimum age of marriage, as between minimum age of marriage and age of lawful sexual activity:

"This creates tension with the age of consent for sexual activity. In my view, both should be aligned otherwise we end up with over-criminalization of a different group." (99921192)

"I am not necessarily against raising the age of marriage in Scotland – bringing us in line with what commonly happens in Europe. But I do worry about the disjunction this will create between the age of marriage/civil partnership and the age of lawful sexual activity. Though legislation may well state that nothing in the present Act affects any matter in the Sexual Offences (Scotland) Act 2009, a political argument might well be made that the law ought not to permit or encourage sex outwith marriage. And sex can (of course) lead to children so any child born before the parents are able legally to marry would not have the benefit of automatically having two people with parental responsibilities." (99754650)

One respondent referred to inconsistencies in the existing law pertaining to 'children', and suggested that some broader change is necessary (not just adjusting the minimum age of marriage) in order to address this:

"I think that broader reform is needed in respect of the definition of 'child' generally – the current arrangements throw up inconsistencies." (99756050)

2) Restorative justice

Only 5.6% of respondents supported the idea of restorative justice practices being introduced in the context of forced marriage in Scotland. 16.7% of respondents were opposed to the idea, and 77.8% were unsure.

One respondent (101449249) remarked that,

"I think the potential for restorative justice practices should be considered to help support people to leave forced marriages without having to become estranged from family members. I think consultation with victims might help determine whether this could work in reality."

Against that, however, other respondents pointed to the power imbalance that exists between a victim of forced marriage and a perpetrator of force, expressing the view that it renders the context a difficult and probably unsuitable one in which to apply restorative justice practices:

"I have real reservations about the use of restorative justice in situations where there is likely to be complex power inequality." (100945299)

"The primary problem is the abuse of parental (usually but not always paternal) power over children. The imbalance of power in the relationships which are concerned makes restorative justice very problematic." (101062456)

"I don't think restorative justice is appropriate for any context where there is a clear power imbalance and where there has been coercive control exercised. I'm aware of the research in support but I'm afraid I do remain unconvinced." (99921192)

"I would want this to be a decision taken by the people who are affected by it – it may be another way for pressure to be put on victims of FM!" (100928888)

i) Education and training

55.6% of respondents indicated that further action is necessary to educate the legal profession in Scotland about forced marriage and the forced marriage legislative framework, and to raise awareness of available legal remedies and sanctions against forced marriage in Scotland.

One respondent (100482770) commented that,

"Absolutely, as a children's reporter involved in a case ... it was clear that local police, social work, health, education, local authority solicitor and SCRA staff had limited knowledge of forced marriage, the legislative framework etc. There were limited resources and knowledge within SCRA and there is definitely a need to educate legal professionals."

Just over half of respondents (52.6%) were aware of the Scottish Government's published guidance for legal professionals, intended to assist legal professionals in private practice, law centres, local authorities, Crown Office and Procurator Fiscal Service, Scottish Children's Reporters Administration and others to work with victims of forced marriage sensitively and effectively, and also with other agencies involved with the victim. One respondent commented that, although the published guidance helped them,

"It doesn't really take account of the limitations of the law, however." (99756050)

In terms of suggestions for improving the guidance, other respondents commented that:

"As with all guidance it could do with being refreshed and updated to take account of case law and changes in practice and to ensure that links between FMPOs and other public protection measures are set out clearly." (99920777)

"A section could be added which provides examples of the instructions that could be sought in the first meeting. There was emphasis that this meeting may be the first and only chance to protect a person so it would be helpful if legal professionals went in knowing the options and how to clearly lay these out." (101449249)

Separately, 68.4% of respondents indicated that action is necessary to educate the general population of Scotland about Scots law pertaining to forced marriage and to raise awareness of available legal remedies and sanctions against forced marriage in Scotland.

Comments included the following:

"Think this is vital in tackling the issue." (99921192)

"Some basic training or awareness raising for those working in universal services who might have contact with potential protected persons might be beneficial e.g. housing, health, education." (99920777)

"I suspect there may be some confusion in certain sectors of the population as to the difference between arranged marriages and forced marriages. Education/information in relation to the latter may assist in more effective protection of potential victims of forced marriage." (102681734)

Responses differed on how targeted public education programmes ought to be, with some respondents favouring general awareness-raising and others preferring a targeted approach:

"While I think I have seen a TV campaign, it should certainly be covered in schools – young people deserve to know their rights and even if they do not take it all in, an increased awareness that rights may exist may prompt further investigation by those who feel themselves to be at risk/potential risk." (103157596)

"Public information films are far less common today than they were some decades ago, but they do serve some purpose. They would need to be created very sensitively to avoid giving the impression of targeting particular communities within Scotland, but the general risks are ubiquitous." (99754650)

"I think there could be a lot more general public awareness. I think there is potential to offer targeted education to those who may come into contact with those at risk of forced marriage." (101449249)

"The issues here are restricted to a minority community ... Education requires to be directed at them, and not at the wider community who already recognise that forced marriage is an abomination." (101062456)

8. FINDINGS FROM THE QUALITATIVE INTERVIEWS

This Chapter reports on the key findings from the semi-structured interviews that were carried out with a diverse range of 23 professionals over spring 2023.

The purpose of the interviews was to explore, with a range of professionals/key parties in the family law justice system, their experience of forced marriage law and practice in Scotland, and of legal processes relating thereto, with a view to determining whether or not Scots civil and criminal law are fit for purpose and if justice responses are robust, swift, consistent and co-ordinated, and, importantly, to ascertain if there are areas where reform of Scots law is needed to strengthen the protection of individuals at risk of forced marriage.

Interviewees were recruited from the judiciary in Scotland (with the consent of the Lord President/Lord Justice General⁴⁰³), from members of the Scottish Bar, from solicitors (in private practice and local authority practice, respectively) and solicitor advocates in Scotland, from legal academia, from Police Scotland, and from stakeholder organisations with expertise in advising and assisting victims of forced marriage.

The Indicative Interview Questions are set out in Appendix C.

Qualitative data analysis of the interview transcripts was undertaken using NVivo software.

a) The use and effectiveness of the 2011 Act

A number of interviewees indicated that, although there is awareness of the forced marriage legislation and of the 2011 Act in particular, its use in practice has been limited:

'... there's very little use of the legislation in terms of the uptake of it, ... but also I think in terms of the practical use of it for service users.' (Interviewee [I]-15)

"Although it has improved protections ... very few applications have come before the court." (I-19)

"... working in a local authority we have lots of remedies available to us ... we only use [this one] very occasionally, but I think the attitude we would take is if it protects one person then it's done its job." (I-3)

One interviewee said that:

"... the implementation of the legislation has been impeded by a lack of understanding and a nervousness." (I-11)

In spite of the 2011 Act, the under-reporting of instances of forced marriage is still considered to be a problem:

"Well, we have the legislation, so obviously that's a very positive thing, that there is a remedy. ... But forced marriage and honour-based abuse is ... much more underreported, and that's the problem. ... And the problem is, first of all, I think, having those at risk coming forward with all the difficulties that we know around that – difficulties reporting, the implications in relation to relations with your family, your community, ... the danger and the safety aspects of that." (I-11)

Some interviewees (I-13; I-15; I-16) voiced concern that an individual or family that is not being supported by social work services would not necessarily be aware, or become aware,

403 We are grateful to the Lord President/Lord Justice General for granting our Scottish Courts and Tribunals Service Research Access Request, and nominating four judicial office holders to take part in interviews.

of the forced marriage legislation, and so the risk, or incidence, of forced marriage may not be adequately addressed:

“... all sorts of other just ordinary young people will be slipping through the cracks because there isn’t social work involved in it. Why would there be?” (I-13)

Under reference to the very small number of reported cases concerning the 2011 Act, not all interviewees were positive about the legislation:

“This is another piece of parliamentary flag waving about, you know, how righteous we can be. It’s not necessary, or wasn’t necessary, but now we’ve got it, we need to make sure that it works ... Look at how few cases there have been.” (I-9)

Against that, however, there was a widely expressed view that the very existence of the 2011 Act is positive in terms of the message that it communicates to individuals, families, and communities:

“What is quite helpful about it is if I’m sitting with a young person or whoever else, it is actually quite helpful to ... say, well actually, this is against the law and it’s wrong that you’re being made to do this and that there are protections in place, and if you go and speak to somebody about it, your concerns will be taken seriously. So [although] ... the way it operates in terms of the law isn’t actually that effective, it is actually quite helpful ... for the young person to hear, well actually this is wrong, and there’s legislation in place.” (I-1)

“The very fact that the statute says, you’re entitled to protection against this, is sending a clear message that this is unacceptable, that no-one should have to put up with it.” (I-5)

“... looking at the civil court process, there are so few cases that in terms of any direct impact, I would say that it’s not resulting in a use of the Act, but I think culturally having a piece of legislation there is important in terms of setting what are the expectations and that remedies are there.” (I-10)

“... it can only be a good thing that there are further protections there that strengthen it.” (I-15)

Some interviewees (I-3; I-7) indicated that the legislation has a valuable deterrent effect:

“... there is something about the message that sends to people and it is often enough to make the people back off.” (I-3)

Others, however, considered that the deterrent effect of legislation is impossible to measure:

“What I guess we don’t really know about is whether it’s having any preventative effect and whether it being there is effective in that sense.” (I-16)

“It’s very difficult to capture deterrent effect because, of course, you don’t know what hasn’t happened because of this. ... I tend to think that actually people aren’t much put off doing things in their private existences by laws. I think there [are] still maybe very important messages to be sent societally. ... if you have parliament saying this is a bad thing, then there probably is a wider benefit to that.” (I-18)

It was widely recognised, however, that the overall messaging effect of the legislation may be its most significant feature:

“I think it’s helpful. It’s a toolkit, certainly. Whether it actually helps is another matter because there are all these social factors in terms of getting the order ... It’s a toolkit but whether it’s effective in practice, that’s another matter.” (I-2)

“... maybe something is better than nothing, surely, and I guess raising awareness of the issue and ... trying to give people a remedy. How effective it is as a remedy, I suppose is where I’m struggling.” (I-8)

A significant number of interviewees specifically commended the civil law nature of the FMPO, albeit recognising the value of criminal penalties in the event of breach:

“... one of the benefits of the civil legislation is that there are no penalties while the order is in place and those against whom it’s imposed don’t breach it. So, it sits there.” (I-11)

“I think the existence of something, a civil remedy, is a good thing so that there’s not only ... there is an option that isn’t criminal. So in that sense, having it there, I think, is a positive thing.” (I-20)

“I think for me because it’s more a civil ... order, for the kind of client that we support, it has strengthened them being able to report forced marriage” (I-21)

“So having the civil remedy and then backing it up with the offence tied to it to breaching the order, I think, does strengthen the position. It sends a very clear message and insofar as law serves an educational function, it should be contributing to that process.” (I-5)

“I think on the whole, I would say [FMPOs] do provide a level of protection, and they provide two levels of protection because there is the stick at the end if you breach the order.” (I-14)

One interviewee highlighted the particular benefits of a FMPO as against undertakings that may be given by a party to the proceedings:

“I think there’s an advantage to what is a state intervention, effectively, and being seen as such by the party who is the subject of the order. The difficulty with the undertaking is ... a breach of an undertaking leads you into the contempt sphere with fairly limited sanctions there ... I think the signal is far stronger if the

[FMPO] is made and is in place. I cannot say that it’s more likely to be complied with, because it’s an order of the court, but ... I would have thought there’s some kind of psychological benefit to having an order imposed on you, as opposed to giving an undertaking personally, and perhaps later being able to justify in your own mind why you’ve departed from that undertaking.” (I-19)

b) Operation of the 2011 Act

1) Force

While no interviewee criticised the definition of ‘force’ in the 2011 Act, one interviewee stated that, although, in theory, there is a clear distinction between arranged marriage and forced marriage,⁴⁰⁴ in practice, it can be difficult to distinguish between these two types of marriage:

“So, there can be quite a grey area between arranged marriages and forced marriages particularly when the party to the marriage might lack capacity.” (I-10)

Another interviewee referred to a case in which,

“... it looked as if it was morally forced marriage as opposed to somebody actually being physically carted off against their will, the literal abduction – which, of course, I do know happens – but it was more the very, very strong familial pressure to get married” (I-18)

404 See, e.g., SafeLives, “‘Honour’-based abuse and forced marriage cases at Marac in Scotland: Research Report” (2023) (‘Marac Research Report 2023’) <https://safelives.org.uk/wp-content/uploads/Honour-based_abuse_Marac_research_report.pdf>, p 3: “A forced marriage is different from an arranged marriage, where the marriage is arranged by one or both families, but both parties are free to accept the arrangements or not. Forced marriage is a form of ‘honour’-based abuse and may be seen by a family as a route to restore ‘honour’. Forced marriage involves one or both spouses being forced to marry without their consent.”

2) Applications for FMPOs: relevant third party applications and inter-agency cooperation

The 2011 Act provides that a court may make a FMPO on an application made to it by the protected person, or by a relevant third party,⁴⁰⁵ or by any other person with the leave of the court.⁴⁰⁶ Relevant third parties comprise local authorities, the Lord Advocate, and any person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.⁴⁰⁷ To date, the only additional person specified is the chief constable of the Police Service of Scotland.⁴⁰⁸

One interviewee observed that it is very difficult for the protected person to be the applicant for a FMPO:

“And these cases are tricky ... because of the family dynamics that are involved in it ... you’ve got a young person that’s ... stuck in the middle in some ways that ... isn’t necessarily wanting to travel to wherever it is to get married or doesn’t want to get married at all. But they don’t want to fall out with ... their mother or father and everything else. So in some ways it’s easier if they’ve got the application coming directly from the local authority via the social work department where they’re making the decision which they say is in the best interest without having to ... put the child in a very tricky position.” (I-1)

Two interviewees (I-2; I-7) commented on the importance, in cases where the protected person is not the applicant for the FMPO, of the protected person being legally represented in the proceedings.

Only one interviewee referred to the Lord Advocate’s status as a relevant third party:

“You never really hear of the Lord Advocate’s rep in terms of the legislation, but there’s always discussion around who’s the best person to go for the order.” (I-22)

Several interviewees (I-1; I-6; I-10) expressed the opinion that most applications will be made by the relevant local authority. A number of interviewees (I-1; I-7; I-23) indicated that, typically, the impetus for a FMPO application will come from social workers, rather than lawyers, either because social work services have an ongoing relationship with the individual who is at risk of forced marriage, or with that person’s family, or because they have received a report from the police, school, or voluntary organisation.

“I honestly think in the vast, vast majority of cases it would be social work because that’s where the child protection referral would be made. And if it’s a vulnerable adult, again social work because it would be an adult protection concern with a vulnerable adult. So it will be nearly always social work who are applying.” (I-10)

“... it’s usually the local authority that will apply to the courts. Again, most of them are reliant on the social work department that will raise a concern and it’ll get flagged over to the local authority” (I-6)

405 s 3(1).

406 s 3(2).

407 s 3(7).

408 Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Relevant Third Party) Order SSI 2017/461, para 2.

The perception among many interviewees was that the responsibility is on the relevant social work service to liaise with the relevant local authority solicitor to assess if an application for a FMPO ought to be made:

“Police were also involved in the background and were very much pushing for social work to take steps to protect the child. They were worried that it couldn’t be managed without any kind of legal basis anymore, so social work were saying to [the local authority legal service], yeah, we think that the risks now are too great that the child will be taken to the airport at any time ... they could have sought a child protection order and removed her from her home or a forced marriage protection order, so we discussed those options with them, and went ahead with the forced marriage protection order application.” (I-8)

Some interviewees (I-1; I-6; I-22) reported that social work practice is not uniform across Scottish local authorities, with services in some local authorities being judged to be more proactive and better informed than others as regards implementation of the forced marriage legislation:

“... if there’s social work involvement, some local authorities are better than others. Some are more proactive than others.” (I-1)

“... I think its implementation is very patchy depending on what local authority you’re in. ... we all know that the social work services and social work departments can act in different ways. And again, due to resources or whatever else, their implementation can be patchy depending on what area you’re in. ... So in some regions, for example, I see where even if there’s a lot of information that’s being presented to say, look, there is a high risk that this could happen, you’re literally having to persuade, push, cajole the local authority to take any action ... And in other local authorities, in other areas, we feel that the local authority have jumped – they’ve just heard one quick thing and they’ve jumped the

gun and raised applications. And sometimes when they raise these applications, they have huge implications on the family.” (I-6)

Two interviewees (I-11; I-23) said that there ought to be a framework (including, for example, clear referral pathways) and a named person within each local authority who is assigned to lead on matters pertaining to forced marriage, and that inadequate progress has been made in this regard:

“... there’s still no named person in the local authority to deal with forced marriage in [specified local authority] ... within social work services you’ll have ... child protection, adult support and protection, you’ll have ... drugs and alcohol, you’ll have somebody that has a role to take that particular social issue forward, if you like. ... there’s nobody named for forced marriage, and in the first guidance that came out, it was recommended that all local authorities have a named person.” (I-23)

“And I think there is a lack of proper channels in place within local authorities. Now, the statutory guidance was very clear that there had to be ... a framework within local authorities, and there had to be a progression. And that’s been missing, which was why we were trying to very forcefully insist that the statutory guidance be updated and really make it very explicit that local authorities had a duty to act.” (I-11)

Several interviewees (I-1; I-4; I-8; I-10; I-11; I-19; I-21; I-22; I-23) expressed the opinion that, in relation to an application for a FMPO, Police Scotland is highly likely to defer to the local authority. The ‘expectation’ is that an application, if considered appropriate, will be made by the local authority, and that the local authority, in effect, will act as the ‘gatekeeper’:

“... the two cases we’ve dealt with more recently, the police have been very insistent that the local authority raise proceedings, and that they’re not going to raise proceedings.” (I-8)

"Police Scotland never want to make the application and will dictate, and have done recently, to our authority what they think should happen and expect ... I pointed out that if they felt that was what was needed to protect the individual, they could go off and seek that application themselves ... the perception is that it is a local authority responsibility. ... [Police Scotland] do see it, I think, as a local authority responsibility, but that is arguably appropriate because when you think about a social worker's role and their professional responsibilities and legislative statutory duties as a local authority has for protecting people, it's far further reaching, and broader. ... The Police tend to be far more, you know, sort of one hit wonder. So, they might, for example, go out in the middle of the night and secure a child, and put them somewhere safe, but there is the expectation that ... when day breaks, that social work will pick up the reins on that and take it forward. ... And the Lord Advocate, I just don't think they would know where to start with something like this." (I-12)

"... what I've seen are reports being made by the police to the local authority, as if that's their obligation. ... Certainly, I've seen referrals from the police to the city council and they appear to ... well, they appeared to me to consider that that was the appropriate way to deal with the matter, and to provide information, certainly, and to the local authority. ... I've seen no sign of, certainly in this jurisdiction, of Police Scotland taking the lead in any applications so far as I'm aware." (I-19)

"Social work hold the key for the most part, although Police Scotland are named in the legislation as a third party as well. It's generally reliant upon social work in relation to forwarding any kind of forced marriage. So, social work are almost a gatekeeper in relation to going for a Forced Marriage Protection Order... I said to the officer, but Police Scotland are named in the legislation, you go for it. Oh, social work have got a

duty of care, they'll need to look after her, so there's no point us going for it. Okay. So, that was the answer to that" (I-23)

Interviewees expressed different opinions as to possible reasons for reluctance to make an application for a FMPO, ranging from lack of appropriate knowledge and training to apprehension about the cultural sensitivities that can arise in forced marriage cases, to resources implications:

"And one of the cases that I was going to highlight as the sort of negative practice was, there was a case this year where the person had already been forced into marriage when they were 15 but by the time they were contacting us they were 17. ... The police had said that they didn't need to apply for a protective order because the person was now 17. Something like that, some just very bad information. You know, there's no age limit obviously on when you can apply for them." (I-20)

"There seems to be a real ... just a systemic, that's not us, that's not us that do that ... maybe it's just because it's a civil court matter, they don't see it as being within their remit." (I-8)

"... we have this conversation frequently with the police. You know, we say, you know, this is about enforcing the law, which you are empowered to do ..." (I-22)

"And this is quite a subtle sort of offence and so I'm not sure that we can just assume that training the police is enough to then have them looking out for this wherever they go and being the gatekeepers. And, of course, the kind of families who are going to force a young person into marriage are the kind of families that keep well away from the police if they possibly can. So I'm not convinced the police are the best gatekeeper. I think local authorities are a reasonable gatekeeper, but only if it comes to their attention." (I-13)

"Now, the police of course have been made a relevant third party, which is extremely useful because the police were really responsible for supporting most of the applications ... But the problem is ... from what I understand with my conversations with my colleagues in other organisations, is that professionals don't understand forced marriage, honour-based abuse, and the particular issues around that for those at risk, and they don't understand how to use the legislation. ... I think there needs to be ... I think lose a bit of the fear about what you're doing and why. Remembering this is a human rights issue. ... women, children, and young people in particular, and people with disabilities, people with particular vulnerabilities, have the right to be protected. ... we have an obligation to protect their human rights, you know, their article 8 rights. ... they have a choice, they have a right to decide whether or not to get married and who to get married to. And actually, engaging to protect them is not being racist, it's not being culturally insensitive. It's actually saying, these people are at risk, the law in this country is such that it's there to protect people at risk, and we have an obligation to act, to speak to one another and to respond in the most appropriate supportive way." (I-11)

"... again I come back to the cultural sensitivities, the police are not going to be wanting to be seen to be prosecuting Asian families who may properly say we were just arranging a marriage and everyone's happy with it." (I-13)

"And we were saying, ... why are you hesitating, why are you hesitating, what is taking you so long, and eventually when we managed to tease it all out, it was like the fear of discrimination, it was fear of cultural issues, it was fear of getting it wrong. And we were saying, ... I'm telling you, her parents are breaking the law, they have broken the law. She needs protected." (I-22)

"[The police] ... just generally see it as something that needs to be done from a multi-agency perspective. They want to be involved in it because there's Border Control sometimes needing to be involved. ... these are volatile situations where the support of the police is required. ... But they very much, and I understand why, would rather the chief social work officer took over all responsibility. So, until we get to a stage where, as we have with health, where there are partnerships set up to take these steps, that's, I think, generally always going to be the councils that will be hit for taking these." (I-12)

"... I think it's a lack of training and money." (I-14)

In spite of these comments, one interviewee stated that Police Scotland being authorised to act directly could be important in emergency situations, or in cases where there is no existing social work involvement with an individual or family:

"... if there was no longer maybe adult or child protection involvement or social work involvement with the family and they felt that they hadn't been involved with them for a long time or didn't know enough information and police had more information, then [Police Scotland] might take the lead for that." (I-4)

The same interviewee suggested that there could be benefit in conferring 'relevant third party' status on other persons, such as victim/survivor support organisations:

"... a lot of our third-sector organisations, they do have a lot of people coming to them who won't go to social work or police or are not ready to make that step yet so they're certainly aware of ... the risks that are involved there ... potentially before any other area is." (I-4)

However, two interviewees (I-15; I-22) highlighted that conferring relevant third party status on such organisations would have funding and resource implications:

“... you can put these things in place but you need to then equally put in place the funding and the resources for these services to be able to take on that additional responsibility.” (I-15)

Moreover, two interviewees (I-19; I-21) said that it would be very difficult for a support organisation to apply for a FMPO in the face of opposition from the victim, and that conferring relevant third party status on such organisations could jeopardise service users' confidence in an organisation:

“in terms of access to remedy, ... I could see that someone who looks as if they might be in need of the remedy, could have fallen through all of the cracks and the local authority might not have become aware of the case, nor might the police, but a support organisation could have a role. But I quite understand from their perspective that's incredibly difficult, particularly if the person concerned is very against any action being taken ... and also, I think, that there becomes a real difficulty in identifying what their role is, are they really a support organisation, or are they policing the situation? And how ... I'm thinking about it from their perspective, how do they reconcile what they think they should be doing with the support that the person is asking for, particularly if taking or making an application would be against the person's wishes?” (I-19)

Two interviewees (I-4; I-21) referred to the MARAC (Multi-Agency Risk Assessment Conference)⁴⁰⁹ process, a strategic, public protection response to high-risk victims of domestic abuse and their children.⁴¹⁰ Since August 2022, 35 MARACs have operated across all 32 Scottish local authorities.⁴¹¹ At a MARAC meeting, information is shared about the highest risk domestic abuse cases among “representatives of local police, health, child protection, adult social care, housing practitioners, Independent Domestic Violence Advisors (Idvas - Idaas in Scotland), probation and other specialists from the statutory and voluntary sectors.”⁴¹² One interviewee, however, commented on the difficulties of bringing forced marriage cases for consideration at MARACs:⁴¹³

“... the unfortunate thing is that MARAC does not receive forced marriage cases, which is the problem we are fighting. As it is still a form of domestic abuse, they should, but up 'til now, they don't ... MARAC do not take forced marriage cases because they say the relationship is not with a partner.” (I-21)

409 For background, see <https://safelives.org.uk/Marac_In_Scotland>.

410 See 'Honour'-based abuse and forced marriage cases at Marac in Scotland: Current and best practice responses ('Marac Best Practice 2023') (<https://safelives.org.uk/wp-content/uploads/Honour-based_abuse_Marac_guidance.pdf>).

