

<b>Title:</b> Criminalising breaches of Forced Marriage Protection Orders <b>IA No:</b> HO  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> MoJ, FCO, CPS	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 09/12/2011			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> Chaz Akoshile 020 7008 8759				

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**  
Forced marriage is an appalling and indefensible practice that is recognised in the UK and elsewhere as a form of violence against women and men, domestic abuse, a serious abuse of human rights and, where a minor is involved, child abuse. In 2010, the Governments Forced Marriage Unit provided advice or support in over 1700 cases - this does not reflect the full scale of the abuse, and many more cases are not reported. The Government is seeking views on how criminalisation of breaches of Forced Marriage Protection Orders might be implemented.

**What are the policy objectives and the intended effects?**  
The Government is committed to tackling forced marriage. The policy objective is to ensure the law tackles forced marriage cases effectively. On the whole the Government wishes:

1. To reduce the number of incidences of forced marriage.
2. To provide adequate protection and support for victims of forced marriage
3. To punish the perpetrators of forced marriage

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Option 1: Criminalise the breach of a Forced Marriage Protection Order  
  
Option 1 is the only option. On 10 October in his speech on Immigration the Prime Minister made a commitment to criminalise the breach of a Forced Marriage Protection Order. The necessary provision making breach a criminal offence will require primary legislation and an appropriate legislative vehicle will accordingly need to be identified.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Criminalise the breach of a Forced Marriage Protection Order

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NK

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

### Description and scale of key monetised costs by 'main affected groups'

Where appropriate, cost estimates will be monetised following consultation.

### Other key non-monetised costs by 'main affected groups'

One-off drafting and administrative costs for new offence.

One-off familiarisation costs to police; increased police resource through enforcement and investigation.

Additional CPS, HMCTS and legal aid costs due to an increase in prosecutions. The current volume of breaches is very low; therefore additional costs are likely to be small. Increased prison service costs and probation service costs if criminalisation of breach of FMPO results in additional and/or longer prison sentences.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

### Description and scale of key monetised benefits by 'main affected groups'

Where appropriate, benefit estimates will be monetised following consultation.

### Other key non-monetised benefits by 'main affected groups'

Possible reduced CJS costs if fewer breaches due to threat of criminal action.

Possible benefits to victims if there is a reduction in forced marriages due to the deterrence effect. However, the existence and extent of this effect is unclear.

Key assumptions/sensitivities/risks

Discount rate (%)

The number of cases which might be affected is unknown (pre consultation). At the moment we only know of the number of breaches (5 recorded) but we do not know whether the number of breaches would rise, fall or remain at the same level if they were criminalised.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

# Evidence Base (for summary sheets)

## A. Strategic Overview

### A.1 Background

Forced marriage is an appalling and indefensible practice that is recognised in the UK and elsewhere as a form of violence against women and men, domestic abuse, a serious abuse of human rights and, where a minor is involved, child abuse. A forced marriage is a marriage in which one or both spouses do not (or, in the case of some vulnerable adults, cannot) consent to the marriage but are coerced into it. The coercion can include physical, psychological, financial, sexual and emotional pressure. Victims of forced marriage can be both women and men, and the marriages may take place in the UK or overseas.

The Government's Forced Marriage Unit (FMU) provides direct assistance to victims as well as undertaking a full programme of outreach activity to practitioners and communities to ensure that people working with victims are fully informed of how to approach such cases. Overseas the FMU provides consular assistance to British nationals who are victims prior to or after marriage to secure their return to the UK. In addition to providing direct support to victims, the FMU ensures front line professionals receive up-to-date and relevant information.

In 2010, the FMU provided advice or support in over 1700 cases, but we know that this does not reflect the full scale of the abuse, and many more cases are not reported – research carried out by the then Department for Children, Schools and Families estimated that the national prevalence of reported cases of forced marriage in England was between 5000 and 8000. Forced Marriage cases tend to involve young women and young men. The FMU is aware of cases from, Afghanistan, North and East Africa, Bangladesh, India, Iran, Iraq, Pakistan and Turkey. This list of countries is not exhaustive and there may be other communities in which forced marriage is practised.

