



The Scottish  
Government  
Riaghaltas na h-Alba



# FORCED MARRIAGE

STATUTORY GUIDANCE

# **Scottish statutory guidance**

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# Chapter 1

## Status, relevant persons, aims and content

### Status

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

### Relevant persons

2. This guidance is given to relevant persons and bodies in Scotland listed in Appendix A in so far as they exercise public functions in or as regards Scotland (“relevant persons”). Relevant persons include those who protect and promote the welfare of children including schools<sup>2</sup>, Scottish local authorities, NHS Health Boards, the Scottish Children’s Reporter Administration (SCRA), Children’s Hearings Scotland and Chief Constables, of the Scottish police. It will also be given to Child Protection Committees which are locally based, inter-agency strategic partnerships responsible for individual and collective leadership and direction for the management of child protection across Scotland. And to Community Safety, Violence Against Women Multi-Agency Partnerships as these multi-agency partnerships also have the management of child protection as part of their remit.

3. The guidance will also be given to relevant persons and bodies in Scotland who exercise public functions to protect adults at risk from abuse. Examples of these bodies may include, but are not limited to, the police, NHS Health Boards and local authorities, in particular adult social work services. It will also be given to Adult Support and Protection Committees which are locally based, inter-agency strategic partnerships responsible for individual and collective leadership and direction for the management of adult protection across Scotland and relevant persons and bodies as identified in the Adult Support & Protection (Scotland) Act 2007<sup>3</sup> who exercise public functions to support and protect adults who may be at risk from harm. The guidance is also given to any person exercising public functions on behalf of a relevant person.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2011/15/contents>

<sup>2</sup> In accordance with the Registration of Independent Schools (Scotland) Regulations 2006: <http://www.legislation.gov.uk/ssi/2006/324/contents/made> the registration application includes a requirement that registered schools have in place appropriate child protection policies and procedures. Registered schools are required to ensure that they have up-to-date safeguarding policies and procedures and that all staff are trained as necessary. The breadth and detail of the procedures should be in line with national guidelines and can be adjusted to reflect the specific type of school.

<sup>3</sup> <http://www.legislation.gov.uk/asp/2007/10/contents>

## **Aims and content**

4. In particular, the guidance is given to Chief Executives, Directors and senior managers of bodies mentioned in Appendix A. It outlines their responsibilities for developing and maintaining local procedures and practice arrangements to enable their frontline practitioners to handle cases of forced marriage effectively. It sets out how cases of forced marriage should be responded to using existing frameworks for protecting children, adults at risk and victims of abuse.

5. This document gives guidance about the effect of Part 1 of the Act and about other matters relating to forced marriage. Chapters 2 and 3 give guidance on the background to the Act and other matters relating to forced marriage and the effect of Part 1. Chapters 4 to 6 go on to set out the duties and responsibilities of relevant persons, bodies and offices in Appendix A.

6. It also highlights actions that may inadvertently place a victim at risk of harm. These include failure to share information appropriately among agencies, the danger of involving families, breaches of confidentiality and all forms of family counselling, mediation, arbitration and reconciliation.

7. As forced marriage is a form of child and adult abuse, it should form part of existing domestic abuse, child and adult protection structures, policies and procedures.

# Chapter 2

## Background

8. In August 1999, the UK Government's Home Office Minister for Community Relations, Mike O'Brien MP established a Forced Marriage Working Group to undertake an investigation into the scale and extent of forced marriage across the UK. The Working Group's findings were published in "[A Choice by Right](#)" in 2000. The Working Group concluded, amongst other things, that there were eight guiding principles that should be adopted by all agencies dealing with forced marriage.

9. These were:

- Commitment
- Safety and protection
- Sensitivity
- Involving communities
- Multi-agency working
- Monitoring
- Training
- Promoting awareness of rights and services

10. The Foreign & Commonwealth Office responded to this by setting up the Community Liaison Unit in 2000. The role of the Unit was to provide information and support to the victims of forced marriage and professionals who were dealing with cases. In 2005, the Unit developed into a joint Home Office and Foreign & Commonwealth Office Unit known as the [Forced Marriage Unit \(FMU\)](#).

11. The Forced Marriage Unit deals with approximately 300 to 400 cases of forced marriage a year (469 cases in 2010). Of these, (up until 2009) approximately 10% involved people from Scotland. In 2010 this percentage was significantly less at 2.7%. However it should be clarified that neither the Forced Marriage Unit nor Scottish stakeholders supporting victims of forced marriage believe that this decrease in reporting reflects a real reduction in forced marriage cases in Scotland. A more likely reason is that Scottish victims are seeking advice and support from organisations closer to home, rather than contacting the London-based Forced Marriage Unit. Also the Scottish Government is aware that cases will be under-reported generally as a result of a lack of public awareness of the issue and where to seek help and advice.

12. The main support organisations in Scotland for female victims, who make up 85% of all cases, are [Shakti Women's Aid](#) in Edinburgh and [Hemat Gryffe Women's Aid](#) in Glasgow. In 2010-11 Shakti Women's Aid supported 12 forced marriage cases and Hemat Gryffe Women's Aid 13 cases. There is no reliable source of information that captures the 14% of cases involving male victims of forced marriage. However, since we know that 20 cases

involving female victims make up 86% of all cases, we can estimate that there were at least 4 cases which involved male victims. Forced marriage also affects people with learning and other disabilities, regardless of which cultural community they belong to and evidence suggests that for people with learning disabilities, forced marriage may occur at a similar rate for men and women.

13. Victims are also becoming more visible to the police and there has been joint work between the Association of Chief Police Officers (Scotland) (ACPOS) and the main support organisations, to increase the confidence of victims to come forward and report honour based violence including forced marriage.

14. The Scottish and UK Governments undertook a joint consultation, [\*Forced Marriage, A Wrong Not a Right\*](#), in 2005 to ask whether or not forced marriage should become a criminal offence. Agencies, professionals and individuals were invited to respond to the paper.

15. While there was no clear majority among respondents about whether or not a specific criminal offence should be created, the majority thought that the disadvantages of creating new legislation would outweigh the advantages and potentially drive forced marriage further underground by preventing victims from coming forward. As a consequence of the consultation paper, the [\*Forced Marriage \(Civil Protection\) Act\*](#) was enacted in 2007. The Act forms part of the Family Law Act 1996 and makes provision for protecting children, young people and adults in England, Wales and Northern Ireland through the civil courts, from being forced into marriage without their free and full consent.

16. In 2009 the Scottish Government launch a consultation [\*Forced Marriage: A Civil Remedy?\*](#) which asked whether Scotland should introduce its own civil legislation to protect victims of forced marriage.

17. The consultation was overwhelmingly in favour of the introduction of legislation and led to the development of the [\*Forced Marriage etc. \(Protection And Jurisdiction\) \(Scotland\) Bill\*](#) which was introduced to the Scottish Parliament on 29 September 2010. The Bill made provision for protecting people from being forced to enter into marriage without their free and full consent and for protecting those who have been forced to enter into marriage without such consent. It also amended the jurisdiction of the sheriff court in relation to actions for declarator of nullity of marriage. It successfully made its way through the Scottish Parliamentary process in March 2011, received Royal Assent on 27 April 2011 and was [\*commenced on 28 November 2011\*](#).