411 'Victims/survivors of domestic abuse - multi-agency risk assessment and interventions: report' (May 2023) Section 1, Note on Context, p 3 (<<https://www.gov.scot/publications/multi-agency-risk-assessment-interventions-victims-survivors-domestic-abuse-deep-dive-learning-report/pages/2/>>).

412 See 'Marac data – Key findings July 2022 - June 2023' (<<https://safelives.org.uk/wp-content/uploads/Marac-data-Q2-2023.pdf>>), p 1.

413 See "'Honour'-based abuse and forced marriage cases at Marac in Scotland: Research Report' (2023) (<https://safelives.org.uk/wp-content/uploads/Honour-based_abuse_Marac_research_report.pdf>), p 7: "Among the key findings in the 'Honour'-based abuse and forced marriage cases at Marac in Scotland: Research Report 2023" was one stating that there was "very little consistency in the way that Maracs across Scotland respond to 'honour'-based abuse referrals, with some accepting the referrals while others do not. For some Maracs, the decision on whether to accept a referral depends on the identity of the primary perpetrator. Some Maracs do not accept an 'Honour'-based abuse case if the primary perpetrator is a family member rather than a partner or ex-partner (as per the definition of domestic abuse in the Domestic Abuse (Scotland) Act 2018). Many of the focus group participants would like to see this aspect of the law changed to include family abuse as a form of domestic abuse."

Another interviewee highlighted the constructive involvement of local police in MARACs:

“... we’ve got ... MARAC process where [third-sector organisations] would refer instances into MARAC so police would become aware there, local authority would become aware there, and they’re able to raise that risk ... and be able to put supports in place.” (I-4)

Two other interviewees (I-11; I-12), while commenting on the informed and supportive role that can be played by the police in addressing forced marriage, expressed the view that the main concern of the police is in responding to an immediate risk to a victim, and not assessing whether or not an offence has been committed:

“... I think ... they’re more concerned with the immediate risk to the individual than they are necessarily moving forward in terms of a prosecution for ... having forced somebody into marriage. ... They’ve spoken to the [procurator fiscal] and then I think they take a view that ultimately what’s probably more important is engaging and working with the family to make them understand ... what the situation is, and the seriousness of what’s happened.” (I-12)

“I think they, out of all the services, probably have more of an understanding of risk.” (I-11)

One interviewee was critical of police engagement when alerted to a possible breach of a FMPO:

“... we said to the police, or I think the police came to us and said, right, she’s back, and we said, okay, so, you know there’s been a breach here now of the Forced Marriage Protection Order, what are you doing? And it took some persuasion for the police to go out and even speak to the young person. ... The police have done nothing. They wouldn’t go out and speak to [the victim], it was something they weren’t willing to do.

So they did come back to social work and say, yeah, well, there’s nothing we can do, and then I wrote a long letter to them saying, why can you not? ... it seems to me there’s been a breach of this part of the order, what did you do about that? What decision have you made about that? What questions did you ask? Oh right, no, we never really thought about that, we’ll go back out and see her again, but I don’t know whether they have been back out to see her again. ... I would be surprised if they’re taking any steps off their own back, other than getting in touch with social work and saying, you need to do something. ... as far as the police are concerned, it’s a case of, we’ve told social work and they’ve dealt with it and that’s it. There’s no further need for us to be involved.” (I-8)

In sum, interviewees’ comments in respect of police involvement were mixed, with some highlighting the supportive role played by police, and others being critical of police engagement.

3) FMPOs and associated measures

Many interviewees (I-2; I-3; I-10; I-12; I-13; I-16) perceived a FMPO to be a powerful remedy and a significant judicial intervention:

“But I suppose if one goes through what an order could be ... I’m looking at section 2(3) – a Forced Marriage Protection Order may (a) take a protected person to a place of safety designated in the order. So that’s the very first intervention that’s envisaged as being something that might occur. Then we have effectively orders that would be similar to an interim interdict, precluding family members from doing certain things; and then practical things, such as the surrendering of a passport or other documentation. ... So it is a very robust and serious intervention in a family’s life.” (I-10)

“... when you look at the legislation itself, it provides for a variety of different ways in which you can look to restrict what ... control someone else may have over that individual. And it may be in the circumstances that you require their passport. It may be that you require to put them somewhere safe for a X period of time. It may be that you want to regulate contact for the person ... with family. You may want to remove ... their mobile phone. So, it can become complex.” (I-12)

“I can see that for the young person their fear of the forced marriage may be less than their fear of their liberty being restricted.... And so there’s a proportionality thing here that the court has to grapple with. But it’s easier on an interim basis.” (I-13)

“I think it can feel like a huge step for women and girls to take, especially if they are still trying to maintain contact and a relationship with family members, it’s such complex dynamics at play, so I think ... so I’m not surprised that it’s something that is ... for many women and girls, just won’t feel like something that they want to or feel able to pursue.” (I-16)

Some interviewees deemed the FMPO to be a ‘last resort’ mechanism:

“... so often a FMPO will be last resort, kind of process ... so often there’ll be other measures that you would go to first, kind of, practical safety planning measures rather than taking a FMPO.” (I-16)

“... these orders are helpful but are often a last resort because of the impact that it tends to have on people’s familial relationships but also relationships within their community and the isolation that almost inevitably follows these orders being started ... it really does almost necessitate the victim or survivor being willing to cut off ties with their family, with their community and accept that as a consequence of seeking the legal protections.” (I-17)

This may explain why so few orders have been granted since implementation of the 2011 Act.

Although interviewees generally considered that the FMPO can be an effective remedy, commendation was sometimes qualified:

“I think it’s a good start. But that’s all it is. I think what it’s trying to achieve is useful. I don’t think in practice it’s actually getting where it needs to be.” (I-6)

A number of interviewees voiced support for the approach taken in case law, to the effect that evidence of an actual, planned marriage should not be a pre-condition of a FMPO being granted, but two interviewees referred to difficulties deriving from the high evidentiary threshold that must be satisfied in order to secure a FMPO:

“But certainly, I think that in terms of the case law as well, it does seem to be that the threshold of the barrier ... the legal test is very high. And I think that that can only be compounded by the difficulty to provide evidence. So, I think that’s probably something that needs looked at.” (I-15)

“... what they’re expecting is wedding bells, they’re expecting confetti, they’re expecting dresses, they’re expecting to see some sort of physical evidence that this marriage is taking place. That doesn’t exist. It’s conversations, it’s a knowledge and an understanding.” (I-23)

Another interviewee called for a simpler procedure:

“I was heavily involved in the preparatory work to get the legislation on the statute books and when it was enacted. I did very much feel that it offered great protection for young Scots who were faced with this situation. Upon reflection, I wonder if there is a more simplified procedure that could be put in place to support ... victims.” (I-22)

Many interviewees commented positively on how speedily an interim FMPO can be obtained (I-3; I-6; I-7; I-8; I-9; I-10; I-11; I-12; I-13; I-19), and on the value of interim orders:

“... those interim orders are obtained very quickly and often they’re obtained before the application is even served, so on an interim basis very quickly. And again I think the courts obviously take the cautious approach – so they’ll grant that order, papers are then served and then there’ll be further hearings. And if they’re opposed, then often they’ll leave the interim orders in place, because if you’ve got someone saying I’m opposed to that order being granted then that’s raising red flags in the first place. So often the interim orders can do the job; if they are opposed and contested and evidence requires to be led, often by the time evidence is narrowed down and focussed parties have reached a settlement or an agreement.” (I-6)

But one interviewee underlined the significant impact of an interim order:

“... you’re very well aware of the real implications of [an interim FMPO] because often a FMPO will effectively result in the child being removed from the family home – not always, but often. ... And while that can be a very effective intervention at a very early stage, if a case then takes six months to get to proof you’ve got to ask what is the end game and is it in that young person’s best interest to be in a foster placement for that length of time. And also what contact and communication is there with the family members during that time and what impact might that have in turn in the young person’s wellbeing? So an order is quite a blunt instrument.” (I-10)

Several interviewees remarked that often the risk of forced marriage subsides after an interim FMPO has been granted, and that there may be no need, therefore, for a final order:

“If the interim order does the job and generally interim orders are raised, you know, as an emergency or an urgency issue, if they do the job and social work then becomes involved

as a result and steps are taken to address these issues with people who perhaps don’t understand why they’re doing something wrong, then what’s the need for a final order?” (I-9)

“I think in many cases where there are interdicts of any type, and this is effectively an interdict, it’s very, very common for there to be an order granted early in the case and it never gets to proof, because you have set down an effective ... warning shot, you’ve indicated that there is a remedy ... I think you have to balance the fact that forcing a family through a proof diet when they don’t want to is maybe not the court’s place. But the order has such a big impact on family life that if they want to travel, for example, then there will, I think, be some element of wanting to have it resolved.” (I-10)

“... the legislation is drafted in a way that will allow you to fire a warning shot, and you come in and you get an interim order, and that’s fine ... And in many ways it is a failure if these things have to go to a full-blown proof with a final judgment ... The interim stage is so important.” (I-13)

“... the cases that I’ve heard and that have run to proof and where orders have been granted, I certainly have formed the impression from the evidence that I’ve heard, that the initial intervention by the court at the interim order stage has been a very significant step. It has provided protection for the adults that we were ... that the local authority was concerned about, but it sent, I think, a very clear message to the wider family that the court would intervene if necessary and did intervene in those cases. ... But in none of the cases that I’ve dealt with have I been asked to make any intervention after the interim orders were granted, in the sense of any sort of enforcement or any further action by the court, and I’m not aware of any even alleged breaches of the interim orders.” (I-19)

Some interviewees noted, however, that where the risk of forced marriage is sustained, a final order after proof is an appropriate remedy:

"I know that at the point where we obtained an interim FMPO we then obviously had a first hearing on the actual application after it was intimated on the parents. And we did have a conversation at that point about whether the risk had disappeared sufficiently that we didn't need to continue with the application. ... But we decided we did need to continue ... We felt we needed to continue with the FMPO notwithstanding that the immediate risk had probably, at least temporarily, subsided. ... I think it would have been risky of us to abandon the FMPO at that point and I would have rather been in a position where we pressed on with it and at least made our best arguments and if a court said it wasn't needed that's fine, but at least we've tried everything we can. ... I would rather do that than be in a position where we make a decision to abandon something on a kind of risk-based decision about where things stood at a moment in time. Because, you know, these things, these cases change – every day something else will change. And it seemed premature to me to abandon it at that point." (I-3)

"You know, the final orders may be reserved for people who are perpetual offenders, continual offenders, who just don't get it and are not going to get it and who need to be told that this is unacceptable." (I-9)

"... families play a long game in this. So, you could have a Forced Marriage Protection Order and then everybody behaves, but then again ... the risk appears to go away, but it actually hasn't." (I-11)

4) Duration and review of FMPOs

It was apparent from interviewees' responses that the duration of a FMPO will be peculiar to the circumstances of the individual case:

"the impression I got was that duration was going to be very much fact specific." (I-7)

It was also apparent, however, that this has caused a degree of uncertainty for applicants:

"I think I had to raise with parties ... the whole issue of duration. ... I remember being surprised that no one had addressed me on it and there appeared, I thought, and maybe I was wrong, but there appeared to be a thought that it was either you grant the order and it was indefinite, I suppose, or you didn't grant the order." (I-19)

Without any guidance in the legislation as to the duration of orders, nor any default duration as is included, for example, in the Adults with Incapacity (Scotland) Act 2000,⁴¹⁴ an applicant is required to present a case justifying the length of order requested:

"I think if the idea ... if the goal is protection, you have to be looking at what is effective to protect ... the court would require, and will require, an individual applicant to justify the period which is sought and it will also have in mind that what is being proposed is a restriction on other people's rights, potentially, at least, although of course there's no right to force someone to get married. But a potential infringement of other people's rights and a restriction on their right to enjoy their family life. And they will, I suspect, in all cases be looking at a conservative and restrictive analysis of that period." (I-9)

⁴¹⁴ By s 58(4), where a sheriff grants an application under s 57 of the 2000 Act, the guardianship order appointing the individual or office holder nominated in the application to be the guardian of the adult shall be made "for a period of 3 years or such other period (including an indefinite period) as, on cause shown, he may determine." See also Criminal Procedure (Scotland) Act 1995, s 58A(5): "A guardianship order shall continue in force for a period of 3 years or such other period (including an indefinite period) as, on cause shown, the court may determine." See further, s 31 of the 2000 Act ('Duration of withdrawal certificate') (substituted by the Adult Support and Protection (Scotland) Act 2007): "(1) Unless this Part provides otherwise, a withdrawal certificate issued under section 25 [authority to intrude with an adult's funds] is valid for a period of 3 years commencing with the date of issue of the certificate."

The important, though typically difficult and sometimes arbitrary (I-8), factor is for the applicant to gauge what degree of protection is necessary, and what degree of interference is justifiable. It was clear from interviewees' responses that this entails a subtle balancing exercise between protection and interference, with very limited reported case law available to assist applicants:

"It is very difficult to make a judgement about what term or what length of time to apply for ... I suppose we do have to think about it also from a human rights point of view because as a local authority we shouldn't be seeking an order for a duration that creates a human rights breach or compromises people's human rights. So we do have to actively consider what term might be appropriate. ... I suppose to an extent any duration is random." (I-3)

"I think there's an obligation on a pleader, against the background of ... article 6 and article 8 rights in the respondents ... the family perhaps or the people who are accused of these issues. It's necessary to ensure that [orders] are drafted as restrictively or as conservatively as possible. ... we took the view that you couldn't ask for indefinite orders based on suspicion which had arisen at some point miles into the past. You'd have to really be able to justify some ongoing concern about protection." (I-9)

"... you're interfering with people's rights and freedoms, and particularly in cases where the party protected is not supportive of the order. ... clearly, [the sheriff] wouldn't have granted a perpetual order in some kind of unthinking way, but it might have helped parties and their representatives to focus their submissions, if there was some sort of ... it's very difficult, as soon as you start saying what should the minimum, what should the maximum be, but there might be some kind of default option, a little like Adults with Incapacity where the default position is three years, but sometimes [the sheriff] make[s] orders for 12 months, sometimes less. ... you simply have to work

with the evidence that you have and the degree of risk and for how long you think that might pertain." (I-19)

Interviewees were divided on the question whether or not it would be helpful for legislation to lay down prescribed minimum and/or maximum durations. Some support was expressed for such an approach:

"... it might help for everyone involved to have some idea of what sort of periods, knowing that the final decision might be less, it might be shorter or longer, but to have some idea. Because really people have none, I think, at the moment, and ... I think they came late to that issue." (I-19)

By contrast, however, a number of interviewees did not consider statutorily prescribed minimum and/or maximum durations to be appropriate (I-1; I-2; I-3; I-6; I-12; I-15)

"... people are all different and people's situations are all different and risk is different in every case." (I-3)

"You know, the gender based violence does not stop. And all it takes is a small trigger and that person can be back in your life again. ... I think that having a maximum would then in the really severe and serious cases limit the protection that could be available for that. And somebody may just require an indefinite order, and that might be evidenced through ... you know, that it's been three years since the person's left the family and yet they're still engaging and trying to cause this person ... so in a really serious case, an indefinite order may be required. And I think that putting any kind of restrictions on that could actually cause issues." (I-15)

Since FMPOs can be seen as compromising individuals' human rights – both those of the protected person (I-10) and those of the perpetrator(s) (I-15) – and since FMPOs can be varied and extended, best practice, at least for relevant third party applicants, should be to err on the side of requesting orders of reasonably short duration:

“I would find it slightly uncomfortable probably seeking anything more than a year, initially. Because you just don't know how situations are going to evolve and there's lots of moving parts in these scenarios and lots of variables that can change.” (I-3)

This, however, raises the significance of regularly reviewing orders (I-3). One interviewee supported the notion of a mandatory review:

“I think the idea of a mandatory review is actually quite important. I think that, for the protected person, it gives them a comfort in relation to how their life is going to pan out and I think it might be ... akin to children's hearings where there's an annual review of orders. ... I think that it would be helpful to young adults ... where they're not just sent away from the court where their views haven't been replicated in the judgment but they're told that this can be revisited.” (I-7)

5) The protected person's wishes and feelings

In deciding whether to make an order under the 2011 Act and, if so, what order to make, a court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the protected person.⁴¹⁵ In ascertaining the protected person's well-being, the court must have such regard, in particular, to the person's wishes and feelings (insofar as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding.⁴¹⁶

Interviewees were asked if this legislative direction gives rise to any difficulty of implementation in forced marriage cases.

Some interviewees observed that it is very difficult in forced marriage cases for the protected person to voice their wishes and feelings:

“I think it's more likely than not that a protected person would find it hard to truthfully say the reality of the situation to any sort of authority.” (I-2)

“... every effort, I think, was made to make sure that her voice was heard. What she really thought or wanted; I don't think that was easy for her to express.” (I-8)

Interviewees indicated that particular issues arise where the protected person is a child or young person, albeit one interviewee regarded the incorporation of the UNCRC into domestic Scots law by way of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 as an opportunity to increase protection for victims under 18 years of age:

“I think it's going to be quite an interesting position when we have the UNCRC fully incorporated⁴¹⁷ because there's a strong focus in a family court, whether public or private law, in considering the child's views and allowing them to participate. This legislation says that one should look at the child's feelings and wishes so you have to consider at a very early stage what are the young person's feelings and wishes. So [the sheriff] could appoint somebody to speak to the child, ... could appoint a curator or ... could facilitate that child entering the process.” (I-10)

415 s 1(2), 2011 Act.

416 s 1(3), 2011 Act.