### A.2 Groups Affected

The proposals as set out in this Impact Assessment will have effect in England and Wales only.

The main groups affected by these proposals are:

Police Forces;  
HMCTS;  
Prison and Probation services;  
CPS;  
Legal Services Commission;  
Local authorities in England and Wales;  
Third sector agencies;  
Other government departments;  
Organisations with a direct interest in tackling forced marriage;  
Victims of forced marriage;  
Members of the public; and  
Defendants.

## B. Rationale

Forced marriage is a practise which results in considerable distress to victims and is estimated to affect between 5,000 and 8,000 people in England. Government intervention is necessary to:

1. Reduce the number of forced marriages.
2. Provide adequate protection and support for victims of forced marriage.
3. Punish the perpetrators of forced marriage.

On 17 May 2011 the Home Affairs Select Committee (HASC) published its Eighth Report of Session 2010 – 12 on Forced Marriage<sup>1</sup>. The report looked at what they perceived as a lack of progress in tackling forced marriage issues and made a number of recommendations for action to prevent forced marriage and for the provision of support to victims, including that the Government consider criminalising forced marriage. The report was a follow up to a more detailed report published by HASC in 2008<sup>2</sup>, which drew attention to the abusive practice of forced marriage, highlighting its scale and suggested that there were weaknesses in the approach previously taken. The Government issued its response on 19 July.

On 10 October 2011, the Prime Minister described forced marriage as 'the most grotesque example of a relationship that isn't genuine' and 'little more than slavery'<sup>3</sup>. He went on to announce the Government's intention to:

- (i) criminalise the breach of a Forced Marriage Protection Order; and
- (ii) consult on making forcing someone to marry a criminal offence.

The Government is therefore committed to doing more to tackle forced marriage and, through consultation, is seeking views on the most effective and efficient means of doing so, in order to minimise the social harms that are associated with it.

## C. Objectives

1. Reduce the number of forced marriages.
2. Provide adequate protection and support for victims of forced marriage.
3. Punish the perpetrators of forced marriage.

## D. Options

### **Option 1: Criminalise the breach of a Forced Marriage Protection Order**

The usual 'Do nothing' option has not been considered in this Impact Assessment because on 10 October, in his speech on Immigration, the Prime Minister made a commitment to criminalise the breach of a Forced Marriage Protection Order. This will require primary legislation to provide for breach to be a criminal offence and an appropriate legislative vehicle will accordingly need to be identified.

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<sup>1</sup> REPORT *Forced Marriage, 17 May 2011* (Eighth Report, Session 2010-11, HC 880)  
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>

<sup>2</sup> Report 20 May 2008: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/26302.htm>

<sup>3</sup> <http://www.number10.gov.uk/news/prime-ministers-speech-on-immigration/>

Currently breach of a Forced Marriage Protection Order (FMPO) is not a criminal offence. Breach is dealt with as a civil contempt of court and the county courts can impose a custodial sentence of up to two years. If the FMPO was issued with an attached power of arrest, a police officer may arrest a person who they have reasonable cause to suspect is in breach of any provisions of the FMPO. If the FMPO was issued without a power of arrest the applicant will need to apply to the court for a warrant of arrest and for the person to be brought back to court for committal where the court will decide whether or not there was a breach, and if so, what punishment to administer for disobeying the order of the court.

### **Home Affairs Select Committee report on forced marriage**

The Home Affairs Select Committee (HASC) published a follow up report<sup>4</sup> in May 2011 on progress made since their initial report on Forced Marriage and Honour Based Violence was published in 2008.

On the issue of breaches of FMPOs, the Committee suggested there were inadequacies in the monitoring of compliance with an order after it was made and a lack of effective action in cases of breaches. Only one person has received a sentence of imprisonment relating to the breach of an order.