# Chapter 3

## Understanding the issues around forced marriage

### Understanding forced marriage

18. The Scottish Government regards forced marriage as a form of violence against women<sup>4</sup>/gender-based violence and, when children are involved, child abuse. It is associated with other forms of domestic abuse and 'honour-based' violence. It can happen to both men and women although most cases involve younger women and girls aged between 13 and 30. However, there is no "typical" victim of forced marriage. Some are under 16 years old, although many are older. Some victims have a disability, some have young children and some are spouses from overseas.

19. The majority of cases of forced marriage reported to date in the UK involve South Asian families. This is partly a reflection of the fact that there is a large, established South Asian population in the UK. However, it is clear that forced marriage is not solely a South Asian problem and there have been cases involving families from East Asia, the Middle East, Europe and Africa. Some forced marriages take place in the UK with no overseas element, while others involve a prospective partner coming from overseas or a British citizen being sent abroad.

20. There is a clear difference between a forced marriage and an arranged marriage. In arranged marriages, the families of both spouses take a leading role in arranging the marriage but the choice whether or not to accept the arrangement remains with the prospective spouses.

21. In a forced marriage, one or both spouses do not (or, in the case of some adults at risk and children and young people under 16, cannot) consent to the marriage and some element of duress is involved. Duress can include coercion by physical, verbal or psychological means, threatening conduct, harassment, threat of blackmail, use of deception and other means. It is also "force" to knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage.

22. Under Part 1 of the Act, a civil court may make an order for the purposes of protecting a person:

- from being forced into a ceremony of marriage or from any attempt to force the person into a ceremony of marriage, or
- who has been forced into a ceremony of marriage.

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<sup>4</sup> See definitions in Annex B for more information



23. A person (“A”) is regarded as being forced into a ceremony of marriage if another person (“B”) forces A to enter into a ceremony of marriage without A’s free and full consent. The ceremony can be religious or civil and it can take place anywhere. In addition, the ceremony does not need to be legally binding (as a marriage) under the law of Scotland or any other place.

24. The concept of force used in Part 1 includes coercion by any means (physical, verbal or psychological) such as threatening conduct, harassment or blackmail. It also includes knowingly taking advantage of a person’s incapacity to consent to marriage or to understand the nature of marriage.

## **Motives prompting forced marriage**

25. Parents, extended family and wider community members who perpetrate forced marriage often justify their behaviour as protecting the children, building stronger families and preserving cultural or religious traditions. They often do not see anything wrong in their actions. Forced marriage cannot be justified on religious grounds; every major faith condemns it, and freely given consent is a prerequisite of Christian, Jewish, Hindu, Muslim and Sikh marriages, as well marriage in other major religions.

26. Often parents and relatives believe that they are upholding the cultural traditions of their home country, when in fact, practices and values there may have changed. Some parents come under significant pressure from their extended families to ensure their children are married. In some instances, an agreement may have been made about marriage when a proposed spouse was a very young child. Many young people live their entire childhoods with the expectation that they will marry someone their parents select – some may be unaware that they have a fundamental right to choose their spouse.

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

27. While it is important to be aware of the motives which drive parents, extended family members and others to force their children to marry, these motives should not be accepted as justification for denying them the right to choose their own marriage partner and enter freely into marriage.

28. In addition to the provisions of the Act, Appendix C identifies some international law principles which may be of relevance in this context. In particular, forced marriage may involve an abuse of basic human rights including a child’s rights under the UN Convention on the Rights of the Child (UNCRC). It is also an abuse of the basic human rights of children, young people and adults, as set out in the European Convention on Human Rights and is directly contrary to the domestic laws of Scotland and the UK.

29. Some of the key motives that have been identified are:

- controlling unwanted behaviour, sexuality, sexual orientation or gender identity (including perceived promiscuity, or being lesbian, gay, bisexual or transgender) - particularly the behaviour and sexuality of women:

- controlling unwanted behaviour, for example, alcohol and drug use, socialising unchaperoned with, or simply speaking to, members of the opposite sex who are not family members, wearing make-up or behaving in what is perceived to be a 'westernised manner'
- preventing 'unsuitable' relationships, for example, outside the ethnic, cultural, religious or caste group
- protecting 'family honour' or 'izzat' (see definitions page 37) (for example this might be related to a victim disclosing rape or sexual abuse)
- responding to peer group or family pressure about conforming to expectations
- attempting to strengthen family links
- financial gain or obtaining financial security for the person with a learning disability
- ensuring land, property and wealth remain within the family
- protecting perceived cultural ideals
- protecting perceived religious ideals
- ensuring care for someone with learning/physical disability when parents or existing carers are unable to fulfil that role or because of mistrust of external social care
- concerns that younger siblings may be seen as undesirable if older sons or daughters are not already married – this could include marrying off a young person with learning/physical disability because their unmarried status might be seen as a barrier to marriage for their siblings
- assisting claims for UK residence and citizenship, and
- obtaining physical assistance or personal care for ageing parents

## **The victim**

30. Isolation is one of the biggest problems facing those trapped in, or under threat of, a forced marriage. They may feel they have no one to speak to about their situation. These feelings of isolation are very similar to those experienced by victims of other forms of domestic abuse and child abuse. In many cases an individual will not disclose fear of forced marriage. Therefore, someone who fears they may be forced to marry often comes to the attention of health professionals, police, social care services or education professionals for various behaviours consistent with distress.

31. Most cases that have been reported to the police have also included a level of collusion and planning, usually by way of a family or community meeting, to decide as to how to deal with the issue concerned. This reinforces the isolation that victims experience and the restricted options they face when trying to access help and support.

32. Victims may also be unable to seek help, because they are either imprisoned in their homes or abroad, their activities and contacts are closely monitored or their safety could be compromised by trying to access support and protection.

33. Those at risk may be reluctant to take legal action to protect themselves for fear of criminalising those involved, potential repercussions

include threats to their physical safety or child abduction, alienation of family and community and the stigma attached in involving their family and community. These issues will also be present for those who succeed in securing civil protection, and they may actually find themselves further at risk for having done so.

34. Young people forced to marry, or those who fear they may be forced to marry, are frequently withdrawn from education, restricting their educational and personal development. They may feel unable to go against the wishes of their parents and consequently may suffer emotionally, often leading to depression and self-harm. These factors can contribute to impaired social development, limited career and educational opportunities, financial dependence and lifestyle restrictions. Studies have shown that self-harm is significantly higher amongst Asian women than other groups and contributory factors include lack of self-determination, excessive control, weight of expectations of the role of women and concerns about their marriages.

35. A mental or physical disability or illness adds to a young person's, or adult's vulnerability and may make it more difficult for them to report abuse or to extricate themselves from an abusive situation. Their care needs may make them dependent on their carers.

### **Possible consequences of forced marriage**

36. Women forced to marry may find it very difficult to initiate any action to bring the marriage to an end and may be subjected to repeated rape (sometimes until they become pregnant) sexual degradation and ongoing domestic abuse within the marriage. In some cases, they suffer violence and abuse from the extended family. Victims frequently end up trapped in a relationship marked by physical and sexual abuse. The impact this has on them and on children within the marriage is immense.