417 The interview took place before the 2024 Act received Royal Assent on 16 January 2024.

Several interviewees flagged that children and young people do not always appreciate the full circumstances of the case, and that a victim may not be attuned to the reality of the situation:

“... a lot of the times where you’re talking about a vulnerable child then sometimes, even if ... they have clear views about a particular thing, I think that’s always treated with a high level of caution and I don’t see that sometimes the views are taken into account as much because there’s always that scope about whether they’ve been coloured or whether they’ve been pressurised.” (I-6)

“... you may not think it’s necessary as a judge to adhere to [the protected person’s views] for the obvious reason that that person may not properly comprehend the position which faces them.” (I-9)

“What you also need to be mindful of as the decision maker though is that the child’s wishes and feelings might be made in ignorance of the level of risk – they might not be fully in understanding of the position. ... But that doesn’t mean there isn’t a risk.” (I-10)

“... there’s concern ... because they don’t understand their own vulnerability and the risks that they’re going to be exposed to.” (I-12)

“... if that young person says, yes, I want to enter into this marriage, it’s an arranged marriage, not a forced marriage; what are you going to do with that?” (I-13)

“... the thing about where they have already been forced into marriage, you know, some of them will not say it’s forced. They don’t want to report their parents, that’s the problem. You know, because we’ve had ... actually when we really look into a lot of the cases that we have, that even the victims themselves ... believe that it is arranged marriage ... the question I always put to them is, ‘would you have been able to say no?’ And when you put the question like that, they said, ‘no I couldn’t.’” (I-21)

It was recognised, however, that having regard to the views of a child or young person is a regular exercise for sheriffs:

“I think most sheriffs that would hear [the evidence], would weigh up and ... it’s probably not that dissimilar to what they do day-to-day in ... section 11 orders and stuff involving child contact, where they’ll take the views of the children, ... and then they’ll make a decision what they think is in the best interest of the child. ... that’s what they do on a day-to-day basis.” (I-1)

“... a judge listening to evidence about the protected person’s wishes and feelings will have to take into account that individual’s particular circumstances. ... the court will be looking at, for example, the age and degree of maturity of the individual involved; whether there are learning difficulties; whether there are family circumstances which cause particular views, perhaps to be advanced; whether the protected person has a complete understanding of their own position, which maybe only a court can get after hearing evidence. ... that’s part of the usual exercise of weighing evidence, which judges are very well able to do.” (I-9)

The situation can be more difficult in relation to adults. Some interviewees (I-3; I-5; I-11; I-12) expressed concern about the danger of undermining the autonomy of competent adults:

“It’s when we turn to adult women and taking decisions designed to protect them because we feel it’s necessary when they may not want us to ... it troubles me greatly because, I think, a sane, competent adult has the right to make bad decisions. That’s part of what it means to be free and adult so as long as you’re mentally competent. ... I’m not comfortable with the idea of making decisions in the interests of adults, but in conflict with their wishes where they are competent.” (I-5)

“... you cannot infantilise women, you cannot take away their agency.” (I-11)

“... there are some people for whom ... perhaps we should be able to step in and offer that protection. But I recognise it’s also a complex issue where you’re talking about interference with rights and people’s freewill.” (I-3)

One interviewee emphasised that, in relation to vulnerable adults, the wishes and feelings that the victim expresses need to be contextualised:

“... if it’s a vulnerable adult, then again it’s a case of, even if they’re saying this, do they actually even understand what they’re saying?” (I-6)

Another interviewee pointed to a further complication, namely, that the victim may vacillate in the wishes and feelings they express:

“... the protected person had kind of fluctuated between saying, yeah, I am worried that I’m going to be forced to be married, and other times she would say, no, nobody’s going to force me to do anything. And as to whether the order was necessary etc, again she fluctuated ... social work spoke to her regularly about how she felt and what she wanted ... and at times she would say, I just want this court thing finished, I don’t want to go to court. I don’t want this case to be in court. But in the end, she did come to court and say, well, yeah, I think it would be good if the order was made.” (I-8)

A number of interviewees stressed the importance of objective judicial analysis in order to secure the health, safety and well-being of the protected person:

“That idea that you are going to protect someone for their own good because in your judgment, or somebody’s judgement, it is for their own good, we will protect you. Now I’m less troubled by that with children because we do accept we have a responsibility to children to take decisions in their best interests in order to protect them, even if it’s not what they want us to do. We should be listening to them, but if, ultimately, we believe that the child needs protecting, then the legal system

accepts that responsibility. It’s not ideal, but I think it is the preferred way to go otherwise the adult world is abdicating its responsibility to children.” (I-5)

“So you have to balance what’s best for the child with what are their expressed views. And that’s quite tricky to navigate sometimes in a situation like this.” (I-10)

Two interviewees stressed the importance of ensuring that appropriate supports are in place to assist the protected person in making their wishes and feelings known:

“... by the time you get to the stage of applying for an order the child has probably had a joint investigative interview with police and social work, has certainly spoken to a number of professionals and trusted adults and those professionals ought to be signposting potential supports, a variety of supports, ... and, when the 2020 Act comes in, we will have child advocacy workers closer to what CAFCASS has in England so that there are a number of supports for a child” (I-10)

“... It’s ... the parallels with domestic abuse, when those at risk are actually supported in a way that they’re maybe able ... better able to think about ... decisions affecting them and what’s actually happening, you’re more likely to get them coming on board with you. But the difficulty is if they don’t want to, or they’re being prevented.” (I-11)

6) Coordination with other legal proceedings

In addition to FMPOs, interviewees were asked about the possible use of a range of other legal remedies in respect of forced marriage, including referral to a children’s hearing, child protection orders and non-harassment orders.

Children's hearings

Two interviewees commended the specific ground of referral to the children's hearing based on forced marriage, and commented favourably on the possibility of longer-term intervention in the victim's life:

"Certainly, I would have thought that often using the Children's Hearings (Scotland) Act 2011 might be the best way to go because there are now tailored grounds of referral ... that were introduced by the legislation, and if you look at what interventions with a family are likely to be most effective then an allocated social worker who is keeping an eye on things on an ongoing basis might be a more effective way to deal with it." (I-10)

"What the Forced Marriage Order will not do is get you into the children's hearing system. So, it won't allow you that longer term intervention and support and ability to ... really examine the circumstances and the situation. ... where there is a child, if there is a need for something longer-term in terms of intervention, then the children's hearing is the place for that. Not necessarily a Sheriff sitting look at it only through the lens of forced marriage, because there's probably going to be other elements there that need addressed, in terms of the care of that child." (I-12)

Two interviewees described how a referral to a children's hearing could take place either independently of, or in conjunction with, an application for a FMPO:

"... the fact that they've applied for that interim order does not mean there can't separately be an application by a reporter to find grounds of referral established. And I do think the two can go together, and actually in some cases the grounds of referral procedure might be better if you look at what is the ideal objective in terms of outcome for a child. There might be some children for whom the only outcome is a foster placement until they reach the age of 16 and complete estrangement from their family, but I would suggest for many children an intervention that simply precludes any

coercion into a marriage taking place while having familial relationships, in so far as they can be, would be the outcome that most teenagers would want. Which is why, I think, if you look at what is in the best interests of the child, that I would have thought a grounds of referral and a children's hearing is better. Because a children's hearing results in a compulsory supervision order being granted which means there's an allocated social worker and that allocated social worker will go into school, will check the child's attendance, will speak to the teachers, will speak to the child and will go to the family home and speak to the family members. And that ongoing involvement of a professional where there is a statutory basis for them doing so with a compulsory supervision order is, I think, more effective than simply an interdict that's granted and then one doesn't know what's happening behind the scenes. So even looking at it from a child-centred point of view, I think that the children's hearing is the best place to actually deal with an effective remedy after you've got an interim order. And the interim order would possibly deal with issues like passport surrender, would possibly remove the child in the short term, if required, would certainly put down a very clear marker with a family that certain behaviour is not acceptable and there will be an intervention if it continues." (I-10)

"... she was made subject to a Compulsory Supervision Order under the children's hearing and that actually stayed in place until she was 16. And at the end of the first term of the Forced Marriage Protection Order – it was granted, I think, for six months and ... then we decided at that point not to renew it because she was subject to the CSO. ... So the practical considerations, I think, along with the protection of the supervision order, we felt were enough such that we didn't need the Forced Marriage Protection Order anymore. ... I guess that's another reason why you would want to make sure that you have taken advantage of every remedy you have available to you, because the FMPO is obviously not dependent on the children's hearing at all.

So even if the Children's Panel discharge the referral and decide not to proceed and take no further action, you've still got the Forced Marriage Protection Order there" (I-3)

Against that, however, two interviewees questioned if a children's hearing is an appropriate forum in which to deal with matters pertaining to forced marriage:

"You see grounds before the children's panel involving issues of forced marriage. I see that probably more often now than what I used to. And I don't really think it's the right forum for dealing with that sort of stuff. ... And these cases are tricky ... because of the family dynamics that are involved in it. And you've got a young person that's, kind of, stuck in the middle in some ways that, you know, isn't necessarily wanting to travel to wherever it is to get married or doesn't want to get married at all. But they don't want to fall out with, you know, their mother or father and everything else. So in some ways it's easier if they've got the application coming directly from the local authority via the social work department where they're making the decision which they say is in the best interest without having to ... put the child in a very tricky position... ." (I-1)

"What the children's hearing cannot do is regulate the conduct of the parent." (I-3)

Child Protection Orders ('CPOs')

Two interviewees observed that the use of CPOs should be restricted to high-risk scenarios:

"... it's one of those protective measures that is very, very useful where, for example, if the reason for you applying for a CPO was because you knew they had booked flights for that day to Pakistan, let's say, and that she was to be on that flight, I think in that instance you would be applying for a CPO on the basis of the risk of forced marriage." (I-3)

"A child protection order is a separate test and quite a high threshold to reach so I would think it would have to be at the most egregious end of the spectrum before a social worker would ... remove a child under a CPO. ... I would say that in the cases where a child is in the most acute danger, where there has already been threats or coercion, where a child is not attending school and being kept at home, where the family are not engaging with professionals" (I-10)

One interviewee expressed concern, however, about the doubt, and lack of guidance, surrounding the possible use of CPOs in respect of 16 and 17 year olds:

"I think we have seen issues around 16 and 17 year olds and a bit of a gap in terms of whether local authorities are using child protection procedures. ... certainly, I think, [law firm XX] has worked with 16 and 17 year olds who have been identified at risk of forced marriage, but ... Child Protection Orders, or other orders from the children's hearing system, have not been sought and ... I think the 16/18 thing continues to cause an issue there. ... So there are still issues there I think around gaps in child protection at the age of 16 and 17. And I think that one way to address that ... is really clear guidance." (I-16)

Non-harassment Orders ('NHOs')

Two interviewees spoke about other measures, such as non-harassment orders, as potential remedies against forced marriage, but noted their limitations:

"If you're trying to get a non-harassment order or an interdict in Scotland, it's only really beneficial if there's power of arrest attached to it ... you need the bite. But in a lot of the cases, with women I work with where maybe they have been forced into, or been a survivor of, an attempted forced marriage overseas, for example, often it's just not going to be the relevant remedy for them if they are no longer in contact with the perpetrator, if they are no longer ... if they're able to sever links with whoever was forcing them or had forced them into the marriage." (I-15)

"So often it won't feel relevant for some of the women that I work with. But I do think there's something there around it being the right remedy in a small number of cases, I guess, potentially but also just the awareness and having it be there as an additional protection, ... I think can only be a good thing." (I-16)

One interviewee advised that, akin to the reluctance of some victims to utilise the remedy of FMPO, so too there can be reticence on the part of victims to seek other protective orders:

"...we often have services users say to us that ... they wouldn't want to go for these orders ... because of the impact that might have ... And I think it causes a barrier. ... I think it's more of a surrounding support and resources issue and making sure that the person is fully supported and the resources are there to, you know, support the person through that, I still think that all of these protections are immensely important and they still need to be there, because there will be circumstances where the person just needs these orders and there's no other option." (I-15)

Use of multiple remedies

Some interviewees spoke of the effectiveness of seeking multiple remedies:

"So we then applied for a Forced Marriage Protection Order – very quickly actually, within a few days of the Child Protection Order – and we sought interim orders in relation to various things which included handing over her passport, requiring production of any travel documents that they had in relation to plans to travel abroad ... So the two things sat alongside each other, and she was made subject to a Compulsory Supervision Order under the children's hearing and that actually stayed in place until she was 16. And at the end of the first term of the Forced Marriage Protection Order – it was granted, I think, for six months and ... then we decided at that point not to renew it because she was subject to the CSO. She had chosen by that point – so things had moved on – she had chosen by that point not to have any contact with her parents or her extended family, she was in a placement where they did not know the location of that and it wasn't in our area. ... So the practical considerations ... along with the protection of the supervision order, we felt were enough such that we didn't need the Forced Marriage Protection Order anymore. But I think the two things, you know, the CPO and the Forced Marriage Protection Order were, in my view, together needed to ensure that the very, very high risks around this particular girl being removed from the country, I think both were needed actually as a belt and braces, I think." (I-3)

"I don't think the duplication in this field is particularly troublesome. I think it gives a choice to the local authority lawyer about what to do. What can they get most quickly? Can they get an FMPO or an interim FMPO or can they get the kid to a children's hearing more quickly, if they have both options available to them? If there is more than one young child or young person in the family, it may be appropriate to take one to a hearing and one for an FMPO if she or he is older." (I-5)

“... I think it is good to have the arsenal, ... Child Protection Orders are the simplest, quickest, easiest way of preserving the status quo. ... if you’re in a situation where there’s sufficient information to say we’ve just got to get this girl out of there, then a CPO may not be a bad method. And then once the reporter to the Children’s Panel is involved, as they inevitably will be, then there’s more room for liaison between the various agencies including the local authority solicitor, and then say is this a case where it would be helpful to try to get a Forced Marriage Protection Order.” (I-13)

However, whilst the benefits of early, multi-disciplinary discussion were recognised, several interviewees observed that a coordinated approach to proceedings is not always evident:

“... in a case like this you would like to think there was a discussion, a sort of multi-disciplinary discussion – are we bringing criminal charges? are we applying for an order? are we seeking a CPO and going down the children’s hearing route? what intervention would be most effective for this young person in terms of remedies? – which I don’t think is always thought through.” (I-10)

A number of interviewees commented on the potential lack of coordination between FMPO proceedings and related proceedings, such as child protection proceedings, children’s hearings, and criminal prosecution (I-1; I-3; I-7; I-10; I-12; I-13), and on some of the difficulties of coordinating different sets of proceedings:

“I think what would be useful with these is if there are proceedings to be raised then I think a clear decision, and this falls as far as I’m concerned on the local authority bringing the application, to coordinate with social work department to say which avenue are they going to take – choose one and either continue with that or adjourn one and continue with the other, not run all matters concurrently. I feel like sometimes it’s a case of let’s choose all the weapons or tools that we’ve got and just see if one sticks, and I

don’t think that’s the approach. And again I think it comes down to lack of maybe understanding of the process and what you’re actually trying to achieve.” (I-6)

“I do think that there may be occasions where there has not been the joined-up thinking that one would like between the local authority solicitor and the reporter’s office. And I come back to the fact that removing a young person from a situation is the nuclear option and sometimes the only option, but it’s quite hard to find a way back from that, and sometimes a more urgent intervention in terms of compulsory social work involvement is more effective both in the short and the medium term.” (I-10)

“... you could have the child protection and the children’s hearings provisions coming in place to protect while something else actually happens. So, it’s almost like a belt and braces ... do the things that you can do, ... use your powers, then say, right, we really need to have something more robust in place. But this ... means that everybody has to tie everything up. So they need to be speaking to one another. ... And ...the most important thing throughout this as well is they have to be speaking to whoever’s supporting the child, the young person as well, and actually explaining to them what’s going on.” (I-11)

“... children’s hearings sometimes will refuse to hear from a local authority solicitor. So, you simply have to ensure that the sheriff is kept up to speed with any children’s hearing proceedings and vice versa. And there is that awareness and understanding, but it tends to only be short term.” (I-12)

"It's up to the local authority solicitor. ... a sheriff granting a CPO would not say anything like 'should you not be thinking about a Forced Marriage Protection Order here?', because that would be overstepping the locus that the sheriff has to decide something. ... And I think most sheriffs would be very cautious about saying anything ... So from a judicial perspective you can't say maybe you should all be getting together and thinking about this and that. From the local authority perspective, they'll be involved anyway at that stage, and so it would be up to them to decide whether they felt further proceedings of a different kind were necessary; but they're usually all too willing to put it in the hands of the reporter ... the sheriff would be overstepping the mark to do that." (I-13)

One interviewee noted, in particular, that a sheriff cannot make a direct referral to the Reporter:

"Section 13 of the [2011] Act ['Amendment of Children's Hearings (Scotland) Act 2011'] simply amends the Children's Hearing Scotland Act 2011 to add in the grounds of referral. ... Prior to the 2011 Act, the mechanism for sheriffs referring matters to the reporter and requiring them to hold a hearing was much more direct and now [a sheriff] can raise a concern with a reporter but they may or may not act on it, and my experience is that they rarely do unless the referral comes through social work. So this is such an acute and such an anxiety-provoking matter where there has to be very quick protective steps taken that, I suppose, I would like to see section 13 strengthened to allow the judiciary to make a direct referral to a reporter directing urgent consideration of child protection measures ... Even in the extreme case ... all [a sheriff] can do is make a referral to the reporter by writing a note and sending it.... if I had a magic wand, I would strengthen section 13 and ensure more of a multidisciplinary approach. ...

[A sheriff] can't tell the reporter what to do but ... could say that an interim interdict has been obtained ... on the balance of probability [there is] sufficient evidence for such an order to be granted in the short term, and an urgent decision ought to be made by reporter as to whether grounds of referral are to be sought in this case, rather than [the sheriff] simply saying to the local authority solicitor 'have you contacted the reporter and what did they say?'...." (I-10)

Another interviewee highlighted that the existence of multiple sets of proceedings may be detrimental to the victim:

"I think the difficulty is where you, as a protected person, are a participant. So this girl, instead of being able to focus on her prelims and her Highers, was having to be represented and take part in both the referral proceedings and also the forced marriage proceedings because she's got a voice. ... There's no coordination ... it's not like dealing with the Crown Office, the Crown Office liaising routinely with the Reporter's Office. It's the local authority ... But there's no ... obligation for them to liaise with each other." (I-7)

A further interviewee commented that multiple proceedings can be difficult from the perspective of the respondent(s):

"... on one view, if the position of the parents is that the protected person isn't going to be subjected to a forced marriage, then the granting of an interim order should do its job. ... the perspective of the parents was that they were being effectively prosecuted twice and, in that, you were left feeling that there might have been some measure of unfairness to them. But, in that scenario, both the referral proceedings, the care proceedings and the 2011 forced marriage proceedings were proceeding in tandem." (I-7)

A key theme to emerge from interviews is that there should be clarity as to the pathway that is being taken to protect a victim. Moreover, to safeguard the victim, and to respect the rights of the respondent(s), it should be incumbent on a local authority applicant to liaise with other agencies and services, to ascertain if criminal proceedings are underway, and to discuss with the Reporter to the children's hearing if any referral has been or should be made, and to ensure that there is as much coordination between different sets of proceedings as is possible.

c) The use and effectiveness of the 2014 Act

Interviewees were divided on the subject of whether or not the 2014 Act was a positive step against forced marriage in Scotland.

A number of interviewees expressed the opinion that the 2014 Act has a beneficial messaging effect:

"I think the fact that Scotland has a criminal offence of forced marriage, which is what the section is headed, sets a very important societal expectation of deploring the behaviour and of saying that that behaviour is crime which will be punishable, and I think you can't underestimate the importance of that being clear in terms of what is unacceptable behaviour in Scotland." (I-10)

"... it's criminalised behaviour. ... it's really important that it's recognised as a crime and that you can say that to somebody and that strengthens that behind them, and they feel somewhat reassured by that." (I-15)

"I think there [are] still maybe very important messages to be sent societally. ... if you have parliament saying this is a bad thing, then there probably is a wider benefit to that." (I-18)

"... sometimes you criminalise something to actually effect a cultural change in people's behaviour. I suppose if you look at it through that lens, would you not say that if, as a society, we have taken the view that forced marriage is unacceptable, why would we not criminalise it to try and send that message that that's not something that's permitted within our society in Scotland?" (I-3)

As well as the beneficial messaging effect, some interviewees indicated that the legislation has a valuable deterrent effect:

"... I think the two of them [the 2011 Act and the 2014 Act] go hand-in-hand and I think it is really important to have them both there and offer that extra bit of protection and deterrent." (I-4)

"I would see the prosecution as being a useful tool to impose a heavy penalty if the behaviour has actually occurred, particularly if it has been successful in securing the intended outcome, both in terms of that individual but also making it clear about what the cultural norms are in terms of accepted behaviour and potentially as a deterrent within the community." (I-10)

"... for the kind of client that we support, it has strengthened them being able to report forced marriage, because a lot of the young people, they would not want their parents to be criminalised, you know, so that is used to deter people." (I-21)

"I suppose some of the communities involved, not all of them, but certainly for people that have not got definite leave to remain, they will be nervous about criminal proceedings because that could affect them being able to remain in the UK permanently." (I-2)

As was the case in relation to the 2011 Act, however,⁴¹⁸ two other interviewees queried the deterrent effect of the legislation:

“It’s very difficult to capture deterrent effect because, of course, you don’t know what hasn’t happened because of this. ... I tend to think that actually people aren’t much put off doing things in their private existences by laws.” (I-18)

“I think that’s incredibly difficult to comment on... I think the key would be to find out from certain communities, whether they are aware of the civil and criminal legislation. I mean, it may be that it was ... publicised at the time, but I’m not aware of it being publicised on a regular basis. You would kind of hope ... it sounds a bit, I don’t know how faint this hope is, that people would know that forced marriage had been criminalised, and that might affect the behaviour, but I have absolutely no basis on which to suggest that.” (I-19)

Irrespective of possible deterrent effect, another interviewee said that one positive consequence of criminalisation is that it supports police involvement in forced marriage cases:

“... I suppose it has given the police a clear locus to be involved in these cases where there is a risk of forced marriage. ... without the criminalisation, if we thought someone was at risk of forced marriage, what would the police response be without that criminalisation? But I just wonder if it just gives the police a clearer role in actually tackling that unacceptable behaviour? And I’m not sure how they would do it if they didn’t have that specific offence to hang their hat on.” (I-3)

Several interviewees, however, were critical of the criminalisation of forced marriage, partly because of its tendency to make individuals resistant to reporting wrongful behaviour:

“I wasn’t utterly opposed to [criminalisation]. I thought it had some purpose, but I was cautious about it. I saw dangers, mostly the danger of discouraging reporting.” (I-5)

“I think the 2011 Act was great, and I think it raised the issue. ... The problem we think, as an organisation, came with the 2014 Act. So, when they criminalised it, that’s where the problem came.” (I-23)

“Now, the huge issue, of course, for those at risk is criminalising ... their parents and their family, and the stigma.” (I-11)

“... when we started our work, almost every single victim survivor that we met told us, yes, it should be criminalised. ... now a lot of them are telling us that was a mistake ...” (I-14)

“You know, there could be so many reasons why somebody wouldn’t want to apply for an order which has the potential to criminalise a family member. And just really highlighting that you can very much still love somebody while they’re abusing you, you may want to not be forced into marriage, but you may not want to lose your whole community, for example.” (I-20)

The view was widely expressed among interviewees that victims do not want their family members to be criminally prosecuted:

“[Young people] just don’t want to be involved with the legal ... it terrifies them, and especially the criminalisation aspect, that their parents may be criminalised, it terrifies them, great fear. ... and now in particular with criminalisation ... there’s a lot of fear within the community, the children and young people, well, in girls, they just don’t want to use it ... their initial reaction is that no, they don’t want to apply for a forced marriage protection order.” (I-22)

418 Chapter 8.a, above.

Additionally, two interviewees thought that criminalisation interferes with victims seeking, or supporting, civil orders under the 2011 Act, and that victims need to be reassured that FMPOs are not criminal orders unless they are breached:

"I think it's one of the fears, one of the things that prevents people from applying for the protective orders is worrying about criminalisation." (I-20)

"... now, in particular with criminalisation, I think ... there's a lot of fear within the community, the children and young people, well, in girls, they just don't want to use it, ... their initial reaction is that no they don't want to apply for a Forced Marriage Protection Order." (I-22)

One interviewee also referred to confusion among affected parties as between the available civil remedies and possible criminal sanctions:

"... they don't understand the differences between the civil and criminal legislation and the penalties that are attached." (I-22)

When asked about the investigation, reporting and prosecution of offences of forced marriage contrary to section 122 of the 2014 Act, interviewees' responses were also varied.