The Committee recommended that the Government investigate how orders were monitored; the real level of breaches and the judicial response to recorded breaches. The report noted: *"It is not at all clear that the Act is wholly effective as a tool in protecting individuals from forced marriage and from repercussions from family members."*

The Government noted that while the Committee had commented on the fact that there had only been five breaches recorded, suggesting that the legislation was ineffective, the courts were only aware of a breach if an applicant brought the matter back to the court for committal.

The Government's Response<sup>5</sup> (July 2011) accepted that it was timely to review some particular aspects of the legislation again, particularly the issue of breaches. The Government was then minded to consider criminalising breaches once the Scottish legislation (which includes making breaches of such orders a criminal offence and came into force on 28 November 2011), had been evaluated.

As referred to above since implementation in 2008 of the Forced Marriage (Civil Protection) Act 2007, five breach hearing cases have been recorded. While other orders were made in some cases, for example, extending the original order, breach was not proven in any of them.

Clearly we need to look at the current monitoring and recording of breaches of FMPOs. It is possible more breaches are being dealt with which are not being recorded. The case referred to by HASC which attracted a custodial sentence was a case heard at the Old Bailey in February 2011 which attracted some media interest. Lydia Erhire had refused to sign documents allowing for the repatriation of her son after he was allegedly taken from the UK to Nigeria against his will. She was sentenced to eight months imprisonment for 'flagrant breach' of a High Court order (FMPO) to co-operate with the return of her teenage son.

We also need to assess how those statutory agencies and the voluntary sector which have made third party applications monitor compliance and where a breach occurs that is not

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<sup>4</sup> REPORT *Forced Marriage, 17 May* (Eighth Report, Session 2010-11, HC 880)  
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>

<sup>5</sup> <http://www.official-documents.gov.uk/document/cm81/8151/8151.asp>

brought back to court, the reasons for this. A commitment to review the legislation in terms of criminalising breaches was made in response to the HASC Report.

## **Designing the breach of a FMPO**

The Forced Marriage (Civil Protection) Act 2007 is modelled on the provisions set out in the Family Law Act 1996 for domestic violence injunctions and non-molestation orders. The Domestic Violence, Crime and Victims Act 2004 made it a criminal offence to breach a non-molestation order. The Government is minded to use the model for breaches of non-molestation orders for breaches of FMPO's.

### **(i) Based on the breach of domestic violence non-molestation orders**

On 1st July 2007, Section 1 of the Domestic Violence, Crime and Victims Act 2004 ('DVCVA') came into force. This provision amended section 42A of the Family Law Act 1996 by creating a criminal offence of breach of a civil non-molestation order obtained under section 42(2) or section 45(1) (ex parte applications) Family Law Act 1996.

The breach offence is triable either way with a maximum penalty on indictment of five years imprisonment, or a fine, or both. In the magistrates' court, the statutory maximum applies which is six months or a fine of £5000, or both.

The applicant to the originating order still has the choice on the mechanism by which a breach of a non-molestation order is dealt with. They can either call the police to have the breach dealt with within the criminal jurisdiction, or they can make an application in the originating county court (family jurisdiction) to have the breach dealt with as a civil contempt of court with possible sanctions of custody.

Breach proceedings were brought in approximately 11% of the non-molestation orders made in 2009 and 2010. Of those found guilty, on average, 20% were given a custodial sentence (4 months average) and 16% were given a fine.

The two jurisdictions are exclusive: if someone has been convicted of the breach in a criminal court they cannot be punished for civil contempt and vice versa.

### **(ii) Based on the Scottish model**

The Forced Marriage etc (Protection & Jurisdiction) (Scotland) Act 2011 was implemented on 28 November 2011. The criminal sanctions for breach under the Scottish model differ slightly from the England and Wales legislation on non-molestation orders. The maximum prison sentence in this model for breach is two years rather than the five years for breach of a non-molestation order.