37. Witnessing persistent violence and domestic abuse can traumatise children and undermine their emotional security and capacity to meet the demands of everyday life. It is also associated with depression, trauma related symptoms and low self-esteem in adulthood. Children's academic abilities can be affected.

38. Some people may think that running away is their only option. For many young people, especially women from ethnic minority communities, leaving their family can be especially hard. They may have no experience of life outside the family and therefore, they do not know how, or where to access, personal and financial support, including information on the law and their rights, particularly in their own language if it is not English. They may be suspicious or fearful of engaging with organisations such as the police.

39. Most victims/potential victims contact police seeking safety and protection but see this as a temporary solution as they hope that, despite the treatment they have been subjected to, that those closest to them, who they still love, will accept their decision and eventually agree reconciliation. This often means that the services that can be offered such as relocation are not seen as viable options unless the victim has reached a point of desperation that can be when they are at the greatest risk. The consequences for victims

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

40. For many, finding accommodation for themselves and their children is very difficult – especially for those who do not have leave to remain in the United Kingdom and do not have recourse to public funds.

41. Living away from home with little support can make a victim more isolated, thus making it more likely that they will return to the abusive situation. In addition, leaving their family (or accusing them of a crime or simply approaching statutory agencies for help) may be seen as bringing shame on their honour and on the honour of their family in the eyes of the community. This may lead to social ostracism and harassment from the family and community. For many, this is simply not a price they are prepared to pay.

42. Those who do leave often live in fear of their own families, who will go to considerable lengths to find them and ensure their return. Families may solicit the help of others to find them, or involve the police by reporting them missing or falsely accusing the person of a crime (for example theft). Some families have traced individuals through medical and dental records, bounty hunters, private investigators, local taxi drivers, members of the community and shopkeepers or through National Insurance numbers, benefit records, school and college records. Sometimes having traced them, the family murders them (so called "honour killing"). This may seem an almost exaggerated or extreme response but the risk to those who leave is very real. The potential for such a reaction from families should never be ignored or downplayed and the contents or fears of victims on this issue should be listened to.

43. Many girls and young women are withdrawn from education early. Some are taken and left abroad for extended periods, which isolates them from help and support – this limits their choices so that often they go through with the marriage as the only option. Their interrupted education limits their career choices. Even if they manage to find work, however basic, they may be prevented from taking the job or their earnings may be taken from them.

44. This leads to economic dependence, which makes the possibility of leaving the situation even more difficult. Some may be unable to leave the house unescorted – living virtually under house arrest.

### **Difficulties faced when a forced marriage takes place overseas**

45. For many, it may be their first experience of travelling overseas. If they are being held against their will and forced to marry, there are various difficulties they may encounter if they want to return to the UK. They may find it impossible to communicate by telephone, letter and e-mail. They may not have access to their passport and money. Women may not be allowed to leave the house unescorted. They may be unable to speak the local language. Often individuals find themselves in remote areas where even getting to the

nearest road can be hazardous. They may not receive the assistance they expect from the local police, neighbours, family or friends. Some individuals may find themselves subjected to violence or threats of violence.

46. If a person is a British national and also holds the nationality of another country, they are considered to be a dual national. This may mean that, in the country of their other nationality, the authorities may view them as being solely or primarily nationals of that country and treat them accordingly. The authorities or nationals may not recognise that the British Embassy or High Commission has any right to assist them or may not permit any assistance to be given. If the Foreign and Commonwealth Office considers that there is a special humanitarian reason to do so, it will consider offering assistance to dual nationals in the country of their other nationality. Forced marriage is one of those circumstances where such an exception may be made.

## **The legal position – domestic law**

47. Forcing a person into marriage became a criminal offence in Scotland on 30 September 2014 under section 122 of the Anti Social Behaviour Crime and Policing Act 2014. Other criminal offences can also be committed.

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

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

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

51. The [Domestic Abuse \(Scotland\) Act 2011](#) provides that the breach of a 'domestic abuse' interdict with a power of arrest is a criminal offence punishable by a fine or imprisonment or both.

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

53. Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010

creates an offence of engaging in ‘threatening or abusive behaviour’. Subsection (1) provides that it is an offence for a person to behave in a threatening or abusive manner where that behaviour would be likely to cause a reasonable person to suffer fear or alarm and he or she either intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm. Also section 39 of this Act creates an offence of ‘stalking’.

## **Adult protection**

54. There is a range of protective measures under legislation including the Adult Support and Protection (Scotland) Act 2007<sup>5</sup>, Adults with Incapacity (Scotland) Act 2000<sup>6</sup> and the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>7</sup> which can protect adults at risk. In certain circumstances, the police can intervene to protect adults at risk. See more on adult support and protection on page 33.

## **Child protection**

55. For information about relevant Scottish legislation, terms and powers relating to child protection including emergency child protection measures and the Children’s Hearings system, please see the Scottish Government’s [National Guidance for Child Protection in Scotland \(2010\)](http://www.scotland.gov.uk/Publications/2014/05/3052) (updated 2014) <http://www.scotland.gov.uk/Publications/2014/05/3052>. This document also has a section on honour-based violence and forced marriage.

## **Civil Remedies**

56. In addition, the following civil remedies may offer some protection or assistance to an adult who is being, or has been, forced into a marriage:

- a common law interdict with power of arrest under the Protection from Abuse (Scotland) Act 2001
- an interdict or non-harassment order under the Protection from Harassment Act 1997
- a non-harassment order under the Domestic Abuse (Scotland) Act 2011
- a matrimonial interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (available to spouses or cohabiting couples only)
- a domestic interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under ‘the 2001 Act’ (available only to couples who are or were living together)
- a determination that an interdict is a domestic abuse interdict under the Domestic Abuse (Scotland) Act 2011

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<sup>5</sup> Adult Support and Protection (Scotland) Act 2007:  
<http://www.legislation.gov.uk/asp/2007/10/contents>

<sup>6</sup> Adults with Incapacity (Scotland) Act 2000:  
<http://www.legislation.gov.uk/asp/2000/4/contents>

<sup>7</sup> Mental Health (Care and Treatment) (Scotland) Act 2003:  
<http://www.legislation.gov.uk/asp/2003/13/contents>

- a declarator of nullity of marriage, and
- divorce

## **Forced Marriage Protection Orders**

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

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

## **Relevant third parties**

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

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

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

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

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

## **Potential warning signs or indicators**

63. Individuals facing forced marriage may appear anxious, depressed and emotionally withdrawn with low self-esteem. They may come to the attention of professionals for a variety of reasons, some of which are described in the diagram opposite. Whilst the factors set out in the diagram may be, collectively or individually, an indication that someone is facing forced marriage, it should not be assumed that it is forced marriage simply on the