Two interviewees expressed the view that the police would, and do, undertake appropriate investigations:

"If somebody reports ... that they feel like they're being forced into a marriage that would fall under section 122 then, yes, absolutely, [the police] would ... do that whether that's third party reporting or whether that's direct from the person at risk themselves. Yes, [the police] would carry out an investigation under that section." (I-4)

"... the two cases I've had, the police have done an investigation. So, the allegations of forced marriage have triggered a police investigation under that legislation. I'm not aware though that either of those have proceeded to court. I'm guessing they would

have been reported to the Fiscal, but I'm not aware that either of them then ended up with anyone being charged and convicted." (I-3)

Other interviewees, however, gave more negative responses:

"I don't think it's changed that much; I think there's awareness, you know, that there are these criminal ramifications. The fact that there have not been any prosecutions, the fact that there's not been any action taken, I think, generally speaks for itself. How is it actually being implemented, having it there on the books, is one thing, but actually using it in practice is another. ... I think at the moment just having it there, you know, as a tool is one thing, but I genuinely don't think it's being implemented. And again, all I hear is that it's all about resources." (I-6)

"I think they're [the police] more, they're more concerned with the immediate risk to the individual than they are necessarily moving forward in terms of a prosecution for ... having forced somebody into marriage. ... They've spoken to the [procurator fiscal] and then I think they take a view that ultimately what's probably more important is engaging and working with the family to make them understand, you know, what the situation is, and the seriousness of what's happened." (I-12)

"... as far as I know, there hasn't been one prosecution, never mind a conviction. ... I'm not even necessarily sure there have been any reports to the police around that. But they could, as I said, whilst the civil proceedings are in place, look to see whether there's criminality, but it doesn't seem to be happening and I don't know why not." (I-11)

"I've never seen a prosecution ... under [the 2014 Act]." (I-19)

Different opinions were voiced as to why there have not been more prosecutions and, in turn, more convictions under section 122:

“... I daresay there might be questions, I suppose, the prosecutor might ask themselves questions about whether it’s in the public interest to prosecute something if it’s been dealt with in another way” (I-18)

“I think, dare I say, it’s resonant of the old days of ‘it’s a domestic’ ... and I think that could be the police view. They’ll also be worried about would the prosecution stick, is there enough evidence, etc etc? ... you can see that satisfying a sheriff to make an interim order is going to be a lot easier than bringing a criminal prosecution. So, I think there’s a pragmatic view being taken here ... So, even though there is the further legislation making clear that it’s a criminal matter, can be prosecuted, it was too late, it was already entrenched as a civil matter, I think.” (I-13)

“I think the problem ... is going to be, do you have corroborated evidence because often you won’t because even if more than one family member has witnessed it, they won’t speak up, the complainer won’t come to the trial, you won’t get statements, you won’t get a conviction. So, I think where you’re at the lesser level of violence or threats that might normally appear on a summary complaint, the problem will be an evidential one which is why perhaps the lesser standard of proof required for the 2011 Act, and interventions that nip something in the bud, are more effective than a prosecution. ... The problem with a summary prosecution for that type of behaviour will be an evidential sufficiency and in getting the witnesses to come to court and speak up because they won’t, they’ll be intimidated, they won’t speak up, they won’t attend. I mean if you imagine the difficulty we have in domestic abuse cases and then multiply it by ten, that’s where you are with this.” (I-10)

d) The international dimension

Of the cases that present in Scotland concerning forced marriage, one interviewee expressed the view that it is very likely that there will be a cross-border element:

“... the majority of the cases is cross-border, nearly all of them are cross-border, so when that happens, they get the Forced Marriage Unit involved at the Home Office, the Foreign and Commonwealth Unit, and we work with them” (I-22)

As explained in Chapter 4, the 2011 Act is intended to have extra-territorial effect insofar as the terms of a FMPO (including an interim FMPO) may relate to conduct outwith, as well as, or instead of, conduct within Scotland.⁴¹⁹ One interviewee doubted the effectiveness of the broadly framed, extra-territorial provisions set out in the 2011 Act:

“I mean, it’s quite a weird thing, this Act, isn’t it? That it gives this extra-territorial jurisdiction to the Scottish courts ... I do keep an eye on this sort of thing, but I’m not aware of any example of its use to, for example, protect an individual by the making of an order or an interdict or anything of that sort, where it relates to a person furth of Scotland. ... you do wonder, what’s the point of the power? Because in practical terms it’s not going to be recognised.” (I-9)

A number of interviewees referred to the importance of ensuring that a FMPO, with appropriate measures, is in place before an individual who is at risk of forced marriage is removed from Scotland:

“... with these sorts of things you really have to step in before they’re out of the reach of the jurisdiction otherwise it’s ... I mean, it’s almost impossible. Once they’re gone, ... you’re lost. ... Don’t have any expectations that you’re going to be able to usefully do anything.” (I-12)

419 s 2(2)(a), 2011 Act.

"Getting the passport is probably key." (I-1)

"So if you suspect that there could be a cross-border issue, one way is asking for that power [to prohibit travel outside Scotland] but, again, you've got to evidence that and it's got to be proportionate." (I-2)

Conversely, two interviewees highlighted the risk to persons who travel to Scotland from abroad, for the purpose of marriage in Scotland.

"I think sometimes just the sort of cultural understanding plays a huge part and I think a heavy reliance on interpreters can sometimes also cause difficulties. Language obviously, especially when you're in court, can be very precise and very particular and I think often with these cases where there is a heavy reliance on interpreters it makes a huge difference to the way evidence comes out, or a way that, you know, a case is looked at." (I-6)

"[I]f you have a person at risk, say, where English is not their first language, they may have been brought into the country in circumstances that it would not be safe for them to return to, say, the country they've been brought in from, or there could be consequences for their relatives. I mean, they have no other means of support, financially or otherwise, here. Now, it's so difficult for a person in that position to do anything about it." (I-11)

Several interviewees (I-4; I-12; I-21; I-22) stressed the importance of working closely with other agencies, such as the UK Border Force (a law enforcement command within the UK Home Office, tasked with securing the UK border by carrying out immigration and customs controls for people and goods entering the UK), and the UK Forced Marriage Unit (a joint Foreign, Commonwealth and Development Office and Home Office unit):

"Where there's instances where somebody has maybe been taken, or is, out of the country and there's a FMO exists and there's conditions breached or they're in danger, [the police] would get in contact with the Forced Marriage Unit. They would assist [the police] in relation to those cross-border investigations. [The police] would manage all of the investigations ... or all of the enquiry that happens within Scotland and look at the crimes that have been committed while it's been in Scotland in relation to the victim. I suppose, trying to repatriate them back into the UK, etc, the Forced Marriage Unit at the Foreign and Commonwealth Office would take control of that side of things. [The police] do have that liaison with them." (I-4)

The same interviewee (I-4) also stressed the need for cooperation and close liaison between and among the public protection agencies throughout the UK.

Other interviewees emphasised the importance of effective cooperation between intra-UK legal systems:

"... we had cross border ... cases, where girls from Scotland had been brought to England or Wales, girls mainly, and sent the other way across as well. And some of them who were older, talked a lot about the lack of clarity and understanding of the law between England and Wales and Scotland." (I-14)

"I do think that it would be better, and always of course wanting Family Law issues to be distinctly Scottish, which they are, but nonetheless having a bit of joined-up thinking on cross-border stuff where there's a suspicion of forced marriage." (I-13)

One interviewee expressed concern about the recognition and enforceability of FMPOs intra-UK:

“... could we please look at the [Family Law Act 1986] and what’s wrong with it, and what needs to be changed? Because if you take forced marriage as an example and, let’s say, you have a Scottish order under the 2011 Act, and then somebody gets wind of the idea that they’re just going to take [the victim] down south and get her married there; what would you do? Which court would you go to? Is your order immediately enforceable in Birmingham? Most people won’t know that, most people won’t know what to do with that.” (I-13)

e) Victim profile and victim barriers

Honour-based abuse, including forced marriage, is suffered by a wide range of victims.⁴²⁰

1) Age, sex, sexual orientation, gender and incapacity

It was widely recognised by interviewees that age is a significant risk factor in relation to forced marriage, and that victims under 16 years of age give rise to child protection concerns, meaning that child protection processes should take priority.

Interviewees also recognised that individuals aged 16-18 years are in a vulnerable category:

“So we’ve gone from primary school to secondary school. Now there’s a space where they leave school. They’re not adults and they’re ... in that liminal space or they become young adults. They may still be living at home for several reasons, where do they go? They are very healthy. They don’t need to see their GP. They don’t really know the social system of social care etc, and social care also is not trained well enough to pick them up. ...”. (I-14)

“... I do think there is a gap around protection in 16 and 17 year olds because of the perception in social work sometimes that they’re an adult. And that continues to be harmful. ... And as I say, we see it in other contexts where we’re trying to seek supporting accommodation from the local authority, so I think it’s comes into play in lots of different areas.” (I-16)

“I think when they’re under age, ... the protection is a bit different. It then means that the social services, they have the powers or other people have the powers to step in and do something, whether the victim accepts it or not. But, you know, once they are 16, it is ... for ... that young person ... to make that choice and everything” (I-21)

There was some uncertainty among interviewees about whether or not child protection processes apply to victims aged between 16 and 18 years, with one interviewee mentioning ‘young adult’ protection up to 25 years of age:

“[A victim was a] child when we met her and, by the time the order was granted, she wasn’t a child any longer, she was 18, and in the end, the children and families social worker did hold onto her case, but there was no framework” (I-8)

“... if it’s a younger person, if it’s going to be somebody under 16, somebody under 18 ... they could certainly think there could be a child protection issue here, and no doubt they would have ... organisational responsibilities if they thought there was a child protection issue.” (I-11)

“...when they’re above, you know, 16 up to 25, that’s still classified as vulnerable young people. But it’s not mandatory.” (I-21)

⁴²⁰ See, e.g., Marac Research Report 2023 (n 404, above), p 9. As regards calls made to Scotland’s Domestic Abuse and Forced Marriage Helpline, information regarding the personal characteristics of victims/survivors (age, sex, ethnic background, and disabilities) is collected, but only if a caller chooses to share that information (I-20). Granular detail as to caller profile and characteristics is not publicised in annual reports.

“...there is a fear again, or we have a difficulty when we receive a phone call, and the woman’s over the age of 18 ... It’s almost like this doesn’t happen to people who are over the age of 18 in Scotland, and it does.” (I-22)

One interviewee highlighted the practical difficulties facing a young adult who has a concern about forced marriage:

“... I’m trying to put myself into the place of the young person or adult, but what would you do, who would you speak to if you’re not at school, if there’s been no social work involvement ..., if there isn’t a neighbour that you feel you can trust and there’s not a family member for obvious reasons that you can trust, what would you do, who are you being ... who is the state signposting you to? And it concerned me having seen some of the cases that have come in, I thought, well, that’s been lucky. ...” (I-19)

Although forced marriage affects women and girls disproportionately,⁴²¹ it is not a form of coercion that is specific to women and girls. One interview (I-22) stated that,

“... she sees a substantial number of boys in different schools, in the school-based support she provides, and a significant number of them, after she builds up a relationship of trust, disclose to her that they’re not actually heterosexual, that they will have to go marry someone ... not of their choosing, you know, because of the family situation.”

Another interviewee (I-20) expressed the opinion that it is more difficult for male victims to access support:

“I think it can be harder for men to access ... local support. Because at least if a woman gets in touch, we know that we can signpost them to Women’s Aid who will be good for the more ongoing support. And with men there’s

not always that. There’s FearFree,⁴²² which we would sometimes signpost to if the person were in one of the catchment areas, but there are a lot of areas that aren’t covered by them. So I think there’s a bit of a gap there for sort of more ongoing support.”

LGBT+ victims may be at particular risk of ‘honour’-based abuse, and vulnerable to forced marriage on account of their sexual orientation or identity:⁴²³

“... there is this preconceived idea, I feel sometimes, that forced marriage is ... about girls and women. But actually, I would say the majority of the cases and certainly more recently, have been in relation to sometimes male and adults. So, you know, I mean, that is anybody over 16 generally speaking because after that, you know, the children’s hearing can’t be involved, so we tend to refer to them, well in our service, more as tending towards young people or adults” (I-12)

Several interviewees voiced concern regarding adults with incapacity and vulnerable adults who may be at risk of forced marriage. It was widely recognised that these victims may be less readily identifiable because they do not attend school, college or university, and there is no social work involvement with the individual and/or their family, or involvement with mental health and/or disability services (I-3; I-11; I-13; I-14; I-19):

“... The way I see it is a well-minded social worker who has a family in his or her list where they get wind of any possibility of a forced marriage, will be a gatekeeper. ... I think we can all assume the systems work well enough in the sense that they will have training in this, they’ll be alert to it, they would report it. But that presupposes that that family is within the care system somehow. ... what are the chances that family will be in the care system? There’s no reason why they would be in the

421 See Chapter 1 (n 2).

422 ‘FearFree’ is a national domestic abuse service for survivors of domestic abuse in Scotland. It offers support to people experiencing domestic abuse in Scotland who identify as a man or from the LGBT+ community (< <https://fearfree.scot/> >).

423 See, for detail, Marac Best Practice 2023 (n 410 above), p 13.

local authority care system ... But all sorts of other just ordinary young people will be slipping through the cracks because there isn't social work involved in it. Why would there be? So for every family where the report into the children's panel is involved, or even just there's a social worker allocated to the family, there are hundreds where there's not." (I-13)

As another interviewee put it:

"... how does that person get external support full stop, you know, in any aspect of their disability? ... how would they access a lawyer, how would they even get to ... a support organisation? ... And I think the problem is, we don't know." (I-11)

Some interviewees referred to the protective framework provided by the Adult Support and Protection (Scotland) Act 2007 ('2007 Act') in respect of 'adults at risk',⁴²⁴ but opined that it is not generally apt to protect against forced marriage:

"I remember ... suggestions that ... those at risk could somehow come under the Adult Support and Protection legislation. And we said no, that's not what it's for ... this isn't a capacity issue in relation to that legislation. When the ... woman or young person is supported, that gives them more of an impetus to act. But they aren't inhibited in the way that someone who was subject to the Adult Support and Protection legislation would be, and we said, so, you're not going down that route." (I-11).

"... the Adult Support and Protection legislation ... has a gateway definition, so you have to be an adult at risk. And it's quite hard for, for example, domestic abuse or honour-based violence to fall into that definition of an adult at risk because the adult themselves isn't usually impaired in some way. So the definition very much is geared towards people who have some sort of ... impairment in terms of their ability to protect themselves. And it doesn't really fall into the Adult Support and Protection legislation. ... should the 'adult at risk' test in the Adult Support and Protection Act be expanded to include people who are at risk of honour-based violence? I don't know. I don't know the answer... there are obviously human rights issues and those always need to be balanced against those kind of protective duties." (I-3)

Another interviewee raised concern about cases where an adult's lack of capacity (potentially putting them within the remit and protective framework of the 2007 Act) was ignored, and a FMPO was pursued:

"So sometimes if there's an issue about capacity of the adult ... where the person at risk was an adult and there were issues about their capacity to understand and capacity to perhaps consent in relation to this. ... rather than examining it and perhaps looking at it under the lens of the adult protection legislation the local authority jumped in with a forced marriage protection order and then raised the action, ... and then had to backtrack and cancel those applications

424 s 3(1) of the 2007 Act defines 'adults at risk' as adults who—

- (a) are unable to safeguard their own well-being, property, rights or other interests,
- (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.

By s 3(2), an adult is at risk of harm for the purposes of subsection (1) if—

- (a) another person's conduct is causing (or is 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.

By s 53(1), "harm" includes all harmful conduct and, in particular, includes—

- (a) conduct which causes physical harm,
- (b) conduct which causes psychological harm (for example: by causing fear, alarm or distress),
- (c) unlawful conduct which appropriates or adversely affects property, rights or interests (for example: theft, fraud, embezzlement or extortion),
- (d) conduct which causes self-harm.

when it transpired that actually it was perhaps a slight learning difficulty rather than issues about consent.” (I-6)

One interviewee remarked that, for victims who sit outside the child protection and adult support and protection frameworks, another avenue of support is necessary:

“... the best that I could come up with was that in some way there would have to be ... I hesitate to say it, another arm’s length organisation that could be contacted, it would have to be well publicised, but it would appear to me that it might be preferable to have that as albeit a state organisation at arm’s length from the government. ... But it led me to think, ought there not to be something like Childline? ... You know, something that is well publicised, people know you can phone this number, you can speak to someone in confidence, but you must know that action might be taken as a consequence of this.” (I-19)

2) Cultural constraints

Several interviewees (I-1; I-11; I-17; I-20; I-21; I-23) highlighted that, for some victims, the culture in which they were raised, and the expectations that have been imposed on them, constitute barriers to their seeking assistance in relation to forced marriage:

“It’s difficult if you’re a 16 year old girl and your father’s telling you, you know, this is what we want to do. And you don’t want to ... because what can happen is that ... you can just be completely disowned.” (I-1)

“... some people are scared of contacting [specialist support organisations] because of thinking that it’s a small community, they may have family members working in those organisations. I’ve had multiple people say, I know somebody who works there so that wouldn’t be safe for me.” (I-20)

“... if you’ve got a young girl who, as soon as they get anywhere near puberty, they’re picked up and dropped off at school, their phones are monitored, if they’ve got a phone, their dress is restricted. They learn that certain behaviours cause chaos in the house, there’s a repercussion ... they learn to behave a certain way, they learn where life is easier, and it’s easier to comply.” (I-23)

Some interviewees (I-6; I-11) said that the cultural barriers are heightened where the victim’s first language is not English, or they have been brought to Scotland from an overseas country:

“But reporting and encouraging people to come forward has always been ... and it still is, an issue. ... I think also because depending upon the circumstances surrounding the complainer, if you have a person at risk, say, where English is not their first language, they may have been brought into the country in circumstances that it would not be safe for them to return to ... the country they’ve been brought in from, or there could be consequences for their relatives. ... they have no other means of support, financially or otherwise, here. Now, it’s so difficult for a person in that position to do anything about it.” (I-11)

3) Access to legal aid and advice

Among the barriers that render it difficult for victims to seek legal advice and assistance in respect of forced marriage, three interviewees cited reduced access to legal aid, particularly where the case has a cross-border dimension and the individual who is at risk of forced marriage is outside Scotland:

“I think finances would be the big [legal barrier] ... not being able to afford a solicitor and not qualifying for legal aid.” (I-20)

“... right now, we are really struggling ... with legal aid. ... we can't find legal aid lawyers. That's the biggest problem that we have. ... When I started ... I started working here 2004, it was almost all the top lawyers, they took legal aid, it was so easy. But now it is very difficult to get lawyers.” (I-21)

“I can't see them actually navigating applying for legal aid and making an application for the order. I mean it could happen, but it would be an extraordinarily robust young person who would do that.” (I-10)

Another interviewee referenced a related problem concerning the impact of forced marriage on immigration status and having no recourse to public funds:

“But women ... who don't have resources of their own ... women who have no recourse to public funds, as soon as you actually try to leave the abuser, that puts in place a whole mechanism – machinery, as it were – that means that your current immigration status could essentially be negated, you know, while you try ... while you apply for indefinite leave to remain. And of course, if you leave your partner due to forced marriage, or issues surrounding that, or honour-based abuse, that really makes your immigration status fragile.” (I-11)

Aside from financial difficulties associated with accessing legal advice and assistance, another interviewee cited difficulty in finding a solicitor with relevant knowledge and expertise:

“Now, the problem again is that with the paucity of cases ... the actual solicitors in practice aren't necessarily au fait with what that ... what that would mean in the application and who to speak to.” (I-11)

Another interviewee, however, flagged the Scottish Women's Rights Centre, the Scottish Child Law Centre, and the Ethnic Minorities Law Centre as places to which victims could be signposted for legal advice and assistance concerning forced marriage. (I-20)

Several interviewees (I-10; I-11; I-20; I-21) flagged the importance of being able to access victim-centred support and assistance from third sector, specialist support organisations that are recognised to have wide-ranging knowledge and understanding of forced marriage and its consequences.

f) Case reporting

One interviewee voiced concern regarding control of media reporting in relation to applications for a FMPO:

“The one Forced Marriage Protection Order we applied for for someone who was over 16, the Sheriff Court did not put that in ... they put that on the public court roll which created massive issues around risk for that young [victim] because the media picked up on it. And we had to go back to court and seek an anonymity order and all sorts of orders under the Contempt of Court Act to prevent media reporting. So actually, even just a tweak like having the court rules say that these proceedings are to be heard in private would put that beyond doubt. I think it was probably it just hadn't been thought about, but there's nothing expressed in the rules that I could see.” (I-3)

Many interviewees (I-3; I-5; I-6; I-7; I-10; I-11; I-19; I-22) commented on the very small number of reported cases concerning forced marriage. One interviewee (I-22) referred to a problem of the 'invisibility' of some forced marriage cases. Several interviewees stated, however, that this is not an issue confined to forced marriage, but rather is one that affects other areas of family law, such as adoption and permanence (I-10), child contact, domestic abuse (I-11), and adults with incapacity (I-3; I-5; I-6; I-7; I-19; I-22).

A number of interviewees (I-1; I-2; I-6) expressed the view that the low level of case reporting means that practitioners are able to consult and cite only limited case law, and that only limited lessons, therefore, can be learned from decided cases.

One interviewee (I-13) remarked that the issue of restricted case reporting affects only the sheriff court, and not the Court of Session. Another interviewee (I-10) remarked that a shrieval decision is unlikely to be reported unless it raises a novel or interesting point of law, while the former interviewee (I-13) said that most sheriffs, in the event of a fully contested case, would publish their judgment. Two interviewees (I-5; I-18) noted that individual sheriffs have a discretion whether or not to report a particular decision, with one commenting that:

“There is a real ... there’s something of a randomness about what gets reported.” (I-5)

Two interviewees (I-7; I-11) commented that, as a consequence of the limited reporting of decided cases, it can be difficult for practitioners to know, for example, what evidence, and from whom, is appropriate or necessary to justify the order being sought, or to justify a particular length of order (I-11), and that there is potentially a “transparency issue” (I-13):

“If the aim is for the legislation to be effective and fit for purpose, then you must have transparency because otherwise ... you’re either making it up ... or we’re all quoting from the odd authority that’s been made available.” (I-7)

Another interviewee expressed concern that there could be geographical disparity in the orders that are granted across the country, the outcomes of which are not reported (I-1).

In terms of possible justification for the non-reporting of cases, several interviewees referred to the need to preserve the anonymity of victims (e.g. parties’ names, place(s) of education, and place(s) of work), and to protect the identities and safety of parties (I-2; I-7; I-8; I-10; I-19). One interviewee, however, remarked that,

“You know, we have a system which is meant to provide free access to justice and justice being seen to be done. By concealing people’s identity through these endless

initials, A, B and all this, for me, it undermines the quality of justice being seen to be done.” (I-9)

Another interviewee expressed the view that the burden of anonymisation is not justification for the non-reporting of decisions, and that transparency of decision-making (I-13) and “open justice” (I-18) are important:

“... everyone wants everything anonymised. And that’s not really how it should be. However, anonymising children under 16 is an absolute, obviously, and that that usually means anonymising the parents too. But anonymisation doesn’t mean not publishing, it just means anonymising. So I think people get really confused about the two. And these things should all be published” (I-13)

Other reasons mentioned by interviewees for restricted reporting of decided cases were judicial concern about cultural sensitivities (I-8; I-11; I-18), and the fact that the parties to proceedings may be opposed to the publication of decisions (I-10). Moreover, two interviewees stated that, if an application does not proceed to a proof, but rests on an interim order, there will be no final decision as such to report on (I-13; I-22).

Two interviewees (I-8; I-12) suggested that, because of the relative infrequency of applications for a FMPO, it would be helpful to have more information-sharing among local authority solicitors across different council areas:

“What would be really useful would be to see a list of possible orders that you might seek, because you’re kind of having to make it up out of thin air almost ... I would love to see a list of, take the passport away, but also make sure there’s something there about not being able to apply for a new passport, just all those ... practical things where you’re faced with an emergency situation going, ‘oh right, wait, how do we stop it? What can we ask for?’, and there’s nowhere to look for a list of suggestions” (I-8)

However, another interviewee commented that, while local authority information-sharing is helpful, solicitors outside local authority practice, as well as counsel, do not have access to, or benefit from, such networks (I-7), meaning that wider information-sharing through publication of decided cases would be beneficial.

One interviewee commented that, although requests for information can be submitted by professional associations, and practice notes can be issued by sheriffs principal, these are likely to materialise only where there is a high volume of cases within a particular jurisdiction (I-10). This interviewee also suggested that information-sharing can take place via professional conferences, and/or published papers.

g) Minimum age of marriage

Interviewees were asked for their views on the possibility of raising the minimum age of marriage in Scotland, and on whether or not that would be an effective way of helping to combat forced marriage in Scotland.

Three interviewees voiced concern about using the term 'child marriage' in relation to Scots law:

"I've had a number of meetings with ... various groups ... over the last two years in relation to this ... my argument when I was attending these meetings was that, using the language that they were using, there is no 'child marriage' in Scotland because you're an adult at 16." (I-23)

"I suppose it flies in the face of our very long-standing view and legal system where ... at age 16 children are recognised to be adults" (I-3)

"But in Scotland a child of 16 to us is not a child, and we are very concerned about consent and free, fair, and informed consent ... What does consent mean, how does a young person, a young adult in Scotland, how do they understand consent, how do they understand informed consent?" (I-14)

One interviewee referred to international obligations concerning 'child marriage', and to the evolution of rules pertaining to minimum age of marriage:

"The real impetus, I think, for us raising the age is so that we're in line with the prevailing view in the human rights community. The human rights community did vacillate a little bit, even they, ... the joint general recommendation, general comment 31.18, I think, from the CEDAW committee and the CRC Committee. In its initial version in 2014,⁴²⁵ it did permit for an exception for the possibility of marriage of 16-year-olds, subject to a lot of safeguards, and then very quietly it changed that text in 2019 and it's taken the exception out.⁴²⁶ So those two committees are now onside with the mainstream of the human rights community that says 18 is the age for marriage, anything below that is unacceptable." (I-5)

Different views were expressed in response to the question whether or not international recommendations should be accepted in Scotland without question:

425 See 'Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices' (2014) (CEDAW/C/GC/31/CRC/C/GC/18).

426 See 'Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices*' (CEDAW/C/GC/31/REV.1 - CRC/C/GC/18/Rev.1).

"I think the push in Scotland for us to change our law is because we want to be in line with human rights thinking and we don't want to be criticised next time there is a report to the CRC Committee⁴²⁷ because we will be criticised if we haven't raised our age. I think there is that sort of ethos. I am less persuaded by that. I think we should respect international human rights and the prevailing views, but it doesn't mean you can never disagree with them" (I-5)

"I suppose, the argument for doing it [raising the minimum age of marriage] is that you might be creating an impression that Scotland's a bit of a rogue state, I suppose, with a very low age ... at which marriage is permitted." (I-18)

With regard to the raising of the minimum age of marriage in England and Wales,⁴²⁸ and in response to a question on whether or not Scotland should enact similar legislative provision, some interviewees referred to the different rules concerning parental consent to marry that existed in Scotland, and in England and Wales, respectively, prior to the 2022 Act:⁴²⁹

"First of all, just because England's doing it, doesn't necessarily mean [Scotland has] to do it. And particularly taking into account the fact that this was to address a very particular issue about parental consent that doesn't exist up here." (I-11)

"What they've done in England and Wales is they've raised the minimum age of marriage, but what they've done is taken away the ability for parents to consent under the age of 18. ... that doesn't exist in Scotland." (I-23)

Various interviewees (I-3; I-10; I-16; I-18; I-23) highlighted existing policy tensions in Scots law regarding age and legal capacity, under particular reference to areas of law where the policy has been to reduce, rather than increase, the age of legal capacity:⁴³⁰

"... [raising the minimum age of marriage] sort of contradicts what, I suppose, I see as the direction of travel in Scotland, which is to lower other things to 16 that were previously 18. ... we have a very confused picture, I think, about when are children adults and when are they not adults?" (I-3)

"It's unclear whether the voting age in Scotland would be 16 or 18, but there's certainly discussion of it being 18, where you can't drive a car or legally drink and it's a very young age in order for a young person to be marrying, for a young person to have the capacity to make such a decision. There are differing views about that. There has been very intense debate about the gender legislation in relation to whether 16 is young enough. I think many 16 years old are not of sufficient age and maturity to make a lifelong decision of that magnitude, whether that be in relation to gender assignment or marriage." (I-10)

"... raising [the age of marriage] is at odds with some of the other kind of moves to make things ... to lower ages for things." (I-16)

"I think there are just policy tensions brought through everything around really age between about 16 and 25 because obviously there are purposes for which we regard people as children until they're 18. ... there's also the question of disempowering children and recognising the extent to which they have

427 See, for background, 'Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland : Committee on the Rights of the Child' (CRC/C/GBR/CO/6-7) (UN. Committee on the Rights of the Child (93rd sess. : 2023 : Geneva), para 18 (<<https://digitallibrary.un.org/record/4013807?ln=en&v=pdf#record-files-collapse-header>>).

428 Marriage and Civil Partnership (Minimum Age) Act 2022. See Chapter 4.b.7.

429 See, in England and Wales, prior to the 2022 Act, Marriage Act 1949, s 3 ('Marriages of persons under twenty-one').

430 e.g. Age of Legal Capacity (Scotland) Act 1991, s 2 (Exceptions to general rule); and Scottish Elections (Reduction of Voting Age) Act 2015, s 1 (Scottish elections: reduction of voting age to 16).

capacity at 16 and not wanting to infantilise children who are able to do certain things at 16. We also now have the recognition in the Sentencing Council guidance⁴³¹ that the brain is not complete until 25, and we take that into account in sentencing decisions. So there is a whole lot of information and policy tension there, as it is. I think it might be another example of it, but I don't think it would necessarily be introducing tension where none currently exists because, as I say, we do have all these pulls going on... We do let people do quite responsible things before their brains have ... fully developed.” (I-18)

“But in Scotland, the complication for me is you can learn to drive when you're 17, you're an adult at 16, you can't vote till you're 18, and now we're going to tell young adults in Scotland something else, that they can't [marry] 'til they're 18. So, for me, the bigger conversation should be around raising the age of the child. If that's what you want to do, if you're telling these adults at 16 there's loads of stuff that they can't do 'til they're 18, are they really adults then, in the capacity of what an adult is? Is somebody old enough to make their own decisions and then tell them there's a list of decisions you can't make?” (I-23)

There was a wide spectrum of views among interviewees on whether or not the minimum age of marriage in Scots law should be raised.

Interviewees referred to the following factors in support of raising the minimum age of marriage in Scots law: consistency with international standards and recommendations; uniformity as between Scots and English law; perceived lack of maturity at 16/17 years of age to make decisions about marriage; and the possible benefits of increased safeguarding and child protection:

“I think many 16 years old are not of sufficient age and maturity to make a lifelong decision of that magnitude, whether that be in relation to gender assignment or marriage.” (I-10)

“... at some point the UNCRC may actually become law and that talks about children being under 18. So, yes. I mean, I think it's bizarre and that is a representation that we ... did make to the government when they were consulting on the UNCRC.⁴³² So, I find it curious that they can take that approach to the UNCRC and accept that children are under 18 but allow them to get married at 16.” (I-12)

“I think it probably would be more helpful that we had uniform across, given that we are bordering, that it's the same throughout the United Kingdom.” (I-2)

“I would like it to be reformed because it's 16. 16, they're young. And when they come from a lot of the backgrounds that we come from that are these forced marriages. ... You know, they're still totally controlled because what we notice is that a lot of the victims of domestic abuse that we have, they are totally controlled until they get married. And when they get married, their husband has to control them. So, a lot of them have no life skills.” (I-21)

“But overall, I think, ... thinking about children's rights and balancing, sort of, participation and positive rights against the potential safeguarding and protection benefits of raising the age, ... I think we would come down in favour of raising the age. ... I guess there is the option of ... additional safeguards where someone is giving ... a notice of intention to marry, where it would be an early

431 Scottish Sentencing Council, 'Sentencing young people - Sentencing guideline' (Effective from 26 January 2022) (<<https://www.scottishsentencingcouncil.org.uk/media/4d3piwmw/sentencing-young-people-guideline-for-publication.pdf>>).

432 This interview took place before the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 received Royal Assent on 16 January 2024.

marriage. ... I think the possibility of a greater local authority role is one worth considering.” (I-16)

By contrast, interviewees referred to the following factors in opposition to raising the minimum age of marriage in Scots law: the very small number of marriages involving 16/17 year olds; scepticism that raising the minimum age would be an effective tool in combatting forced marriage; and the fact of longstanding differences between Scots and English law as regards capacity and parental consent to marry:

“I think we should respect international human rights and the prevailing views, but it doesn't mean you can never disagree with them and say, well, you know, frankly, we have very few marriages of 16, 17-year-olds in Scotland, the numbers are tiny, they've been dropping and get smaller every year⁴³³ ... So, the argument that by raising the age to 18 you will protect against forced marriage, will be true of a very small number of cases, in my view, and I'm not sure that is enough reason to raise the age in Scotland.” (I-5)

“... raising the age of marriage is an issue far beyond ... it extends far beyond the question of whether or not we should be stopping forced marriages. I mean there are bigger questions at large about society and whether we should let 16 year olds get married. ... we've got a historical position in this country, which has endured for hundreds of years, well I don't know if it's hundreds of years, it's at least 150 years. And the fact of a tiny number of forced marriages occurring doesn't seem to me to be a justification for changing that. Now there may be other reasons why the legislature would want to change the age at which parties can be married. They stop people smoking cigarettes at 16 and doing all sorts of other things. Although I notice they can vote at 16 in Scotland. But I don't think ... forced marriage is a reason why the wider rule should be changed, no.” (I-9)

“I mean, I guess if someone's at risk of forced marriage, they'll be at risk of forced marriage whatever their age. So, I'm not sure raising the age limit for marriage from 16 to 18 would address the forced marriage issue.” (I-3)

“Instinctively, I don't like it. ... I don't think that that will be a deterrent.” (I-7)

“We don't see the point of raising the age of marriage for raising the age of marriage's sake. Child marriage that we know of doesn't happen in Scotland unless it is all going underground. What we find from people and the girls that we support, they get married when they leave school and when they are 18, 17 or 18 anyway, that's another reason, our argument for it. I think you need to think of the wider society as well, you know, so you're going to be able to drink and ... have a sexual relationship when you're 16, but you're not going to be able to get married 'til you're 18?” (I-22)

A number of interviewees expressed the view that more extensive consultation and debate on the subject is necessary, with some interviewees saying that this should be done in respect of legal capacity and consent more widely, and in light of research as to the impact of the Marriage and Civil Partnership (Minimum Age) Act 2022 in England & Wales:

“I think it's something to consider and I think it's something to perhaps have a useful debate on, especially in light of the other debate at the moment in terms of gender recognition, etc – you know, what a 16 year old can and can't do in terms of consent. I think it's something that certainly would be interesting to look at. What I don't know is whether changing that has made any difference in England so, you know, what practical difference it's made ... so it would certainly be interesting to see what practical difference it's making down there.” (I-6)

433 See Chapter 6.d.5, above.

“... but I think a lot more research would have to go into it, certainly. They’d have to maybe ... do some studies to see, well, look at married people who have married at 16, have there been a lot of issues attached to that? Is social work aware, perhaps, that there’ve been a number of problems there?” (I-2)

“I suppose I was waiting to see the impact of that change [in England & Wales as a result of the 2022 Act]. And it leads on into the whole very difficult area of what age can you be allowed to make these decisions?” (I-19)

h) Education and training

In response to a question about whether or not further action is necessary to educate (a) lawyers and (b) the general population in Scotland about forced marriage and the forced marriage legislative framework, and to raise awareness of available legal remedies and sanctions against forced marriage in Scotland, several interviewees (I-4; I-6; I-12; I-23) said that an ongoing commitment to continuing education and training is necessary:

“... I am a huge advocate of further education on anything to do with forced marriage, honour-based abuse etc. I think it is really under-reported in Scotland, probably right across the UK, but specifically in Scotland. I think that because it’s not something that we routinely manage on a day-to-day basis or routinely deal with on a day-to-day basis, we really need to keep that education up. I think that would go a long way to help improve the use of the legislation that we’ve already got and that it’s used more effectively, probably.” (I-4)

“... it’s the same as FGM. I mean, all these issues have their moment in time, don’t they, when we talk about them? Or they’re in the news because of a particular case, and then something else will come along. ... there needs to be a constant commitment to awareness-raising and training in all, at all points in the process.” (I-12)

1) Professional education and training

Two interviewees (I-2; I-17) emphasised the importance of foundation level legal education encompassing the subject of forced marriage:

“I think that specifically for lawyers, it’s something that ... we really advocate for in terms of early university learning ... getting in there early I think is important” (I-17)

Two other interviewees (I-1; I-9) reported possible knowledge gaps among relevant professionals:

“... you’re relying on the social worker, firstly, picking up on any sort of potential threat or any difficulties and then, secondly, sending it ... to somebody to say, well, I think we should be looking at this ... the problem in my experience is ... well, people from the local authority are just not really ... knowing what to do or even that it’s really an option for them. ... I’ll see situations where it’s immediately apparent to me that the local authority should be applying for Forced Marriage Protection Orders or at least doing something about it. But it clearly hasn’t ... dawned on the social worker that’s spoken to the child that it’s even something that they should be considering.” (I-1)

“But one would imagine that a possible way of interpreting the lack of prosecution of offences, notwithstanding the powers available to the police, the lack of civil actions raised by them, is that they don’t understand what they’re doing and perhaps the issue there is about education.” (I-9)

One interviewee mentioned the Scottish Government statutory guidance on forced marriage:

“I think probably the guidance needs to be refreshed and made more prominent. It’s actually quite hard to find the Scottish Government guidance on their website. And, you know, I think if they had a more kind of consolidated set of resources that might be helpful.” (I-3)

In addition to the Scottish Government statutory guidance on forced marriage, one interviewee mentioned the importance of local guidelines:

“... there’s national child protection guidance issued by the Scottish Government but local authorities and their local partners will generally also always have their own inter-agency and single-agency child protection guidelines as well. So we have both of those: we’ve got inter-agency guidelines which are predominantly for social work, health, police and the third sector; and we also have our own internal child protection guidance which is for social work, education and other council services, such as housing. And both of those mention forced marriage briefly, but with appropriate links to the national resources.” (I-3)

A number of interviewees referred to the importance of both introductory and ongoing professional education and training in respect of forced marriage for the police, social workers, and members of the legal profession:

“... we see again ... additional training when we’re talking about the police or social work department in terms of domestic abuse legislation, and we see that being rolled out across even the judiciary. And I don’t see that with this, and I think it’s important that perhaps [there is] a bit of extra training in terms of the forced marriage protection legislation ... I think all round that would be useful.” (I-6)

“... I’m very conscious that I’m probably the only person in my team that’s got any experience, proper experience of forced marriage. ... in the case at the tail end of towards last year, it was apparent to me, and they did admit, that they had no experience, the social workers, and the ... group manager, of forced marriage. ... Now, that is all despite our council having a fairly reasonably well-developed process that they should be following” (I-12)

“... somebody starts a new job every day; somebody leaves. So, I think [education] needs to be an ongoing thing. It needs to become just part and parcel of what happens ... our society is more diverse now than it’s ever been. And now there’s dispersal across Scotland in terms of asylum seekers, and it’s no longer just rooted in Glasgow, then the communities right across Scotland are growing in their diversity, so therefore the knowledge needs to grow as well. ... when this all first started, the Scottish Government provided us with funding and we dotted about Scotland ... doing specific training on this. That was years ago. Years ago. ... nothing as significant as that has happened since ... if you’re going to come into any kind of service that functions for society, so law, police, social work, health, then that should absolutely form part of your base root training, I think.” (I-23)

Two interviewees suggested that further education and training in relation to cultural sensitivities, in particular, would be helpful, albeit emphasising that forced marriage law concerns the protection of rights regarding marriage:

“Because I think we need to recognise that for social workers in particular, certainly the experience I’ve had and that reflects my experience as well, is that I’ve gone into these cases knowing nothing about the cultural aspects of arranged marriage versus forced marriage, you know, what are the cultural norms within a particular ethnic group? And people have had to scabble about quite a lot to actually get that advice and support. So perhaps a more structured or accessible range of resources.” (I-3)

“Because I was hearing from ... some of the organisations that, even in relation to child protection where there was a clear child protection obligation to act, local authorities were being nervous, or tiptoeing around responding on grounds ... there was a real, I think, nervousness about interfering in something that they might have seen as someone’s cultural rights.” (I-11)

Another interviewee suggested that training by way of online webinars would be useful:

"I think it would be helpful that there is training available. It's just a niche area. ... maybe online training would be helpful. Maybe there could be some webinars that social workers and solicitors could tap into on this area. It is an area that's not going to come up very frequently for some areas, depending on where you are, and then, often, it's a reactive, you know, right we need to get trained, this has happened." (I-2)

A further interviewee suggested that 'trauma-informed' training would be helpful:

"... I would say that lawyers and police need more training on, you know, what does a trauma-informed approach look like, to supporting a survivor. I think quite often either some do it really well, but there are definitely gaps. I can't imagine that lawyers would be better prepared than they are to deal with someone who is going through domestic abuse, and we do hear some pretty bad stories about lawyers supporting people with domestic abuse." (I-20)

2) Schools, colleges and universities

Two interviewees (I-10; I-23) praised the work of teachers in schools, but said that more could be done to raise awareness about forced marriage, by way, for example, of guidance and bespoke resources:

"I think teachers are often unsung heroes who pick up on all manner of issues that young people encounter and support them through it." (I-10)

"... I think resources for education staff, I think, albeit they might need to just be a bit shorter and a bit more about just recognising that these are issues to be aware of, I think that would be quite helpful. ... Who is it that's most likely to have contact with a child in particular? It's probably the school, that's probably where

it's going to start. ... I think that could all be looked at and refreshed so that it's providing as much guidance as it can." (I-3)

Three interviewees (I-5; I-14; I-23) mentioned the importance of addressing the topic in primary education:

"... as with all of this education about law and education about behaviour, the sooner we start with it the better. We have to start with primary schools, with young kids, with just subtly sending the message about choosing your partner in life when you're grown up." (I-5)

"... let's look at education, and we look at primary education, look at the stories that children are told in school and the fairy tales that they read. You know, some of them are, princess goes to sleep, she's kissed by a prince, she wakes up and they go and get married. So, I think the whole approach to what is marriage from your primary school needs to change." (I-14)

Some interviewees (I-5; I-14; I-23) also highlighted the importance of continuing education about forced marriage throughout secondary school, to ensure continued awareness among children and young people about their rights under Scots law, and about where and how to access support in respect of forced marriage:

"Just getting it through from [primary school] on and right through, very importantly getting it through to teenagers, having discussions in schools up front about these things ... All of those things I think could be immensely helpful." (I-5)

"I think that the law is not a remedy in the real sense. The law becomes a remedy when you're in danger. But if you want a remedy that's going to stop forced marriage, that has to come from a very early age where within citizenship education, people, children, young adults are taught that you have these rights. Those are very important rights." (I-14)

Two interviewees (I-11; I-23) emphasised the importance of having third sector, specialist support organisations to assist schools in their awareness-raising programmes.

One interviewee (I-20) also mentioned the importance of raising awareness about forced marriage in colleges and universities, to increase awareness among the student population, including overseas students.