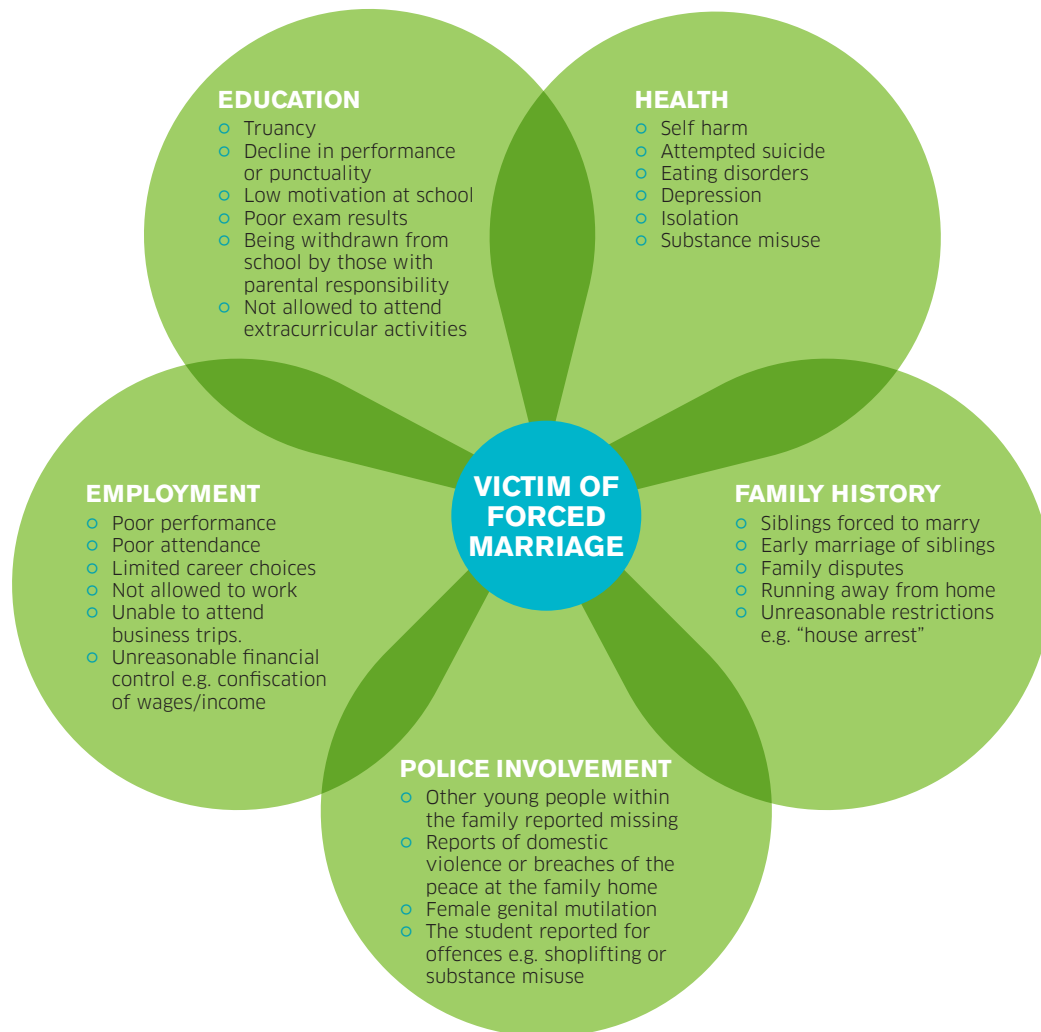
basis that someone presents with one or more of these warning signs. These warning signs may indicate other types of abuse that will also require a multi-agency response. These indicators are not meant to be exhaustive.

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

65. In certain communities, women undergo female genital mutilation (FGM) before being able to marry – usually this is performed during childhood but there have been reports of young women undergoing FGM just before a forced marriage. [FGM is illegal in Scotland](#) as well as in the rest of the UK and it is also a criminal offence to take someone overseas for the purposes of FGM.



# Warning Signs



The list of warning signs is not exhaustive. The lists are inter-linked – do not simply focus on the list which seems most relevant to your area of work.

# Chapter 4

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

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

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

68. Existing strategic bodies should ensure that their member agencies work effectively using agreed policies and procedures to tackle this issue. This includes local strategic partnerships, such as Community Safety Partnerships and Multi Agency Violence Against Women Partnerships, local Child Protection and Adult Support and Protection Committees and Multi-agency Risk Assessment Conferences (MARACs<sup>8</sup>) where these are in place.

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

### **Senior management commitment**

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

- A lead person responsible for the issue of forced marriage. This is likely to be the person with overall responsibility for protecting children, adults at risk or victims of domestic abuse<sup>9</sup> and other forms of gender-based violence

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<sup>8</sup> MARACs (Multi-agency risk assessment conferences) place women and children at the centre of any response and the risk assessment tools (SPECCSSS+/CAADA dash) can be used to identify and support women at risk of further domestic abuse/honour based violence.

<sup>9</sup> In schools this would be the designated person dealing with child protection

- Policies and procedures in place to protect those potentially at risk of forced marriage, both in terms of internal Human Resources and staff policies and the external service delivery/provision. The policies and procedures should be in line with existing statutory and non-statutory guidance on protecting children<sup>10</sup>, adults<sup>11</sup> at risk and victims of domestic abuse<sup>12</sup> and other forms of gender-based violence<sup>13</sup>
- These policies and procedures should form part of an overall child/adult protection strategy
- Policies and procedures that are updated regularly to reflect any structural, departmental and legal changes
- A named person who has responsibility for overseeing the organisational response to forced marriage ensuring that cases of forced marriage are handled, monitored and recorded properly

## Roles and responsibilities

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

- Staff have an awareness and understanding of the nature and impact of forced marriage
- Their staff understand their role in protecting people under threat of, or already trapped in, a forced marriage and how this fits into their organisation's strategy and is relevant to their work
- Their staff are familiar both with their organisational and statutory responsibilities when protecting individuals threatened with or already in a forced marriage and with the relevant internal and external policies and protocols
- Their staff know who has overall responsibility within their organisation, who has day-to-day responsibility, to whom they should refer cases within their organisation and when to refer cases to other agencies, or consult with them, and the named external contacts/teams
- Frontline staff dealing with cases of forced marriage have access to, and are strongly recommended to consult, the practice guidelines that have been issued by the Scottish Government

<sup>10</sup> [The National Guidance for Child Protection in Scotland 2010](#) which sets a national framework to help shape local practices and procedures in child protection.

<sup>11</sup> [Adult Support and Protection \(Scotland\) Act 2007 Code of Practice](#) for local authorities and practitioners exercising functions under Part 1 of the ASP Act.

<sup>12</sup> [A Partnership Approach to Tackling Violence Against Women in Scotland: Guidance for Multi-Agency Partnerships](#), Scottish Government, 2010

<sup>13</sup> [CEL 41](#) (2008) instructs Health Boards to implement an HR policy on gender based violence

## **Clear lines of accountability**

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

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

## **Victim-centred approach**

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

- Victims are listened to and they are able to communicate their needs and wishes, including the provision of interpretation and translation services
- Victims are given accurate information about their rights and choices
- Victims' wishes are considered about the level of intervention they require. Staff must make it absolutely clear to the victim when and why the organisation is going to intervene and what that intervention will be
- Staff are aware that relatives, friends, community leaders and neighbours should not be used as interpreters or advocates, as they could be amongst the perpetrators of the forced marriage – despite any reassurances from this known person. If it is appropriate to use an advocate then an independent advocate should be sourced
- The victim must always be told what information is being shared, with whom it is being shared, who will have access to it and why it is being shared.