3) Wider community awareness

Some interviewees said that, while there is general public awareness of the concept of forced marriage, people's understanding of it is limited:

"I think people know that forced marriage exists. I think large sectors of the population think, well, that's something that happens over there in that 'ethnically different from me' corner of the population and do I need to look out for it? Is it going to affect anybody that I know?" (I-18)

"I think the 2011 Act was great, and I think it raised the issue. I don't think enough was done in the communities in relation to letting them know. You know, like information awareness on it for the general public." (I-23)

Some interviewees (I-4; I-5; I-10; I-20) said that public awareness of the indicators of forced marriage could be increased, albeit the challenges of public education were appreciated:

"... we've got to find a better way to get through to people." (I-5)

"I think that we need to raise more awareness of the fact that we do have the legislation, of the fact that if you are a victim of it, or a potential victim of it, that you can come forward and we're there to support you and we're there to do what we can. ... I think we can only do that by repeating ourselves over and over again, and telling people what's going on and what's there to help protect." (I-4)

One interviewee suggested following the template of domestic abuse awareness campaigns:

"I think if you stopped the average person in the street and asked about this, they wouldn't have any awareness of it at all. So, I think the sharing of information within the community as a whole, through whatever means that's deemed to be appropriate, whether that's in the same way that work is done on promoting awareness of domestic abuse and appropriate remedies. I think this comes under that same category." (I-10)

Other interviewees (I-17; I-21; I-23) suggested community education by way of police and/or specialist support organisations engaging with community groups and religious organisations:

"... making sure that, sort of, grassroots organisations are able to go out to communities and counteract the perceptions of forced marriage and how it might be treated in Scotland ... I think that's going to be a very helpful step in actually being able to increase protection for women and better outcomes for women, families and communities more generally." (I-17)

"... I think that is one of the situations that a lot of these things are there but the community itself are not aware, ... that's what I told the police, I said, you should go into the mosque, you should go into ... to reach out for BME people, you know, to really talk to community groups because that is the only grounds." (I-21)

9. CONCLUSIONS AND RECOMMENDATIONS

This research project set out to investigate, from a legal perspective, the operation and impact of the current legal framework in respect of forced marriage, and to assess the availability, accessibility and effectiveness of legal remedies in respect of, and sanctions against, forced marriage. Given the extension of certain measures of protection against forced marriage to forced civil partnership, the project also encompassed investigation into forced civil partnership. Likewise, in light of the connection between forced marriage and child marriage, the project also explored the topic of child marriage in Scots law, by examining Scottish legislative provision concerning age of legal capacity to marry, and reviewing it to assess its compatibility with international standards, to ascertain if reform of Scots law in respect of age of legal capacity to marry ought to be considered. In this final section of the Report, the results of the research are drawn together, to address the stated aims of the project.

Project aims:

- To understand the aims and objectives and incidence of use of Scottish legislation offering protection against forced marriage, to appreciate the extent to which the current legal framework permits individuals to thrive as equal citizens, empowered, resilient and safe.
- To understand the extent to which Scots law on capacity and consent to marry is compatible with the planned incorporation of the United Nations Convention on the Rights of the Child into Scots law, against the background of the global problem of child marriage and the desire to promote the wellbeing and happiness of children and ensure that their voices are heard and that they grow up safe and respected.
- To gauge the availability, accessibility and effectiveness of Scottish legislation offering protection against forced marriage, determining if the civil and criminal justice responses are sufficiently robust, swift, consistent and co-ordinated, or if improvement in the legal framework and legal practice is required to strengthen the protection in Scots law of individuals at risk of forced marriage.

- To help policymakers in Scotland assess what can and should be done to strengthen protection in Scots law of individuals at risk of forced marriage, ensuring that perpetrators of violence are identified, sanctioned and held to account by the justice system, and helping to eradicate this practice from Scotland.
- To improve knowledge and practice concerning forced marriage among the legal community in Scotland and beyond, to strengthen professional service and support for individuals at risk of forced marriage.

This section of the Report distils key findings, based on the case digest, the Freedom of Information requests and recorded statistics, and the views and experiences of forced marriage law and practice in Scotland of the legal professionals who completed the online survey and of those individuals who participated in interviews, and sets out recommendations that we consider are apt to address the issues identified in the Report.

a) Evaluation of the 2011 Act

1) Overview

Despite the limited use, in practice, of the 2011 Act, most participants in the research project consider that its introduction has strengthened the protection in Scots law of victims of forced marriage. However, the conjectured under-reporting of instances of forced marriage is still widely considered to be problematic.

Far fewer participants in the research project consider that the criminal penalty for breach of a FMPO is effective in protecting persons from being forced into marriage without their free and full consent, and very few participants consider that the remedy of FMPO is effective in penalising perpetrators of forced marriage. Although the deterrent effect of the 2011 Act is impossible to measure, many participants in the project believe that the legislation has a valuable deterrent effect, and it is widely considered that the overall messaging effect of the 2011 Act is its most significant feature: the very existence of the 2011 Act is deemed to be positive in terms of the message that it communicates to individuals, families, and communities.

The uniform view of participants is that, in practice, forced civil partnership has not been an issue. None of the participants has had any experience of legal proceedings concerning forced civil partnership, and no participant is aware of any difficulty arising from operation of the 2011 Act in the context of civil partnership.

2) Force

Although, in theory, there is a clear distinction between arranged marriage and forced marriage, there is a perception among participants that, in practice, it can be difficult to distinguish between these two types of marriage. Although most participants think that the evidential thresholds set out in the 2011 Act in relation to the grant of interim and final orders are correct, it was widely observed that, in practice, the high evidentiary threshold that must be satisfied in order to secure a FMPO means that such an order can be difficult to obtain. There is wide support for the approach whereby the remedy of FMPO is competent irrespective of whether or not an applicant has adduced evidence of an actual, planned marriage (as, for example, in *City of Edinburgh Council v S*⁴³⁴).

3) Applications for FMPOs

A FMPO is widely perceived to be a powerful remedy and to constitute a significant judicial intervention. As such, the order is seen by many legal professionals to be a 'last resort' mechanism. This partly may explain why so few orders have been granted since implementation of the 2011 Act.

Participants universally consider that it is very difficult for a victim – the protected person – to act as the applicant for a FMPO. However, the case of *B v D*⁴³⁵ (in which the pursuer, aged 21 years at the time the action was raised, successfully sought an order under section 1 of the 2011 Act, against her parents and another family member that they should refrain from forcing her into a marriage) is an example of a victim, with appropriate supports, being successful in bringing an action and securing a FMPO.

434 2015 SLT (Sh Ct) 69, at 82.

435 Also known as *AB v CD and DD and EF – or – B v CD, DD and EF* (Note) [2021] SC GLW 15, 2021 SLT (Sh.Ct.) 347, 2022 Fam LR 26.

There is uncertainty among legal professionals as to when particular agencies should exercise responsibility for instigating an application for a FMPO. In practice, applications for a FMPO almost always will be made by the relevant local authority. The perception among legal professionals is that the designation of the Lord Advocate and the chief constable of the Police Service of Scotland, respectively, as 'relevant third parties' has had no, or at least very limited, practical significance. It is widely considered that the relevant local authority, in effect, is the 'gatekeeper' of applications for a FMPO.

Recommendation 1: clarification should be provided as to when particular 'relevant third parties' should exercise responsibility for instigating an application for a Forced Marriage Protection Order ('FMPO'), to ensure that each relevant third party is taking proper action at the appropriate time. In particular, the type of circumstances in which the Lord Advocate, and the chief constable of the Police Service of Scotland, respectively, might be expected to instigate proceedings for an application for a FMPO, rather than the relevant local authority, should be reviewed and clearly set out in the Scottish Government's statutory guidance and in relevant professional protocols. There should be national monitoring of which relevant third parties have applied for orders under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 Act ('2011 Act'), and of the success/failure of such applications. Data analysis should be used to identify potential issues regarding the operation and functioning of the 2011 Act.

At local authority level, participants indicated that social work practice is not uniform across all Scottish local authorities, with services in some local authorities being deemed to be more proactive and better informed than others as regards the operation and functioning of the forced marriage legislation.

Recommendation 2: there ought to be a national framework for local authorities on responding to forced marriage (including a standard operating procedure and clear referral pathways), as well as a named individual within each local authority who is assigned to lead on matters pertaining to forced marriage. Further, to support coordinated action planning, cases of actual or threatened forced marriage should be treated across all local authority areas as appropriate for referral to MARACs.

Although some participants perceive that there could be benefit in conferring 'relevant third party' status on other persons, such as victim/survivor support organisations, on balance, adding such groups to the list of relevant third parties is not recommended. Under current rules, an application for a FMPO may be made by any other person with the leave of the court,⁴³⁶ meaning that it is open to a support organisation, in an appropriate case, to seek such leave. Conferring relevant third party status on such organisations (with the power, therefore, to apply for a FMPO, even in the face of opposition from the protected person) could undermine service users' confidence in an organisation. Moreover, there would be funding and resources implications for any such organisation seeking to bring an application on behalf of a victim.

436 s 3(2), 2011 Act.

4) Duration and review of FMPOs

While it is apparent from participants' responses that the duration of a FMPO will be peculiar to the circumstances of an individual case, it is also apparent that, in practice, this has caused uncertainty for applicants, given the difficulties of weighing the need for victim protection against justification for interference in an individual's and family's life. There is very little published case law available to help guide applicants. Participants are divided on the question whether or not it would be helpful for legislation to prescribe minimum and/or maximum durations for orders, and on whether or not there should be a mandatory review period for a FMPO.

Recommendation 3: since FMPOs, interim and final, can be seen as compromising individuals' human rights – both those of the protected person and those of the perpetrator(s) – it is recommended that, akin to a Compulsory Supervision Order made by a children's hearing, a FMPO should last for as long as the judge considers it to be necessary, but that any FMPO granted by the court must be reviewed by a judge a minimum of once per year from the date of making the order.

5) The protected person's wishes and feelings

For the purposes of the 2011 Act, a court must have such regard to the protected person's wishes and feelings so far as they are reasonably ascertainable, as the court considers appropriate on the basis of the person's age and understanding.

Having regard to the views of a child or young person, or a vulnerable adult, is a regular exercise for judges, and the operation of the 2011 Act does not present peculiarities in that regard. It is very important, however, that appropriate supports are in place to assist a protected person in making their wishes and feelings known, in order to secure that individual's health, safety and wellbeing, including, in particular, in cases where the protected person is not the applicant. This is especially the case where an order made by the court is at odds with the wishes and feelings of the protected person.

Recommendation 4: it should be ensured that one or more agency is identified by the Scottish Government as being available within each local authority area to engage with victims of forced marriage in order to offer support in respect of any safety and/or action-planning resulting from forced marriage. In cases where a protected person is not the applicant for a FMPO, nor a party to the forced marriage proceedings, there should be appropriate signposting to ensure that the protected person is aware of their rights to enter into court proceedings, and have appropriate representation.

6) Coordination with other legal proceedings

An application for a FMPO may proceed in conjunction with, or independently of, other legal proceedings aimed at protecting the victim, such as a children's hearing, or an application for a child protection order, or a non-harassment order. Whilst there is some support among participants for pursuing multiple remedies via different legal proceedings, there is also concern among legal professionals about potential lack of coordination between FMPO proceedings and related child protection proceedings, children's hearings, and/or criminal prosecution.

Recommendation 5: where the applicant for a FMPO is a relevant third party, there should be clarity among all relevant third parties as to the pathway that is being taken to protect the victim. Where, for example, there are multiple sets of proceedings, relevant third parties should endeavour to ensure that the approach being taken is not detrimental to the interests and wellbeing of the protected person. To safeguard the victim and to ensure that there is as much coordination as is possible between different sets of legal proceedings, it should be incumbent on a relevant third party applicant to liaise with other relevant third parties, and with relevant services in the local authority area, to ascertain if criminal proceedings have been, or should be, instigated in respect of forced marriage, and/or, with regard to child victims, to discuss with the Principal Reporter if any referral to a children's hearing has been, or should be, made, or any application for a child protection order, or any other order, has been, or should be, made.

Recommendation 6: section 13 ('Amendment of Children's Hearings (Scotland) Act 2011') of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 should be reviewed, and consideration should be given to empowering a sheriff to make a direct referral to the Principal Reporter to instruct that urgent consideration be given to child protection measures in respect of a child.

b) Evaluation of the criminalisation of forced marriage

1) Offence of breaching FMPO

While imposing a criminal penalty for breach of a FMPO 'gives the civil order teeth', in practice, there have been no prosecutions in terms of section 9 of the 2011 Act.

2) Offence of forced marriage

Likewise, there have been no prosecutions of the offence of forced marriage contrary to section 122 of the 2014 Act.

Few participants in the research project consider that section 122 of the 2014 Act is effective in protecting persons from being forced into marriage without their free and full consent. Likewise, few participants consider that section 122 is effective in penalising perpetrators of forced marriage, or that it is effective as a deterrent to forced marriage.

Although some participants believe that the 2014 Act has a beneficial messaging effect, there is widespread criticism of the criminalisation of forced marriage, partly because of its tendency to make victims resistant to reporting wrongful behaviour on the part of family members. The view was widely expressed by participants that victims do not want their family members to be criminally prosecuted.

There is also some concern that criminalisation interferes with victims seeking, or supporting the making of, civil orders under the 2011 Act, and that victims are confused as to the nature and consequences of the different remedies/sanctions that exist in respect of forced marriage.

Recommendation 7: in addition to national monitoring of which relevant third parties have applied for orders under the 2011 Act, and of the outcomes of such applications (see Recommendation 1), there should be national monitoring of the number of reports that are made to Police Scotland in respect of breaches of FMPOs, the number of reports that are made to the Procurator Fiscal in respect of the same, and the number of prosecutions and convictions that take place under section 9 of the 2011 Act. Likewise, there should be national monitoring of the number of reports that are made to Police Scotland in respect of offences under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014, the number of reports that are made to the Procurator Fiscal in respect of the same, and the number of prosecutions and convictions that take place thereunder.

c) The international dimension to forced marriage

Of the cases that present in Scotland concerning forced marriage, it is very likely that there will be a cross-border element. In outgoing cases, it is important, where possible, to ensure that a FMPO, with appropriate measures, is in place before an individual who is at risk of forced marriage is removed from Scotland. There is uncertainty, however, among legal professionals regarding the procedures for recognition and enforcement of a FMPO granted in one part of the UK in other parts of the UK.

Recommendation 8: clarification should be provided in the Scottish Government's statutory guidance as to the legal basis and procedures for the recognition and enforcement of a FMPO granted in one part of the UK in other parts of the UK. The importance of effective co-operation between intra-UK legal systems should be emphasised in the statutory guidance, as should be the need for relevant third parties to work closely with UK agencies, such as the UK Border Force and the UK Forced Marriage Unit.

d) Victim profile and victim barriers

Honour-based abuse, including forced marriage, is suffered by a wide range of victims.

Age is recognised to be a significant risk factor in relation to forced marriage. Participants emphasise that victims under 16 years of age give rise to child protection concerns, meaning that child protection processes should take priority. Individuals aged 16-18 years are also considered to be in a particularly vulnerable category.

Recommendation 9: in light of uncertainty among some participants about whether or not child protection processes apply to victims of forced marriage aged between 16 and 18 years, the Scottish Government's statutory guidance on forced marriage should be updated and clarified in respect of this point, giving guidance on whether a protected person aged 16-17 years should be supported by children and families support and protection services, or by adult support and protection services.

Participants voiced concern about adults with incapacity and vulnerable adults who may be at risk of forced marriage. It is widely recognised that such victims may be less readily identifiable because they do not attend school, college or university, and there may be no social work involvement with the individual and/or their family, or involvement with mental health and/or disability services.

Difficulty in finding a solicitor with expertise in forced marriage law and practice, and reduced access to legal aid, are considered to be barriers to victims seeking legal advice and assistance in respect of forced marriage, particularly in cases having a cross-border dimension where an individual may be at risk of forced marriage outside Scotland. This increases the importance of victims being able to access victim-centred support and assistance from third sector, specialist support organisations that are recognised to have wide-ranging knowledge and understanding of forced marriage and its consequences, particularly with regard to victims whose first language is not English, and/or whose cultural upbringing may disempower them from seeking help from the police and/or legal advice.

Recommendation 10: for victims of forced marriage who sit outside the child protection and adult support and protection frameworks, and for victims who are not able to seek direct assistance from the police and/or lawyers, a very important avenue of support is provided by third sector, specialist support organisations. Ongoing funding of these organisations should be an essential part of any national strategy against forced marriage. Additionally, consideration should be given at Scottish Government level to promoting a national awareness-raising campaign that highlights relevant helplines (such as Scotland's Domestic Abuse and Forced Marriage Helpline), and other sources of support for victims of forced marriage.

e) Case reporting, publication of decisions and data collection

Many participants commented on the very small number of reported cases concerning forced marriage, and expressed concern that the low volume of case reporting means that legal practitioners can consult only limited case law, and that only limited lessons can be learned from decided cases on forced marriage. Concern also was expressed that there could be geographical disparity in the FMPOs that are being granted, the outcomes of which are not reported. The view among participants is that transparency of decision-making and 'open justice' are important, and that wider information-sharing through publication of decided cases would be helpful.

Recommendation 11: as part of the national strategy against forced marriage, and in order to ensure transparency and open justice, sheriffs should be encouraged, wherever possible, to publish any decision taken in proceedings under the 2011 Act or to issue a short explanatory note thereon (using anonymisation, where appropriate, to protect the interests of vulnerable parties).

With regard to data collection concerning forced marriage, the data collected by the UK Forced Marriage Unit in relation to Scotland lacks granular detail, which makes it difficult to undertake full analysis of the nature and scale of the problem of forced marriage across different areas of Scotland. Moreover, the exercise of submitting Freedom of Information requests to relevant Scottish public authorities, and analysis of the responses received, revealed inconsistencies across local authority areas in the approach taken to release of information regarding forced marriage.

Recommendation 12: as part of the national strategy against forced marriage, there should be central information-gathering, with national monitoring, of the number and nature of applications for FMPOs that are submitted in each local authority area, and of the success/failure of such applications. National monitoring should also include the number of referrals, with Reporter's decisions, made in each local authority area in respect of proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage, in order that a comprehensive mapping can be carried out of legal proceedings across Scotland pertaining to forced marriage.

f) Minimum age of marriage

There is a very wide range of views among legal professionals on the question whether or not international recommendations on minimum age of marriage should be accepted in Scotland and on whether or not the minimum age of marriage in Scots law should be raised. While participants recognise that there are various factors in support of raising the minimum age of marriage in Scots law, they also refer to various factors that are against so doing. More generally, participants highlight existing inconsistencies and policy tensions in Scots law regarding the matter of age of legal capacity.

Recommendation 13: a review of the subject of age of legal capacity in Scots law should be carried out, with full consultation and opportunity for debate. Any proposed change to the rule of Scots law concerning minimum age of marriage should not be recommended in isolation, but as part of a comprehensive review of Scots law pertaining to age of legal capacity, and taking account of human rights considerations, including the right to marry.

g) Education and training

All participants in the research project consider that education and training are central to national strategies in respect of violence against women and girls, and against domestic abuse, including forced marriage.

Participants recognise that introductory and ongoing professional education and training in respect of forced marriage (including cultural awareness training and trauma-informed training) should be provided for members of front-line services, such as the police and social workers, as well as for members of the legal profession (including the judiciary), children's reporters, and panel members serving on children's hearings.

Recommendation 14: as part of national strategies in respect of violence against women and girls, and against domestic abuse, there should be a commitment (including financial commitment) to ongoing education and training in respect of forced marriage. As part of this commitment, the Scottish Government's statutory guidance on forced marriage should be updated and refreshed on a regular basis, with corresponding training modules and/or webinars available.

Updated, bespoke guidance should be produced and made available for use in schools, colleges and universities, as well as bespoke guidance for use among community groups and within third sector, specialist support organisations and other public places, such as hospitals, surgeries, libraries, and at children's hearings centres.

APPENDIX A: FREEDOM OF INFORMATION REQUESTS

Freedom of Information ('FOI') requests were submitted to various Scottish public authorities in terms of the Freedom of Information (Scotland) Act 2002, including all Scottish local authorities, Police Scotland, the Crown Office & Procurator Fiscal Service ('COPFS'), the Scottish Courts and Tribunals Service ('SCTS'), and the Scottish Children's Reporter Administration ('SCRA').

Each FOI request stated that the researchers were employed by the University of Glasgow and that they were working on a Scottish Government-funded research project, Combatting Forced Marriage: Strengthening Protection in Scots Law. Further, each request explained that the project was in receipt of Delivering Equally Safe funding, and that it had received full ethics approval from the University of Glasgow. A short description of the project was included, explaining that the project entailed speaking to legal and other professionals in Scotland about both forced and child marriage, to investigate their opinions and experience in practice, of forced marriage legislation in Scotland.

SUBMITTING THE REQUESTS

Each FOI request was tailored to the recipient, as follows:

Scottish local authorities

"We request information from XX⁴³⁷ Council under the Freedom of Information (Scotland) Act 2002 concerning:

- any report submitted to and /or investigation undertaken by XX Council concerning any instance of forced marriage in the XX local authority area since March 2011.
- any proceedings commenced by XX Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (including the outcome of such proceedings); and
- any referral or involvement by XX Council in respect of proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q).
- We seek information about the number and incidence of such reports/investigations/proceedings/referrals/involvement, as well as the anonymised facts of any such matters."

Police Scotland

"We request information about any reports to and /or investigations by Police Scotland and any further proceedings in Scottish courts or tribunals since March 2011 involving any of the following legislation:

1. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011;
2. Anti-social Behaviour, Crime and Policing Act 2014, section 122; or
3. Children's Hearings (Scotland) Act 2011, section 62(5)(n), (o) or (p), or section 67(2)(q).

We seek information about the number and incidence of proceedings/cases involving the above-named legislation, as well as the content of any such proceedings/cases, including the case name, citation, and any digital link to the proceedings/case. This includes, but is not limited to, information contained in the interim Vulnerable Persons Database(iVPD) and those with a Scottish Government Justice Department (SGJD) crime code."

437 The appropriate identifying information was inserted for each of Scotland's 32 local authorities.

COPFS

“We request information from the Crown Office and Procurator Fiscal Service about any report submitted to COPFS and any subsequent court proceedings, and any diversion from prosecution, since March 2011 involving any of the following legislation:

1. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011;
2. Anti-social Behaviour, Crime and Policing Act 2014, section 122; or
3. Children’s Hearings (Scotland) Act 2011, section 62(5)(n), (o) or (p), or section 67(2)(q).

We seek information about the number and incidence of reports/court proceedings/diversions from prosecution involving the above-named legislation.”

SCTS

“We request information from the Scottish Courts and Tribunals Service about any proceedings in Scottish courts or tribunals since March 2011 involving any of the following legislation:

1. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011;
2. Anti-social Behaviour, Crime and Policing Act 2014, section 122; or
3. Children’s Hearings (Scotland) Act 2011, section 62(5)(n), (o) or (p), or section 67(2)(q).