- Obtain the victim's consent to share information (within the limits of e.g. child protection policy). Always tell the victim if you are planning to share information; who you will share it with; why; and who else might be party to it. You should also ask/tell her if any other organisations are aware of her circumstances even if you are not planning to share information with them

## **Effective inter-agency working and information sharing**

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

- There are policies and procedures for organisations to work effectively together to protect people facing forced marriage. These procedures are set out in existing child and adult protection guidance
- The procedures include arrangements for sharing information and making referrals including, where appropriate, with the police, social work, health and the UK Government's Forced Marriage Unit
- Staff understand the importance of sharing information with other agencies at the earliest opportunity
- Staff understand the difference between breaking confidence (involving the family, community members, etc without the individual's consent) and sharing information with other professionals to protect the individual from significant harm
- Local Child Protection, Adult Support and Protection Committees and Violence Against Women Multi Agency Partnerships are likely to take a lead role in developing policies and procedures for inter-agency working and information sharing to protect adults and children from harm
- Staff understand that a service user is entitled to withdraw their consent to information being shared at any point. The service user must be told that they can exercise this right and that, should they do so, they will be informed of any impact on the service they will receive from the organisation(s) in question. Staff would then take the necessary action to inform other agencies and note the change on record. No further information should be disclosed unless there are legal reasons for doing so, such as child or adult protection issues or where an organisation has a statutory duty to protect, like the police

75. Anyone who processes personal information must comply with eight principles of the Data Protection Act, which make sure that personal information is:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with the individual's rights
- Secure
- Not transferred to other countries without adequate protection

76. For more information agencies should consult the [Information Commissioner's Office \("ICO"\) Statutory Code of Practice](#) on information sharing, designed to help businesses and public sector bodies share people's personal information appropriately. The Code covers both routine and one-off instances of data sharing, includes good practice advice and advises when and how personal information can be shared, as well as how to keep it secure. The Code of Practice is statutory and it is admissible in court proceedings.

## **Confidentiality**

77. A dilemma may occur because an individual facing forced marriage may be concerned that if confidentiality is breached and their family finds out that they have sought help they will be in serious danger. On the other hand, those facing forced marriage are often already facing serious danger because of domestic abuse, "honour-based" violence, rape, abduction etc. Therefore, in order to protect the individual, consideration should always be given to sharing information with other agencies such as the police.

78. Consequently, confidentiality, privacy<sup>14</sup> and information sharing are extremely important for anyone threatened with, or already in, a forced marriage. Professionals need to be clear about when confidentiality can be offered and when information given in confidence should be shared.

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

- Staff understand that the individual's confidence and privacy should be respected at all times and that they should not approach family, friends or members of the community without the express permission of the individual as this may place the individual at risk of harm and they should never be used as interpreters for the victim

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<sup>14</sup> As well as ensuring confidentiality it is important to ensure that the victim's security is safeguarded, e.g. they are not left waiting in public places where they could be seen by family members or acquaintances.

- All records belonging to individuals facing forced marriage should be kept secure to prevent unauthorised access by those within the broader community who may potentially pass on confidential information to a victim's family
- Records should only be available to those directly dealing with the case
- Staff should also be aware that they, other colleagues within the organisation or others within the victim's support network may be approached and/or pressurised by a member of the victim's family, a family friend or a member of the community to give out information
- Staff should always ensure the victim knows who has been told about the circumstances of their case and also be made aware of what the risks to them might be should a professional breach confidentiality

## **Staff training and awareness raising**

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

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

## **Monitoring and evaluation**

81. In line with existing guidance for protecting children and adults at risk, all agencies should monitor and evaluate the effectiveness of their response to forced marriage.

82. This should include data collection of the number of cases supported, the source of referrals, details about the individual involved such as their age, ethnicity and gender, together with information about the outcome of the case. This data should be used to inform and improve the response to cases of

forced marriage within organisations more effectively as well as giving a clearer indication of the prevalence of forced marriage. Organisations should use and, if required, adapt their existing data collection systems to capture information on cases of forced marriage.

## Record keeping

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

- Staff keep clear, concise records of all actions taken who took them and the reasons why particular actions were, or were not taken. There should be a recorded agreement of which agency is to undertake each proposed action together with the outcome of each action
- If no further action is to be taken, this should be clearly documented together with the reasons

## Risk assessment

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

- Staff within the organisation understand the risks facing victims of forced marriage, their siblings and other family members – including the possibility of “honour-based” violence, threats to kill, murder, kidnap, rape, imprisonment and being abducted overseas
- Their organisational risk assessments are evaluated to ensure that they are appropriate for handling cases of forced marriage – and recognise the potential risk of harm to victims and practitioners<sup>15</sup>. That they take into account the inherent differences in practice and procedures required from other types of child or adult protection risk assessment
- Staff alleviate these risks by undertaking ongoing risk assessments on a case-by-case basis, feeding into multi-agency risk assessment structures to manage any risks identified appropriately
- Their organisational risk assessments are evaluated to ensure that they are appropriate for handling cases of forced marriage –

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<sup>15</sup> There is scope for MARAC's (Multi Agency Risk Assessment conferences) currently used in the risk management of domestic abuse situations to be adapted and take account of cases of forced marriage. The Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH, 2009) is already in use across England, Wales and Northern Ireland and in some areas of Scotland. See here for details:

[http://www.caada.org.uk/practitioner\\_resources/resources.html](http://www.caada.org.uk/practitioner_resources/resources.html)

<http://www.dashriskchecklist.co.uk/>



and recognise the potential risk of harm to victims and practitioners

- For children, the *Getting it right* assessment framework should be used to assess the risks (See paragraphs 94-98)

## **The danger of family counselling, mediation, arbitration and reconciliation**

85. Due to the nature of forced marriage and honour-based violence, some of the underlying principles and themes within existing guidance may inadvertently place young people and adults at greater risk of harm. This includes the belief that the best place for them is with their family and the practice of attempting to resolve cases through family counselling, mediation, arbitration and reconciliation.

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

- Staff have adequate training to understand the danger of family counselling, mediation, arbitration and reconciliation in forced marriage cases or where the possibility of forced marriage is a concern
- Staff understand that in cases of forced marriage, it is important that agencies do not initiate, encourage or facilitate family counselling, mediation, arbitration or reconciliation. Mediation can also place the individual at risk of further emotional and physical abuse
- Staff are aware that, on occasions when an individual insists on meeting with their parents, such a meeting should only take place in a safe location, supervised by a trained/specialist professional with an authorised accredited interpreter present (not from the same local community), as parents sometimes threaten the individual in their other language
- Staff are aware that allowing a victim to have unsupervised contact with their family is extremely risky. Families may use the opportunity to subject the victim to extreme physical or mental duress or take them overseas regardless of any protective measures that are in place
- Staff must also be aware that perpetrators can use emails, phone conversations, and or texts as a form of mediation with the individual. These modes of communication can be just as threatening. Staff should consider the impact of these forms of communication on the individual and think about how they might support and keep the individual safe if such contact takes place

## Protecting children and adults with disabilities

87. There have been reports of children and adults with mental health needs, learning and physical disabilities and additional support needs being forced to marry<sup>16</sup>. In the case of children, the law is straightforward: children do not have capacity to consent to marriage, irrespective of any disability.

88. Some adults do not have the capacity to consent to the marriage and may be unable to consent to consummate the marriage – sexual intercourse without consent is rape. There are various offences under the [Sexual Offences \(Scotland\) Act 2009](#) that can be committed against a person with a mental disorder.

89. The [Adults with Incapacity \(Scotland\) Act 2000](#) can also be used to protect adults who lack capacity to consent to marriage. The [Adult Support and Protection \(Scotland\) Act 2007](#) places a duty on local authorities to inquire about the well-being of an adult who may be at risk of harm. This would include an adult with physical or mental disability who has been forced to marry, and allows the local authority to take a range of measures to provide appropriate support and protection. In particular, applications can be made to the sheriff for guardianship orders or intervention orders.

90. There are also sexual offences that can be committed against a person suffering from a mental health disorder under the Mental Health Care and Treatment (Scotland) Act 2003.

91. Children and young people with additional support needs or disabilities and some adults could be at risk of forced marriage and its consequences because they may be reliant on their families for care, they may have communication difficulties and they may have fewer opportunities to tell anyone outside the family about what is happening to them.

92. Many of the measures for protecting children and young people with disabilities and adults who may be at risk from forced marriage are the same as those for children and adults without disabilities. However, they may have particular needs, and face challenges which may be substantially different from those encountered by other people facing forced marriage. In the context of police interviews, the use of an Appropriate Adult should be considered to assist with communication<sup>17</sup>.

93. Chief Executives, Directors and senior managers should ensure that disabled children, children with additional support needs and adults who may be at risk of harm receive whatever additional assistance and support they require. Good practice in relation to this assistance and support includes:

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<sup>16</sup> Forced Marriage and Learning Disabilities – Multi-Agency Guidelines Forced Marriage Unit, (2010)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35533/fm-djsability-guidelines.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35533/fm-djsability-guidelines.pdf)

<sup>17</sup> Information on Appropriate Adults is available here:

<http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult>.

- Listening to disabled children/adults who may be at risk of harm and making sure they know how to raise concerns
- Meeting the care and support and protection needs of the disabled child or adult
- Ensuring disabled children/adults who may be at risk have access to adults outside the family to whom they can turn for help
- [Providing speech and language therapists](#), providing alternative and augmentative communication aids and providing British Sign Language translators or other appropriate support needs to facilitate communication
- Providing training and raising awareness about forced marriage amongst staff that care for disabled children or adults who may be at risk of harm
- Providing an Independent Advocate in cases where the victim lacks mental capacity/has a mental illness – so their needs and wishes are understood and communicated<sup>18</sup>

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<sup>18</sup> The SIAA's leaflet, "[The SIAA Guide to Independent Advocacy for Service Providers](#)" provides a short and accessible overview of the role of the independent advocate

# Chapter 5

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

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

94. There is existing multi-agency statutory and non-statutory guidance for protecting children. This includes [A Guide to Implementing Getting it right for every child](#), published in 2010 (updated in 2014), and its supporting briefings<sup>19</sup> which are key documents for people at all levels who are involved in improving outcomes for children and young people.

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

96. The [National Guidance for Child Protection in Scotland](#) was published in December 2010 (updated in 2014) <http://www.scotland.gov.uk/Publications/2014/05/3052>. It gives a national framework to help shape local practices and procedures in child protection. It is based on the principles of *Getting it right for every child* by focusing on putting the child at the centre and better outcomes for children in need of protection at the earliest possible stage. It includes key messages for practitioners on cases of forced marriage.

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

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

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<sup>19</sup> <http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/publications/practicebriefings>

98. The primary principle of *Getting it right* is to act in the best interests of the child and young person. Child protection guidance states that discussion with family and the family's agreement to refer to local authority children and families social work should only be done where such discussion and agreement-seeking will not place a child at increased risk of significant harm. **Consequently, agencies should not approach or involve families if forced marriage is suspected.**

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

The operation of the Children's Hearings (Scotland) Act 2011 is more fully explained in the [Multi-Agency Practitioner Guidance](#)

100. The Children's Hearings (Scotland) Rules 1996, rule 12 provides a power for the hearing to exclude relevant persons (or a father of the child as defined under rule 5(3)(b)) or their representatives from attending any parts of the hearing for so long as is necessary in the interests of the child in order to obtain the views of the child where the presence of such a person may cause or is likely to cause significant distress to the child. This power must, however, be exercised with caution, balancing the rights of the relevant persons to attend the hearing against the needs of the child to express a view. Current practice allows for a single hearing to achieve this by allowing a child and relevant person to attend separately where risk is identified as above, however this would still be on the same day at the same time.

101. The Children's Hearings (Scotland) Act 2011 includes provisions to allow a sheriff to include an information non-disclosure direction under section 40 of the Act when making a child protection order. The Hearing can also exclude relevant persons and/or their representatives under sections 76 and 77 of the Act.

102. In care proceedings, local authorities are required to demonstrate to the court that they have considered family members and friends as potential carers at each stage of their decision-making. However, in cases of forced marriage, professionals should exercise extreme caution in how they evidence this. Family group conferences are not appropriate where a young person is at risk of forced marriage because of the physical danger and potential emotional manipulation they may experience during this type of session with their parents and other members of their family or community. There must not be any burden on the child or young person to agree to a family conference (see paragraph 85-86 - The danger of family counselling, mediation, arbitration and reconciliation).

103. In addition, if children are being placed into foster care, it should be stressed that foster carers are not from the same community and local area as:

- They might through a sense of community and belief that family mediation is the best route let the family know the whereabouts of the child or young person
- Foster carers themselves might be put at risk of harm from the community for caring for the child or young person

104. Chief Executives, Directors and senior managers should ensure that staff have appropriate training in order to:

- Understand the danger of involving the family and the community in cases of forced marriage
- Recognise that they should not approach or involve families if forced marriage is suspected
- Understand that family group conferences are not normally appropriate in cases of forced marriage because it often places the child or young person at greater risk of harm

## **Getting it right for every child**

105. [\*Getting it right for every child\*](#) is the national programme that aims to improve outcomes for all children and young people in Scotland. It seeks to do this by providing a framework for all services and agencies working with children and families to deliver a co-ordinated approach which is appropriate, proportionate and timely.

106. However an assessment may not highlight any problems concerning some children and young people facing forced marriage. They often come from very loving families where the parents' capacity to provide safety, emotional warmth and stability is excellent.

107. The children are often high achievers at school, their health is good, they are well integrated into the local community and have good relations with the wider family – they may not exhibit the warning signs described on page 16.

108. Therefore, professionals working with children and young people facing forced marriage require additional training in assessing families to identify those where forced marriage may be an issue. The Getting it right Principles and Values state that professionals should work in partnership with families whilst promoting opportunities and valuing diversity amongst children and young people. However practitioners must be clear that child abuse cannot be condoned for any perceived religious or cultural reasons.