We seek information about the number and incidence of proceedings/cases involving the above-named legislation, as well as the content of any such proceedings/cases, including the case name, citation, and any digital link to the proceedings/case.”

SCRA

“We request information from the Scottish Children’s Reporter Administration about any referral of a child or young person to the Children’s Reporter or any children’s hearing since March 2011 involving any of the following legislation:

1. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011;
2. Anti-social Behaviour, Crime and Policing Act 2014, section 122; or
3. Children’s Hearings (Scotland) Act 2011, section 62(5)(n), (o) or (p), or section 67(2)(q).

We seek information about the number and incidence of referrals/hearings involving the above-named legislation.”

FOI RESPONSES: ‘POSITIVE’ RESPONSES RECEIVED FROM SCOTTISH LOCAL AUTHORITIES

Aberdeen City Council⁴³⁸

“Only one investigation has taken place since March 2011, when concerns were raised that a child might be at risk of a forced marriage.

This investigation led to an application for a forced marriage protection order (FMPO) being raised in Court by Aberdeen City Council under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 since March 2011.

This application was successful and a FMPO was granted for a 2-year period. This application did not require to be renewed when it lapsed 2 years later.

The application was in regard to a protected person within school age, who disclosed to the Authority details of marriage arrangements being entered into by their parents without their consent.

438 Extract from FOI 491323954 (21 March 2023).

Four other children were identified at risk of forced marriage but did not require any protective measures being implemented after initial investigation.”

City of Edinburgh Council⁴³⁹

“Q1. Any report submitted to and /or investigation undertaken by Edinburgh Council concerning any instance of forced marriage in the Edinburgh local authority area since March 2011.

A1. There have been no such reports submitted or investigations undertaken, however, our Registrars Service have had two concerns raised since 2011. Concerns were raised by interested party to marriage. When the concerns were raised, the team member reported them to the relevant department.

In first instance, this was reported to the Home Office and Police Scotland.

In the second instance, this was reported to the Social Work Department and Police Scotland.

Q2. Any proceedings commenced by Edinburgh Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (including the outcome of such proceedings).

A2. There have been four applications. One involved recalling the sist and seeking a fresh order. Interim Forced Marriage Protection Orders were granted in all four cases. One was later dismissed.

Q3. Any referral or involvement by Edinburgh Council in respect of proceedings under the Children’s Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q). We seek information about the number and incidence of such reports/ investigations/ proceedings/ referrals/ involvement, as well as the anonymised facts of any such matters.

A3. There have been four applications for Forced Marriage Protection Orders (FMPOs) for girls under 16. In three of these, interim orders were granted shortly after the applications were lodged. The cases were then sisted and ultimately dismissed. The fourth case went to the proof and the Council was unsuccessful.”

Dumfries and Galloway Council⁴⁴⁰

“1. any report submitted to and/or investigation undertaken by Dumfries and Galloway Council concerning any instance of forced marriage in the Dumfries and Galloway local authority area since March 2011.

There have been no reports.

2. any proceedings commenced by Dumfries and Galloway Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (including the outcome of such proceedings).

Two Forced Marriage Protection Orders were applied for in 2019 and granted.

3. any referral or involvement by Dumfries and Galloway Council in respect of proceedings under the Children’s Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q).

There have been no referral or involvement by Dumfries and Galloway Council in respect of this.”

Dundee City Council⁴⁴¹

“1. any report submitted to and /or investigation undertaken by Dundee City Council concerning any instance of forced marriage in the Dundee City local authority area since March 2011.

During this time, we have investigated the circumstances of 9 children/ young people.

439 Extract from FOI 41256 (22 March 2023).

440 Extract from FOI 5410574 (21 March 2023).

441 Extract from FOI 20230222004 (6 March 2023).

2. any proceedings commenced by Dundee City Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (including the outcome of such proceedings).

During this time, we have not commenced any legal action relating to this legislation concerning any of these cases.

3. any referral or involvement by Dundee City Council in respect of proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q).

During this time, we have not commenced any legal action relating to this legislation concerning any of these cases.

We seek information about the number and incidence of such reports/investigations/proceedings/referrals/involvement, as well as the anonymised facts of any such matters.

All 9 were investigated, follow up actions depended on circumstances. For 6 markers were put on passports, none met the threshold for FMPO.

Other interventions included harassment order, arrest, the family moving house, support from women's aid, and monitoring by schools."

Glasgow City Council⁴⁴²

"1. any report submitted to and /or investigation undertaken by Glasgow City Council concerning any instance of forced marriage in the Glasgow City local authority area since March 2011.

On inspecting our records, it would appear that compliance with this part of your request would cost the Council more than the upper limit allowed by section 12(1) of the Act and the fees regulations made under the Act (this limit is currently £600). Accordingly, we are unable to comply with this part of your request.

While we believe that forced marriage is more commonly associated with younger individuals and would more often than not be a child protection matter, it is also an issue for adults. This is not something that the Council reports on, therefore, to answer your request accurately we would need to review all CareFirst records relating to children and adults open to Social Work Services over the last 12 years. The number of individuals currently engaged with SWS is in the region of 50,000. The Council has calculated that the costs of providing your requested information would be in excess of £600.00. This figure has been calculated in accordance with the Fees Regulations made under the Freedom of Information (Scotland) Act. This includes the costs which would be incurred in locating and retrieving the information and staff time. The staff time charged reflects the true pay scale of the member(s) of staff who would be involved capped at a ceiling of £15/hour per member of staff.

The Council has the option of complying with requests where the costs exceed £600. However, on this occasion we have decided not to due to the resources (both financial and human) which voluntary compliance with this request would divert away from our core business.

2. any proceedings commenced by Glasgow City Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (including the outcome of such proceedings).

Glasgow City Council legal services have raised three actions. Two were granted and one is currently in court.

3. any referral or involvement by Glasgow City Council in respect of proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q).

On inspecting our records, however, it would appear that compliance with this part of your request would also cost the Council more than the upper limit allowed by section 12(1) of the Act and the fees regulations made under the Act (this limit is currently £600). Accordingly, we are unable to comply with this part of your request. As at 11 April 2023 the Council is responsible for 1,960 looked after children. This is the current number of looked after children, the figures for 2011 onwards would be significantly higher. To answer your request accurately we would need to review all CareFirst records relating to children over the last 12 years. The Council has calculated that the costs of providing your requested information would be in excess of £600.00. This figure has been calculated in accordance with the Fees Regulations made under the Freedom of Information (Scotland) Act. This includes the costs which would be incurred in locating and retrieving the information and staff time. The staff time charged reflects the true pay scale of the member(s) of staff who would be involved capped at a ceiling of £15/hour per member of staff. The Council has the option of complying with requests where the costs exceed £600. However, on this occasion we have decided not to due to the resources (both financial and human) which voluntary compliance with this request would divert away from our core business.”

Midlothian Council⁴⁴³

“1. any report submitted to and /or investigation undertaken by Midlothian Council concerning any instance of forced marriage in the Midlothian local authority area since March 2011.

As per below. In 2018, family of five siblings – Inter-Agency referral discussion completed under Edinburgh and Lothian’s Inter-Agency child Protection procedures – safety planning agreed.

In 2017, Inter-Agency referral discussion completed under Edinburgh and Lothian’s Inter-Agency child Protection procedures – safety planning agreed.

2. any proceedings commenced by Midlothian Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 including the outcome of such proceedings); and

5 Forced Marriage Protection Orders were granted in respect of siblings on 10 January 2019 at Edinburgh Sheriff Court. They remain in force.

An interim Forced Marriage Protection Order was granted on 30 June 2017. The action was later dismissed after an agreed position was reached.

3. any referral or involvement by Midlothian Council in respect of proceedings under the Children’s Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q).

“None.”

South Lanarkshire Council⁴⁴⁴

“1. Nil.

2. One which was not insisted upon.

3. One, the Council was involved in a case re possible referral to the Children’s Hearing System under S67 of the 2011 Act insofar that a member of school staff was cited as a witness to court.”

443 Extract from FOI 512828586 (15 May 2023).

444 Extract from FOI/WC/JM (31 May 2023).

FOI RESPONSES: 'QUALIFIED POSITIVE' RESPONSES RECEIVED FROM SCOTTISH LOCAL AUTHORITIES

East Lothian Council⁴⁴⁵

"Although East Lothian Council holds this information, it is exempt from disclosure under Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002. This exemption relates to personal information. When information is released as the result of a freedom of information request it is technically released to the general public and not just to the person or organisation making the information request. East Lothian Council is a small, rural authority with close knit communities. The number of situations is so low that we fear releasing this detail would lead to the identification of the individuals concerned."

Highland Council⁴⁴⁶

'We are unable to disclose this information due to the low numbers involved. The Council is concerned that, where very small numbers of individuals are involved, there is a high likelihood that the published information, along with other information which may be available to members of the public, could lead to the identification of the individuals involved. We therefore believe that the information is exempt under Sections 38(1)(b) and 38(2A)(a) of the Freedom of Information (Scotland) Act 2002. The Council believes that the public interest lies with protecting the privacy of these individuals and this outweighs the public interest in publishing this information.'

Inverclyde Council⁴⁴⁷

"1. There has only been one investigation undertaken by Inverclyde Council. It would not be appropriate to provide a report/detail of the subject of the report due to fear of identification.

2. None

3. None."

"Re. 1: Inverclyde Council does hold the requested information, but the information cannot be disclosed because the following exemption under Part 2 of the Act applies: Exemption: Section 36(2): Confidentiality"

North Ayrshire Council⁴⁴⁸

"1. Any report submitted to and/or investigation undertaken by North Ayrshire Council concerning any instance of forced marriage in the North Ayrshire local authority area since March 2011.

We are unable to provide information on instances of forced marriage in North Ayrshire since 2011, due to the small numbers identified. This is due to the risk of individuals being identified and this increases when low numbers are involved.

We consider therefore that the release of this information could potentially enable the identification of individuals. Therefore, North Ayrshire council gives notice under Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002, as the information requested is considered to be personal data by the Data Protection Act 2018.

2. Any proceedings commenced by North Ayrshire Council in Scottish courts since March 2011 concerning the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (including the outcome of such proceedings); and

There have been no proceedings commenced by North Ayrshire Council in Scottish Courts concerning Forced Marriage since 2011; therefore, North Ayrshire Council gives notice under Section 17 of the Freedom of Information (Scotland) Act 2002 that this information is not held.'

445 Extract from FOI 2023/ELF7096 (13 March 2023).

446 Extract from FOI 512700245 (31 May 2023).

447 Extract from FOI 20230522 (1 June 2023).

448 Extract from FOI 101004298129 (8 March 2023).

3. Any referral or involvement by North Ayrshire Council in respect of proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage, including, in particular, section 62(5)(n), (o) or (p), or section 67(2)(q).

Information on North Ayrshire Council's involvement in proceedings under the Children's Hearings (Scotland) Act 2011 concerning forced marriage is not held on internal reporting systems, therefore North Ayrshire Council provides notice under Section 17 of the Freedom of Information (Scotland) Act 2002 that this information is not held in a reportable format."

Perth and Kinross Council⁴⁴⁹

"Question 1

Less than 3. Please note that where the information held relates to a very low number of people (fewer than 3 in a category) or would enable a calculation to be made that may result in a figure less than 3, I have withheld the number as details could identify individuals.

I consider that this information is exempt under the terms of Section 38(1)(b), with reference to section 38(2)(A)(a), of the Freedom of Information (Scotland) Act 2002.

This information is personal data as defined by Article 4(1) of the UK General Data Protection Regulations.

The individual(s) concerned have not given their consent to the information being disclosed to the person making the request.

Disclosure of the information, and any other information which is likely to come into the possession of the person making the request would lead to disclosing personal information relating to another individual who can be identified from that information. The UK General Data Protection Regulations set out principles for how personal data must be processed. I consider that releasing this information would breach the following principles.

- a. Personal data shall be processed lawfully, fairly and in a transparent manner - release of this information would breach this principle as individuals had no expectation or understanding that this personal information would be released to the public.
- b. Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes- release of this information would breach this principle as the purpose of obtaining and recording the personal information was not to release the information to the public.

Question 2

Less than 3. Please note that where the information held relates to a very low number of people (fewer than 3 in a category) or would enable a calculation to be made that may result in a figure less than 3, I have withheld the number as details could identify individuals.

I consider that this information is exempt under the terms of Section 38(1)(b), with reference to section 38(2)(A)(a), of the Freedom of Information (Scotland) Act 2002.

This information is personal data as defined by Article 4(1) of the UK General Data Protection Regulations.

The individual(s) concerned have not given their consent to the information being disclosed to the person making the request.

Disclosure of the information, and any other information which is likely to come into the possession of the person making the request would lead to disclosing personal information relating to another individual who can be identified from that information. The UK General Data Protection Regulations set out principles for how personal data must be processed. I consider that releasing this information would breach the following principles.

449 Extract from FOI ATI 20230504001 (5 June 2023).

- a. Personal data shall be processed lawfully, fairly and in a transparent manner - release of this information would breach this principle as individuals had no expectation or understanding that this personal information would be released to the public.
 - b. Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes- release of this information would breach this principle as the purpose of obtaining and recording the personal information was not to release the information to the public.
- a. Personal data shall be processed lawfully, fairly and in a transparent manner - release of this information would breach this principle as individuals had no expectation or understanding that this personal information would be released to the public.
 - b. Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes- release of this information would breach this principle as the purpose of obtaining and recording the personal information was not to release the information to the public.”

Question 3

Less than 3. Please note that where the information held relates to a very low number of people (fewer than 3 in a category) or would enable a calculation to be made that may result in a figure less than 3, I have withheld the number as details could identify individuals.

I consider that this information is exempt under the terms of Section 38(1)(b), with reference to section 38(2)(A)(a), of the Freedom of Information (Scotland) Act 2002.

This information is personal data as defined by Article 4(1) of the UK General Data Protection Regulations.

The individual(s) concerned have not given their consent to the information being disclosed to the person making the request.

Disclosure of the information, and any other information which is likely to come into the possession of the person making the request would lead to disclosing personal information relating to another individual who can be identified from that information. The UK General Data Protection Regulations set out principles for how personal data must be processed. I consider that releasing this information would breach the following principles;

West Lothian Council⁴⁵⁰

“This information is held within individual client files. Accordingly, a response to this request would necessitate analysis of all raw data, which would be a significant undertaking. The council considers that it would take a member of staff in excess of 40 hours to collate the information requested. Therefore, the council considers that providing the information requested would cost in excess of £600, and as a result the request is refused under section 12 of FOISA.”

FOI RESPONSES: OTHER PUBLIC AUTHORITIES

Police Scotland⁴⁵¹

“In relation to the statistics you have requested in points 1 and 2,⁴⁵² please find them in the attached spreadsheet [below].

I would draw your particular attention to the caveat noted for iVPD marker information which I have included below for emphasis but which essentially means that due to automated weeding within iVPD, the statistics provided should not be considered to be comparable across years or to be a complete dataset.

450 Extract from FOI 101000404602 (12 February 2024).

451 Extract from FOI 2022 – 1589 (1 September 2022).

452 Information about any reports to and /or investigations by Police Scotland and any further proceedings in Scottish courts or tribunals since March 2011 involving the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011; or the Anti-social Behaviour, Crime and Policing Act 2014, s 122.

'Police Scotland does not retain any information for statistical purposes once a record has been weeded from iVPD. When a record is weeded, it is removed from the system, and there is no retention of data outside the weeding and retention policy. Please note, the weeding and retention policy states that if a person is recorded as "no concern / not applicable" then this will only be retained for 6 months.'

In regard to crime statistics, these have been provided for the full period of your request.

In regard to statistics from our Interim Vulnerable Persons Database, this was only introduced in April 2014 and so for the period prior to this in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

In relation to the additional information you have requested such as the content of cases and case names I must advise that In [sic] terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with this information ...

I can confirm that Police Scotland holds the information that you have requested.

The exemption that I consider to be applicable to the information requested by you is section 38(1) (b) - Personal Data.

Personal data is defined in Article 4 of the General Data Protection Regulation (GDPR) as:

'Information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person'

Section 38(2A) of the Act provides that personal data is exempt from disclosure where disclosure would contravene any of the data protection principles set out at Article 5(1) of the GDPR which states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'

Article 6 of the GDPR goes on to state that processing shall be lawful only if certain conditions are met.

The only potentially applicable condition is set out at Article 6(1)(f) which states:

'Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child'

Whilst I accept that you may have a legitimate interest with regards the disclosure of this information and that disclosure may well be necessary for that purpose, I am nonetheless of the view that those interests are overridden by the interests or fundamental rights and freedoms of the data subject.

On that basis, it is my view that disclosure of the information sought would be unlawful."

I [sic] relation to your request for copies of citations or of digital links to cases I must advise that Police Scotland do not hold this information. ...As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland. ...

In regards to point 3 of your request⁴⁵³ ... I must advise that in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland."

453 Information about any reports to and /or investigations by Police Scotland and any further proceedings in Scottish courts or tribunals since March 2011 involving the CHS Act 2011, ss 62(5)(n), (o) or (p) or 67(2)(q).

Attached spreadsheet:

**Number of recorded and detected: Police Scotland⁴⁵⁴
Period: March 2011 to June 2022 (Calendar Years)**

Crime classification	Number of recorded crimes											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Forced marriage	0	0	0	0	0	0	0	0	1	1	1	0
Breach of Forced Marriage Protection Order	0	0	0	0	0	0	0	0	0	0	0	0
Number of Detected crimes												
Forced marriage	0	0	0	0	0	0	0	0	0	0	0	0
Breach of Forced Marriage Protection Order	0	0	0	0	0	0	0	0	0	0	0	0

COPFS⁴⁵⁵

“1. Within the specified period COPFS has received 5 reports under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011. It was decided that no action was to be taken in respect of these reports.

2. Within the specified period COPFS has received no reports with regards to the Anti-social Behaviour, Crime and Policing Act 2014, section 122 and therefore in terms of Section 17 of FOISA this information is not held.

3. Within the specified period COPFS has received no reports with regards to the Children’s Hearings (Scotland) Act, section 62(5) (n), (o) or (p), or section 67(2)(q). Therefore, in terms of Section 17 this information is not held.”

454 All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 15/8/2022. Please note, the data within Table 1 has been extracted from the crime database.

Please note, the recorded data has been extracted using the date raised.

Please note, the detected data has been extracted using the date detected.

Please note, the following Stats Class Codes have been selected: ‘101109’ (Forced Marriage), ‘503922’ (Breach of Forced Marriage Protection Order).

455 Extract from FOI R06582-22 (27 October 2022).

SCTS⁴⁵⁶

“1. Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011

In respect of point 1 of your request, please see response in the table below. The information provided is based on the best information available from the case management system as at the 24 August 2022.

The number of Forced Marriage Protection Order cases registered between March 2011 and 31st July 2022:⁴⁵⁷

Cases Registered	22
-------------------------	----

In addition, we note from the legislation Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (legislation.gov.uk) that where there is a breach to an order of this type this would be dealt with by way of criminal proceedings. Having conducted a search of our criminal case management system, no cases were identified as having any charge codes relating to the legislation specified. Therefore, I must give notice in terms of section 17 FOISA that the requested information is information which SCTS does not hold

2. Anti-social Behaviour, Crime and Policing Act 2014, section 122

In respect of point 2 of your request, SCTS does try wherever possible to provide the information requested, however I must give notice in terms of section 17 FOISA that the requested information is information which the SCTS does not hold.

A search of the case management system to identify charges of this type has been carried out. However, no cases were identified as having any charge codes relating to the legislation specified.

3.Children’s Hearings (Scotland) Act 2011, section 62(5)(n), (o) or (p), or section 67(2)(q)

I regret that SCTS must refuse this part of your request in terms of section 14(1) of FOISA in that it is considered to be vexatious and, as such, the SCTS is not obliged to comply with your request

By way of explanation, if SCTS can establish that it holds the information being requested, section 37 of FOISA (information contained in court records) would be applied as the information would be held in court documents. However, before SCTS can apply this exemption it must establish that the information in question is held. I’m afraid that the work to do this would impose a significant burden on the SCTS, whereby dealing with it would require a disproportionate amount of time and the diversion of an unreasonable proportion of financial and human resources away from the SCTS’s other statutory and core operations.

456 Extract from FOI 2022 143 (30 August 2022).

457 Data Notes

1. This data is based on the registration date of the case.
2. Multiple cases may be raised against the same defender. For example, where there are two separate protected persons raising an action against the same defender.
3. Forced Marriage Protection Orders may be made by a sheriff ex proprio motu in other civil proceedings (e. g. divorce, section11 orders etc).
These are not included in this figure.

Given that such referrals would be contained in the interlocutor of civil proceedings, these are not easily identifiable and would require us to access and review interlocutors in respect of each case to identify cases which may relate to the Children's Hearings (Scotland) Act 2011 and the sections you have specified, being section 62(5)(n), (o) or (p). In respect of section 67(2)(q), we have interpreted from your request that you are seeking the number of "referrals" made to the sheriff to establish the grounds under sections 93 and 94 of the 2011 Act. Whilst there are specific case categories for "Children's Referrals", our case management system does not have the functionality when registering such a referral to identify the section under which the grounds stated apply. We would therefore have to access the court records themselves to identify instances of the information sought.

Even to restrict this to a period of one year, the records involved would still number in the thousands. Taking all of this into account we consider that the request is manifestly unreasonable and disproportionate, given the inevitable burden it would impose on the SCTS and the eventual outcome if we can establish the information held."

SCRA⁴⁵⁸

"The requested information is not held in a reportable format within our statistical analysis database. In order to collate and provide this information, we would need to manually review case files and the cost of doing so would exceed the relevant amount prescribed by Scottish Ministers, which is currently £600. ...

Since 2013, 24 children have had forced marriage (q) grounds applied to referrals made to the SCRA. Six of these resulted in a Children's Hearing.

In relation to you [sic] request for information prior to 2013, the SCRA does not hold this information. Section 17 of the FOI(S)A states that where public authorities receive requests for information that they do not hold, they must issue a notice advising that they do not hold the requested information. The reason the SCRA does not hold the requested information is because the Children's Hearings (Scotland) Act 2011, came into force in 2013, and therefore prior to this we did not record section 67(2)(q) grounds."

458 Extract from SCRA FOI Response (15 November 2022).

APPENDIX B : ONLINE SURVEY QUESTIONS

QUESTIONNAIRE

COMBATTING FORCED MARRIAGE: STRENGTHENING PROTECTION IN SCOTS LAW

Professor Janeen Carruthers
and Ms Felicity Belton

PRIVACY NOTICE

Your Personal Data

The University of Glasgow will be what's known as the 'Data Controller' of your personal data Processed in relation to this survey. This privacy notice will explain how the University of Glasgow will process your personal data.

Why we need it

We are collecting basic personal data such as your gender and employment in order to better understand legal professionals' awareness and perceptions of the forced marriage legislative framework in Scotland. We will only collect data that we need in order to provide and oversee this service.

Legal basis for processing your data

We must have a legal basis for processing all personal data. As this processing is for Academic Research we will be relying upon Task in the Public Interest in order to process the basic personal data that you provide.

What we do with it and who we share it with

All the personal data you submit is processed by staff at the University of Glasgow in the United Kingdom.

How long do we keep it for?

Your data will be retained by the University for 10 years after the survey has concluded. After this time, data will be securely deleted.

What are your rights?*

Where we have relied upon your consent to process your data, you also have the right to withdraw your consent at any time. You can request access to the information we process about you at any time. If at any point you believe that the information we process relating to you is incorrect, you can request to see this information and may in some instances request to have it restricted, corrected or, erased. You may also have the right to object to the processing of data and the right to data portability.

If you wish to exercise any of these rights, please submit your request via the webform or contact XXXXX.

*Please note that the ability to exercise these rights will vary and depend on the legal basis on which the processing is being carried out.

Complaints

If you wish to raise a complaint on how we have handled your personal data, you can contact the University Data Protection Officer who will investigate the matter.

Our Data Protection Officer can be contacted at XXXX If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner's Office (ICO) <https://ico.org.uk/>

I consent to the University processing my personal data for the purposes detailed above.

Required

- Yes
- No

PARTICIPANT INFORMATION

You are invited to take part in this research study by completing a questionnaire.

Please read the following information. You may want to print off a copy of this section, for your records.

The research:

COMBATTING FORCED MARRIAGE: STRENGTHENING PROTECTION IN SCOTS LAW

This research is being conducted by Professor Janeen Carruthers and Ms Felicity Belton, School of Law, University of Glasgow.

The project is concerned with strengthening protection in Scots law of women and girls at risk of forced marriage. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 introduced the Forced Marriage Protection Order ('FMPO'). The Anti-Social Behaviour, Crime and Policing Act 2014 criminalised forced marriage. There has been no legal analysis of FMPOs or criminalisation in Scotland. This project, funded by the Scottish Government's Delivering Equally Safe programme, will investigate the operation and impact of the current legal framework and the effectiveness of available legal remedies/sanctions. As part of the project, we are seeking to gather information from legal professionals across Scotland on ease of access to, and the effectiveness of, prevention and protection measures against forced marriage. To that end, we are circulating this questionnaire, with a view to gathering information on individuals' experience of forced marriage law in practice, its strengths and weaknesses, and potential for reform.

The dataset generated, will enable us to make recommendations to policymakers, with a view to strengthening victim protection in combatting forced marriage. The results of the project will be written up in a Project Report that will be submitted to the Scottish Government and a link sent to all Questionnaire respondents. Additionally, there may be resultant publications that will be read by academics, legal practitioners and policy makers.

This research will be completed by 31 October 2023.

Do I have to take part?

No. Completing this questionnaire is voluntary. Participants do not have to answer any question they do not wish to answer.

How long will it take to complete the questionnaire?

This questionnaire contains 54 questions and should take no longer than 30 minutes to complete.

Confidentiality

We will do our best to keep your information confidential. All data is stored in a password protected electronic format. To help protect your confidentiality, the questionnaire does not collect information that will personally identify you (such as your IP address).

Are there any disadvantages to completing the questionnaire?

It is not anticipated that any respondent will be disadvantaged by completing this questionnaire.

Are there any advantages in completing the questionnaire?

There are unlikely to be direct personal benefits to you as a result of completing the questionnaire, but your contribution will help inform the project conclusions and recommendations.

Who is funding the research?

The research is funded by the Scottish Government's Delivering Equally Safe programme.

Has anyone reviewed the questionnaire?

Yes. The questionnaire has been reviewed by the University of Glasgow, College of Social Sciences Research Ethics Committee.

If you have concerns about the conduct of the research, you can contact XXXX, College Ethics Lead/Convener of College Research Ethics Committee) XXXX.

a) Your employment

1. How would you describe your current job?

- Judge (Senator of the College of Justice/Sheriff Principal/ Sheriff)
- Solicitor (practising)
- Solicitor (non-practising)
- Advocate
- Solicitor advocate
- Principal Reporter/Children's Reporter
- Court administration
- Other: [Please give details]

2. Year of professional qualification: [Please enter year]

3. In what geographical area(s) do you usually work? [Tick all that apply]

- Glasgow and Strathkelvin
- Grampian, Highland and Islands
- Lothian and Borders
- North Strathclyde
- South Strathclyde, Dumfries and Galloway
- Tayside, Central and Fife

4. What is your primary field of legal practice? [Please give details]

5. Does your legal practice include any of the following? [Tick all that apply]

- Criminal law
- Family law
- Human rights law
- Immigration and asylum law

b) Your awareness of forced marriage and associated legislation

6. **To what extent are you informed about forced marriage and associated legislation in Scotland? Please tick the relevant boxes below.**

Legislation	Comprehensive knowledge	Satisfactory knowledge	Limited knowledge	No knowledge
Anti-social Behaviour, Crime and Policing Act 2014, section 122 ('Offence of forced marriage: Scotland')				
Children's Hearings (Scotland) Act 2011, section 67(2)(q) (forced marriage ground of referral to children's hearing)				
Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011				
Marriage (Scotland) Act 1977, section 1 ('Minimum age for marriage')				
Marriage (Scotland) Act 1977, section 20A ('Grounds on which marriage void')				

c) Your experience of legal proceedings concerning forced marriage

7. **Do you have practical experience of legal proceedings concerning forced marriage?**

Yes/No

If yes, please go to Question 8.

If no, please go to Question 13.

8. **Do you have practical experience of:**

- giving legal advice on forced marriage to an alleged victim of forced marriage Yes/No
- giving legal advice on forced marriage to an alleged perpetrator of forced marriage Yes/No
- giving legal advice to a third party applicant in relation to proceedings under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 Yes/No
- presiding over legal proceedings concerning forced marriage Yes/No

9. Do you have practical experience of seeking in respect of an alleged victim of forced marriage a legal remedy/sanction in the form of any of the following:

- a forced marriage protection order Yes/No
- a compulsory supervision order or related order from a children's hearing Yes/No
- a declarator of nullity of marriage Yes/No
- a matrimonial or other interdict Yes/No
- a non-harassment order Yes/No
- other remedy/sanction [please give outline, anonymous details] Yes/No

10. Do you have practical experience of prosecuting an accused person in respect of any of the following offences concerning forced marriage:

- breach of a forced marriage protection order Yes/No
- breach of a matrimonial interdict Yes/No
- breach of a non-harassment order Yes/No
- the offence of forced marriage under s 122 of the Anti-social Behaviour, Crime and Policing Act 2014 Yes/No
- breach of a Domestic Abuse Protection Notice or Domestic Abuse Protection Order under the Domestic Abuse (Protection) (Scotland) Act 2021 Yes/No
- other offence [please give outline, anonymous details] Yes/No

11. Do you have practical experience of defending an alleged perpetrator of forced marriage against the award of legal remedy/sanction in the form of

- a forced marriage protection order Yes/No
- a compulsory supervision order or related order from a children's hearing Yes/No
- a matrimonial or other interdict Yes/No
- a non-harassment order Yes/No
- other remedy/sanction [please give outline, anonymous details] Yes/No

12. Do you have practical experience of defending an accused person in respect of an offence concerning forced marriage?

- breach of a forced marriage protection order Yes/No
- breach of a matrimonial interdict Yes/No
- breach of a non-harassment order Yes/No
- the offence of forced marriage under s 122 of the Anti-social Behaviour, Crime and Policing Act 2014 Yes/No
- breach of a Domestic Abuse Protection Notice or Domestic Abuse Protection Order under the Domestic Abuse (Protection) (Scotland) Act 2021 Yes/No
- other remedy/sanction [please give outline, anonymous details] Yes/No

d) Your evaluation of legal remedies/sanctions available in Scotland in respect of forced marriage

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 introduced the Forced Marriage Protection Order ('FMPO'). The 2011 Act makes provision for protecting persons from being forced into marriage without their free and full consent and for protecting persons who have been forced into marriage without such consent.

Definition of force

13. By section 1(6) of the 2011 Act, 'force' includes (a) coercion by physical, verbal or psychological means, threatening conduct, harassment or other means, and (b) knowingly taking advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage. Is this definition of 'force' adequate?

Yes/No

Comments

Legal test for grant of a FMPO

14. The 2011 Act has been interpreted as applying irrespective that the applicant has not adduced evidence of an actual, planned marriage (e.g. City of Edinburgh Council v S 2015 SLT (Sh Ct) 69, at 82). Do you support this interpretative approach?

Yes/No

Comments

15. In deciding whether to make an order for the purpose of protecting a person from forced marriage and, if so, what order to make, the court must find that, on the balance of probabilities, the evidence supports the granting of the order.

Section 5 of the 2011 Act, which concerns interim orders, provides that in deciding whether to make an interim order "the court must have regard to all the circumstances including any risk of significant harm to the protected person or to another person if the order is not made immediately". This provision is not repeated in section 1, which concerns final orders. Section 1(2) is widely drawn, providing that "the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person".

With regard to interim orders, do you think this is:

the correct legal test

Yes/No

the correct evidential threshold /standard of proof

Yes/No

Comments

With regard to final orders, do you think this is:

the correct legal test

Yes/No

the correct evidential threshold /standard of proof

Yes/No

Comments

Contents of orders

16. A FMPO may contain such prohibitions, restrictions, requirements or other terms as the court considers appropriate for the purposes of the order. Do you think the wording and ambit of section 2 of the 2011 Act ('Contents of orders') is

too restrictive

appropriate

too wide?

Comments

17. Have you encountered particular issues or difficulties affecting an alleged victim of forced marriage arising from conduct outwith Scotland (e.g. a Scottish domiciled individual who was forced, or was at risk of being forced, into marriage elsewhere in the UK or overseas; or a foreign domiciled individual who was forced or was at risk of being forced into marriage in Scotland)?

Yes/No

If yes, please give outline, anonymous information, describing the particular issue or difficulty:

Applications for orders

18. Section 3(1)(b) of the 2011 Act empowers the Court of Session or sheriff court to make a FMPO on application by a person in need of protection (a 'protected person') or a relevant third party. Relevant third parties comprise local authorities, the Lord Advocate, and the Chief Constable, Police Scotland. Any other person may make an application only with the leave of the court (s 3(2)).

Has the enabling of relevant third party applicants been a positive step in helping victims of forced marriage overcome some of the barriers encountered in seeking legal remedies/sanctions?

Yes/No

Comments

19. Should any other individual or body be specified as a relevant third party?

Yes/No

If yes, who/what?

Interim orders

20. By section 5 of the 2011 Act, in a case where it considers that it is equitable to do so and having regard to all the circumstances, including any risk of significant harm to the protected person or to another person if the order is not made immediately, a court has power to make an interim FMPO, in the absence of a person who is/would be a party to the proceedings for the order and may do so whether or not that person has received requisite notice. Do you think this power is appropriate?

Yes/No

Comments

Duration of orders

21. Section 6 of the 2011 Act provides that a FMPO has effect (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is recalled under section 7 or extended under section 8), and (b) where no such period is specified, until the order is recalled under section 7.

Should there be a statutorily prescribed minimum permitted duration for a FMPO?

Yes/No

If yes, what period do you suggest?

Comments

Should there be a statutorily prescribed maximum permitted duration for a FMPO?

Yes/No

If yes, what period do you suggest?

Comments

22. Should there be a mandatory review date for a FMPO?

Yes/No

If yes, what should be the review period?

Comments

Variation and recall, and extension, of orders

23. Section 7 of the 2011 Act empowers the Court of Session or sheriff court to vary or recall an interim FMPO or a FMPO. Do you think the wording and ambit of section 7 is

too restrictive

appropriate

too wide?

Comments

24. By section 8 of the 2011 Act, the Court of Session or sheriff court, before expiry of the specified period for which a FMPO or interim FMPO is to have effect, may extend the order. Do you think the wording and ambit of section 8 is

too restrictive

appropriate

too wide?

Comments

Wishes and feelings of the protected person

25. For the purposes of the 2011 Act, a court must have such regard to the protected person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding (ss 1(3), 3(4), 7(3) and 8(5)). Do you think this is the appropriate approach?

Yes/No

Comments

Offence of breaching FMPO

26. Section 9(1) of the 2011 Act establishes that any person who, knowingly and without reasonable excuse, breaches a FMPO commits an offence. Do think this rule, imposing a criminal penalty for breach of a civil order, is appropriate?

Yes/No

Comments

27. By section 9(4)(a) of the 2011 Act a person who is guilty of the offence of breaching a FMPO is liable on summary conviction to imprisonment for a period not exceeding 12 months and/or a fine not exceeding the statutory maximum. Do think this is appropriate/?

Yes/No

Comments

28. By section 9(4)(b) of the 2011 Act a person who is guilty of the offence of breaching a FMPO is liable on conviction on indictment to imprisonment for a period not exceeding 2 years and/or a fine. Do think this is appropriate?

Yes/No

Comments

29. Do you think that the mechanisms for policing and enforcing a FMPO are adequate?

Yes/No

Comments

Overview of 2011 Act

30. Overall, do you think introduction of the 2011 Act has strengthened the protection in Scots law of victims of forced marriage?

Yes/No

Comments

		<i>Very effective</i>	<i>Quite effective</i>	<i>Not effective</i>
31.	How effective is the remedy of FMPO in protecting persons from being forced into marriage without their free and full consent?			
32.	How effective is the remedy of FMPO in protecting persons who have been forced into marriage without their free and full consent?			
33.	How effective is the criminal penalty for breach of a FMPO in protecting persons from being forced into marriage without their free and full consent?			
34.	How effective is the criminal penalty for breach of a FMPO in protecting persons who have been forced into marriage without their free and full consent?			
35.	How effective is the remedy of a FMPO in penalising perpetrators of forced marriage?			
36.	How effective is the remedy of a FMPO as a deterrent to forced marriage?			

Comments

Criminalisation of forced marriage

Section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 ('2014 Act') criminalised forced marriage. A person commits an offence of forced marriage under section 122 if s/he (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. By section 122(9) a person guilty of an offence under section 122 is liable on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both; or on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or both.

		Very effective	Quite effective	Not effective
37.	How effective is s 122 of the 2014 Act in protecting persons from being forced into marriage without their free and full consent?			
38.	How effective is s 122 of the 2014 Act in protecting persons who have been forced into marriage without their free and full consent?			
39.	How effective is s 122 of the 2014 Act in penalising perpetrators of forced marriage?			
40.	How effective is s 122 of the 2014 Act as a deterrent to forced marriage?			

Comments

One of the main reasons given by the UK Government in 2013 for criminalising forced marriage was to permit ratification of the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention').

41. Do you think section 122 of the 2014 Act is a useful addition to the offence of breaching a FMPO set out in section 9 of the 2011 Act?

Yes/No

Comments

Application to civil partnerships

42. Do you have practical experience of legal proceedings concerning forced civil partnership?

Yes/No

43. Are you aware of any difficulty arising from application of the 2011 Act in this context?

Yes/No

Comments

Other protection against, or assistance in respect of, forced marriage

44. The 2011 Act does not affect any other legal protection or assistance that is available to a person who has been, or is at risk of being, forced into marriage. In your experience of legal proceedings concerning forced marriage, has any other protective legal measure (e.g. declarator of nullity or a matrimonial interdict) been sought in addition to, or as an alternative to, a FMPO?

Yes/No

If yes, please give outline, anonymous information.

45. Have you been involved in a professional capacity in a children’s hearing where the ground of referral was section 67(2)(q) of the Children’s Hearings (Scotland) Act 2011?

Yes/No

		Very effective	Quite effective	Not effective
46.	[[Having regard to <i>City of Edinburgh Council v S</i> 2015 SLT (Sh Ct) 69, at 76]] How effective is s 67(2)(q) of the Children’s Hearings (Scotland) Act 2011 in working alongside the 2011 Act in strengthening the protection available to victims of forced marriage?			

Comments

Access to legal aid

47. Are you aware of any alleged victim of forced marriage having encountered difficulty in accessing legal aid in respect of forced marriage proceedings?

Yes/No

If yes, please give outline, anonymous information.

48. What action, if any, is needed to improve access to legal aid in respect of forced marriage proceedings?

Comments

Potential for reform

49. Do you think any legislative reform and/or supplementary measures is/are needed to improve the availability and effectiveness of legal remedies and sanctions against forced marriage in Scotland?

Yes/No

Comments

50. By virtue of the Marriage (Scotland) Act 1977, section 1, no person domiciled in Scotland may marry before he attains the age of 16, and a marriage solemnised in Scotland between persons either of whom is under the age of 16 shall be void.

To address the practice of child marriage in England and Wales, the Marriage and Civil Partnership (Minimum Age) Act 2022 was introduced and provides that a marriage solemnised in England and Wales, where one party is under the age of 18, is void.

Should legislative reform be considered in Scotland to increase the minimum age for marriage to 18?

Yes/No

Comments

51. The Scottish Government has set out in its Restorative Justice: Action Plan 2019 its commitment to having restorative justice services across Scotland by 2023, in partnership with organisations across the Scottish justice sector.

Should restorative justice practices be introduced in the context of forced marriage in Scotland?

Yes/No

If yes, what format should these restorative justice practices take?

If no, why would you favour excluding forced marriage from the stated Scottish Government policy?

Comments

Supplementary

52. Are you aware of the Scottish Government's published guidance for legal professionals, to assist legal professionals in private practice, law centres, local authorities, Crown Office and Procurator Fiscal Service, Scottish Children's Reporters Administration and others to work with victims of forced marriage sensitively and effectively, and also with other agencies involved with the victim?

Yes/No

[Responding To Forced Marriage: Practice Guidelines for Legal Professionals, Scottish Government 2012]

If yes, have you found the published guidance useful?

If no, in what way could the published guidance be improved?

53. Do you think further action is necessary to educate the legal profession in Scotland about forced marriage and the forced marriage legislative framework, and to raise awareness of available legal remedies and sanctions against forced marriage in Scotland?

Yes/No

Comments

54. Do you think action is necessary to educate the general population of Scotland about Scots law pertaining to forced marriage and to raise awareness of available legal remedies and sanctions against forced marriage in Scotland?

Yes/No

Comments

THANK YOU FOR TAKING THE TIME TO COMPLETE THIS QUESTIONNAIRE

APPENDIX C : INDICATIVE INTERVIEW QUESTIONS

INTERVIEWS – INDICATIVE QUESTIONS

COMBATTING FORCED MARRIAGE: STRENGTHENING PROTECTION IN SCOTS LAW

Professor Janeen Carruthers and Felicity Belton

1. The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 introduced the Forced Marriage Protection Order. The 2011 Act makes provision for protecting persons from being forced into marriage without their free and full consent and for protecting persons who have been forced into marriage without such consent.

Do you think introduction of the 2011 Act has strengthened the protection in Scots law of victims of forced marriage?

2. How effective is the remedy of Forced Marriage Protection Order (and the criminal penalty for breach thereof) in protecting persons from being forced into marriage without their free and full consent (or who have been forced into marriage)?
3. Section 3(1)(b) of the 2011 Act empowers the Court of Session or sheriff court to make a Forced Marriage Protection Order on application by a person in need of protection (a 'protected person') or a relevant third party. Relevant third parties comprise local authorities, the Lord Advocate, and the Chief Constable, Police Scotland. Any other person may make an application only with the leave of the court (s 3(2)).

Has the enabling of relevant third party applicants been a positive step in helping victims of forced marriage overcome some of the barriers encountered in seeking legal remedies/sanctions? Would it be useful to specify any other individual or body as a relevant third party?

4. Section 6 of the 2011 Act provides that a Forced Marriage Protection Order has effect (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is recalled under section 7 or extended under section 8), and (b) where no such period is specified, until the order is recalled under section 7.

Would it be useful to have statutorily prescribed minimum and/or maximum permitted durations for a Forced Marriage Protection Order, and a mandatory review date?

5. For the purposes of the 2011 Act, a court must have such regard to the protected person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding (ss 1(3), 3(4), 7(3) and 8(5)).

Does this direction give rise to any difficulty of implementation in forced marriage cases?

6. How effective are the mechanisms for policing and enforcing Forced Marriage Protection Orders?
7. How effective is the remedy of a Forced Marriage Protection Order in penalising perpetrators of, and in deterring, forced marriage?

8. Section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 criminalised forced marriage. Do you think this provision has strengthened the protection in Scots law of victims of forced marriage?
9. How effective is s 122 of the 2014 Act in protecting persons from being forced into marriage without their free and full consent (or who have been forced into marriage)?
10. How effective is s 122 of the 2014 Act in penalising perpetrators of, and in deterring, forced marriage?
11. How effectively do the 2011 Act and the 2014 Act work in conjunction with other protective legal measures, such as declarator of nullity or matrimonial interdict, in protecting persons from being forced into marriage without their free and full consent (or who have been forced into marriage)?
12. Section 67(2)(q) of the Children's Hearings (Scotland) Act 2011 establishes forced marriage as a ground for referral to the Scottish Children's Reporter.
How effective is s 67(2)(q) in working alongside the 2011 Act and the 2014 Act in strengthening the protection available to victims of forced marriage?
13. Are you aware of particular issues or difficulties affecting an alleged victim of forced marriage arising from conduct outwith Scotland (e.g. a Scottish domiciled individual who was forced, or was at risk of being forced, into marriage elsewhere in the UK or overseas; or a foreign domiciled individual who was forced or was at risk of being forced into marriage in Scotland)?
14. Do you think any legislative reform (e.g. raising the minimum age for marriage in Scots law) and/or supplementary measures is/are needed to improve the availability and effectiveness of legal remedies and sanctions against forced marriage in Scotland?
15. Do you think further action is necessary to educate (a) lawyers and (b) the general population in Scotland about forced marriage and the forced marriage legislative framework, and to raise awareness of available legal remedies and sanctions against forced marriage in Scotland?