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

- Staff have appropriate training in order to enable them to effectively assess children and young people facing forced marriage using the *Getting it right* Assessment Framework.

## **Protecting children and young people from harm by sharing information or to prevent a crime being committed**

110. Forcing a person into marriage became a criminal offence in Scotland on 30 September 2014 under section 122 of the Anti Social Behaviour Crime and Policing Act 2014. Other criminal offences can also be committed. Perpetrators – usually parents or family members – could be prosecuted for offences including, assault, kidnap, abduction, threats to kill, and murder. Sexual intercourse without consent is rape, regardless of whether this occurs within a marriage.

111. Child protection guidance says social work staff should always confer with police officers when they believe a response under child protection may be required, ensuring that the police are in a position to consider carefully their role in investigating any crimes against children.

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

- Forced marriage is automatically handled as a child protection issue
- Staff have appropriate training in order to understand the importance of sharing information with other agencies at the earliest opportunity to protect children and young people from significant harm or to prevent a crime being committed
- Staff share information promptly when a child or young person is at risk of forced marriage
- Staff provide information to the Forced Marriage Unit especially if there is a risk of the victim being taken out of the country
- Staff understand the difference between breaking confidence (involving the child or young person's family without consent) and sharing information with, or without consent with other appropriate professionals, to prevent the child or young person being at risk of significant harm

## **Immediate protection**

113. Ideally, professionals should discuss cases of forced marriage with, and seek advice from, a designated professional or another statutory agency; however, there may be occasions when immediate emergency action is necessary to protect a child or young person from being forced to marry or abducted e.g. police protection or legal measures for the emergency protection of children, contained within the [Children \(Scotland\) Act 1995](#) and [Children's Hearing \(Scotland\) Act 2011](#). In this case, a strategy discussion

should take place as soon as possible after the immediate protection to plan the next steps<sup>20</sup>.

114. It should be noted that the point at which the family become aware of intervention (i.e. when immediate protection measures are instigated) is a point of increased risk for the victim and any siblings. The emphasis should be on swift but comprehensive planning of intervention in order to not inadvertently alert the family / community to the fact that concerns have been identified and protective steps are being taken. There should also be emphasis on the fact that, similar to domestic abuse, separation from perpetrators does not guarantee safety.

115. Chief Executives, Directors and senior managers should ensure that staff have appropriate training in order to:

- Recognise the importance and relevance of immediate protection
- Recognise the risk to other siblings in the household who might also be threatened with, or already in, a forced marriage
- Understand that in almost no circumstances will it be sufficient to protect a child or young person by removing the alleged perpetrator from the household (as in the significant majority of cases the extended family and wider community are also involved)
- Recognise that placing the child or young person with a family member or member of the same community may place them at risk of significant harm from other family members or individuals acting on the family's behalf
- Understand that if a Forced Marriage Protection Order is in place and is breached that the police should be informed as soon as possible

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<sup>20</sup> Local protocols and procedures relating to child and adult protection and domestic abuse should be referred to, to determine who should be involved in these discussions.



# Chapter 6

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

### Existing multi-agency guidance concerning adults

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

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

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

118. It provides information and guidance on the principles of the Act, about the measures contained within it, including when and where it would normally be appropriate to use such powers. The code should be used in conjunction with other relevant codes of practice as appropriate, such as the codes of practice for the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), the Adults with Incapacity (Scotland) Act 2000 and the code of practice for Social Service Workers and Employers of Social Service Workers.

119. Section 3(1) of the 2007 Act defines “adults at risk” as adults who:

- are unable to safeguard their own well-being, property, rights or other interests;
- are at risk of harm; and
- 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

120. The presence of a particular condition does not automatically mean an adult is an “adult at risk”. Someone could have a disability but be able to safeguard their well-being. All three elements of this definition must be met. It

is the whole of an adult's particular circumstances which can combine to make them more open to harm than others. **If an adult passes the 3 point test of an adult at risk of harm, then the local authority has a duty to inquire into their well-being.**

121. If the victim of forced marriage is assessed as incapable of protecting their personal or financial welfare, grounds for protection under the [Adults with Incapacity \(Scotland\) Act 2000](#) may be relevant – i.e. power of attorney, guardianship, which may require the local authority to act in the guardianship capacity. It should be noted that the [Mental Welfare Commission for Scotland](#) and the [Office of the Public Guardian Scotland](#) have a role in ensuring such individuals' rights are protected and also investigating any concerns.

122. Health practitioners will be familiar with the Chief Executive's letter (CEL) 41 Gender Based Violence Action Plan for Health Boards which sets out the steps that should be taken to improve the identification and management of gender-based violence across NHS Scotland<sup>21</sup>.

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

124. MAPs have responsibility for the implementation of *Safer Lives: Changed Lives* in local areas, bringing services together that have an interest in or responsibility for work to address men's violence against women. The intention is that action to tackle violence against women is integral to the core activities of local agencies and structures such as community planning partnerships. The purpose of [A Partnership Approach to Tackling Violence Against Women in Scotland: Guidance for Multi-Agency Partnerships](#) is to support all MAPs to work consistently with the government's strategic direction and to develop effective local strategies and activities to tackle violence against women in all its forms.

125. The guidance helps MAPs assess where they are and what they need to do to progress their work to address the broad spectrum of violence against women within the outcomes environment. It does not prescribe what MAPs should do locally, but sets out a recommended approach for focusing activity and broad principles about how to contribute to the national agenda while allowing for local flexibility.

126. Although we know that men and male children and young people can be victims of forced marriage, it should be dealt with within the context of violence against women and domestic abuse and, in the case of adults at risk, adult protection. Agencies should adhere to the good practice set out in the policies and procedures concerned with domestic abuse and adults at risk as the most effective way to tackle forced marriage. The guidance in this section

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<sup>21</sup> Further resources including the booklet – *Harmful Traditional Practices – What health workers need to know about gender-based violence* is available here: <http://www.gbv.scot.nhs.uk/index.php/resources>

is not intended to replace existing guidance but instead, it addresses some of the particular issues concerning adults at risk of being threatened with, or already in, a forced marriage. There is also a need to ensure that staff are aware of the need to protect children that they may come into contact with in the course of their support of adults at risk of forced marriage.

127. The Mental Health (Care and Treatment) (Scotland) Act 2003 gives a person a legal right to independent advocacy and the Adult Support and Protection (Scotland) Act 2007 places a duty on Council Officers to consider the importance of providing advocacy.

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

128. Involving families in cases of forced marriage may increase the risk of serious harm to an individual. The family may deny that the individual is being forced to marry and they may expedite any travel arrangements and bring forward the wedding.

129. Chief Executives, Directors and senior managers should ensure that staff receive the appropriate training in order to:

- Understand the danger of involving the family and the community in cases of forced marriage
- Recognise that discussion with the family or any type of family involvement often places the person at greater risk of harm

### **Protecting adults at risk by sharing information when a crime may have been, or may be, committed**

130. Forcing a person into marriage became a criminal offence in Scotland on 30 September 2014 under section 122 of the Anti Social Behaviour Crime and Policing Act 2014. Perpetrators – usually parents or family members – could be prosecuted for offences including assault, kidnap, plagium<sup>22</sup>, threats to kill, abduction and murder. Sexual intercourse without consent is rape, regardless of whether this occurs within a marriage. Forcing a person into marriage became a criminal offence in Scotland on 30 September 2014 under section 122 of the Anti Social Behaviour Crime and Policing Act 2014.

131. The [Adult Support and Protection \(Scotland\) Act 2007](#) states that a council must make inquiries about a person's well-being, property or financial affairs if it knows or believes –

- (a) that the person is an adult at risk and
- (b) that it might need to intervene (by performing functions under the Act) in order to protect the person's well-being, property or financial affairs.

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<sup>22</sup> This means theft of a child

132. However, if the person is not an adult at risk in terms of the definition of the [Adult Support and Protection \(Scotland\) Act 2007](#), the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) and [Adults with Incapacity \(Scotland\) Act 2000](#) may be able to support and protect the person.

133. Chief Executives, Directors and senior managers should ensure that staff receive the appropriate training in order to:

- Recognise the importance of sharing information with other agencies at the earliest opportunity
- Understand the difference between breaking confidence (involving an adult at risk's family without consent) and sharing information with other professionals to prevent the person being at risk of significant harm

### Persons to whom guidance is given

Adult Support and Protection Committees  
Association of Chief Police Officers in Scotland (ACPOS)  
Association of Directors of Education in Scotland  
Association of Directors of Social Work  
Association of Scottish Police Superintendants  
British Medical Association Scotland  
Chief Constables  
Child Health Commissioners  
Children's Hearings Scotland  
Child Protection Committee Lead Officers  
Child Protection Committees Chairs  
Community Health Partnerships  
Community Planning Partnerships  
Convention of Scottish Local Authorities  
Crown Office and Procurator Fiscal Service  
Local Authority Adult Protection Lead Officers  
Local Authority Chief Executives  
Local Authority Sexual Health Leads  
Mental Welfare Commission for Scotland  
NHS Board Directors of Public Health  
NHS Board Lead Clinicians  
NHS Chief Executives  
NHS Health Scotland  
NHS Sexual Health Strategy Leads  
National Records of Scotland (NRS)  
Office of the Public Guardian in Scotland  
Royal College for Paediatrics and Child Health ( RCPCH) Scotland  
Royal College of General Practitioners ( RCGP) Scotland  
Royal College of Midwifery  
Royal College of Nursing  
Royal College of Speech and Language Therapists  
Schools  
Scotland's Colleges  
Scottish Children's Reporter Administration (SCRA)  
Scottish Universities  
Social Care and Social Work Improvement Scotland  
Violence Against Women Multi-Agency Partnerships

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

# Definitions

### Forced marriage

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

For the definition at law see:

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

### Arranged marriage

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

### Honour-based violence

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

### Violence against women

The Scottish Government defines forced marriage as a form of violence against women. The full definition of violence against women is in Safer Lives, Changed Lives: a shared approach to tackling violence against women in Scotland, Scottish Government, 2009<sup>23</sup>.

### Gender-based violence

This is defined by the United Nations<sup>24</sup> as 'violence that is directed against a woman because she is a woman, or violence that affects women disproportionately; it encompasses a spectrum of abuse that includes domestic abuse, rape and sexual assault, childhood sexual abuse, sexual

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<sup>23</sup> Safer Lives, Changed Lives: a shared approach to tackling violence against women in Scotland, Scottish Government, 2009 [www.scotland.gov.uk/Publications/2009/06/02153519/0](http://www.scotland.gov.uk/Publications/2009/06/02153519/0)

<sup>24</sup> United Nations definition: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

harassment, stalking, commercial sexual exploitation, and harmful traditional practices such as female genital mutilation (FGM), forced marriage and so-called 'honour' crimes'.

## **Domestic abuse**

The National Strategy to Address Domestic Abuse in Scotland (2000)<sup>25</sup> states:

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

The strategy recognises that:

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

It also states:

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

There are other national definitions as included within the Police Scotland/COPFS protocol *In partnership challenging domestic abuse*:<sup>26</sup>

## **Victim**

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

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<sup>25</sup> The National Strategy to Address Domestic Abuse in Scotland (2000)  
[www.scotland.gov.uk/Resource/Doc/158940/0043185.pdf](http://www.scotland.gov.uk/Resource/Doc/158940/0043185.pdf)

<sup>26</sup> In partnership challenging domestic abuse:  
[http://www.scotland.police.uk/assets/pdf/keep\\_safe/175573?view=Standard](http://www.scotland.police.uk/assets/pdf/keep_safe/175573?view=Standard)

## **Perpetrator**

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

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

Under the Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011, a relevant third party can apply for a Forced Marriage Protection Order (see page 14) without the permission of the court. RTPs are specified as a local authority, the Lord Advocate and others specified by Scottish Ministers. Any other third party can apply for a FMPO but they need the court's permission to do so.

## **Child, children and young people**

Practitioners must be clear that when children and young people are forced into marriage there should be a child protection response and that they should refer to local inter-agency child protection procedures and the Scottish Government's National Guidance for Child Protection in Scotland (updated 2014)<sup>27</sup>.

The National Guidance explains that a child can be defined differently in different legal contexts.

Section 93(2)(a) and (b) of the Children (Scotland) Act 1995 defines a child in relation to the powers and duties of the local authority. Young people between the age of 16 and 18 who are still subject to a supervision requirement by a Children's Hearing can be viewed as a child. Young people over the age of 16 may still require intervention to protect them.

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

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

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<sup>27</sup> Scottish Government's National Guidance for Child Protection in Scotland (2014): <http://www.scotland.gov.uk/Publications/2014/05/3052>



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

### **Adult**

A person aged 16 or over (but see also above definition of child, children and young people).

### **Adult at risk**

The Adult Support and Protection (Scotland) Act 2007<sup>28</sup> defines adults at risk as adults who:

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

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

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

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<sup>28</sup> The Adult Support and Protection (Scotland) Act 2007:  
<http://www.legislation.gov.uk/asp/2007/10/contents>

# International law principles

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

**“No marriage shall be legally entered into without the full and free consent of both parties.”** UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1 (<http://www2.ohchr.org/english/law/convention.htm#wp1033262>)

**“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”** United Nations Convention on the Rights of the Child, Article 3 (<http://www2.ohchr.org/english/law/crc.htm#art3>)

**“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity”** United Nations Convention on the Rights of the Child, Article 34a (<http://www2.ohchr.org/english/law/crc.htm#art34>)

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

**“Protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”** United Nations Convention on the Rights of the Child, Article 19 (<http://www2.ohchr.org/english/law/crc.htm#art19>)

**“Abolish traditional practices detrimental to the health of children”** United Nations Convention on the Rights of the Child Article 24 (<http://www2.ohchr.org/english/law/crc.htm#art24>)

**“Protect children from torture and other ill-treatment”** United Nations Convention on the Rights of the Child, Article 37 (<http://www2.ohchr.org/english/law/crc.htm#art37>)



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