A person found guilty of an offence under Part 1 Section 9 (1) is liable –

- (a) On summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.
- (b) On conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

There are a number of similarities between the Scottish model and non-molestation orders. Similar to non-molestation orders, where a person is convicted of an offence for knowingly and without reasonable excuse, breaching an order, the offending behaviour cannot be

punished as a contempt of court using civil sanctions as it is subject to criminal penalties, and vice-versa. A person cannot be punished twice for the same behaviour – this is referred to as ‘double jeopardy’.

In both models, it is an offence to breach any provision of the original order. In the case of non-molestation orders, a power of arrest is not needed to arrest a perpetrator as the order carries the standard Penal Notice. Similarly, in the Scottish model, a constable may arrest without warrant any person the constable reasonably believes is committing, or has committed, that offence.

### **Preferred approach**

The Government is minded to model the breaches of FMPO’s on breaches of non-molestation orders as the Forced Marriage (Civil Protection) Act 2007 is based on the same legislation as domestic violence provisions. However, other options based on views from the consultation will also be considered.

## **E. Appraisal (Costs and Benefits)**

### **GENERAL ASSUMPTIONS & DATA**

This impact assessment has been prepared to accompany the consultation on forced marriage criminalisation. Costs and benefits have been identified for each option, but further work to develop and quantify these elements will be carried out during and following consultation.

Five breach hearing cases have been recorded since November 2008 up until the end of 7 June 2011. While other orders were made in some cases, for example, extending the original order, breach was not proven in any of them. In some instances this was due to unwillingness on the part of the victim to cooperate. This highlights a difficulty in appraising this policy. The practice of forced marriage undoubtedly places significant emotional harms on victims. Although criminalisation could reduce these harms through prevention, it is not clear that this benefit would necessarily outweigh the emotional cost to victims of criminalising their relatives.

This means that it is not possible to confidently model the likely number of breaches of FMPO’s in the future. There could be:

1. an increase in breaches (relative to the current low volume) due to an increase in exposure and perceived increased chance of an acceptable resolution;
2. a decrease in breaches due to an unwillingness to subject family members to criminal proceedings.
3. no change in the volume of breaches.

Although full cost benefit analysis will not be completed until after consultation, a useful parallel can be drawn with breaches of domestic violence non-molestation orders – a criminal act since 2007. Key findings from this are highlighted in Section D above.

## **OPTION 1 – Criminalise the breach of a Forced Marriage Protection Order**

### **COSTS**

This option will require primary legislation which will result in one-off administrative and drafting costs.

An increase in breach cases proceeded against would be associated with additional costs to the Crown Prosecution Service (CPS), HM Courts and Tribunals Service (HMCTS) and legal aid. Furthermore, there could be additional costs to the prison and probation services, if breaches were punished with custodial sentences.

As it has not been possible to estimate the likely volume of future breaches, these costs have not been quantified. However, given current levels of breach, it is likely that any additional costs would be small.

Detailed quantification of costs will be completed following consultation.

### **BENEFITS**

It is possible that there would be a decrease in FMPO breaches due to the deterrence effect of criminalisation. However there is no robust evidence to confirm that any such effect is likely.

Additionally, if the effect of criminalising breach of FMPO is to highlight the tougher stance on forced marriage generally, there may be a broader decline in prevalence of forced marriage incidents with associated benefits to potential victims. This potential effect has not been quantified.

Victims of forced marriage, their families, and wider society may feel better served by the level of punishment delivered by the CJS.

### **ONE-IN-ONE-OUT (OIOO)**

N/A

## **F. Risks**

**Number of cases:** very few breaches of FMPO's have occurred to date and none have been proven. There is a risk that criminalising breach will have little effect.

**Impact on victims:** victims may not wish to pursue or support a criminal prosecution since this could result in a family member being criminalised. This could also increase their vulnerability and risk their safety since many victims are very young and are still living at home. If there are some successful prosecutions, this could deter victims from reporting a criminal action or even extend to deterring them from making an application for an FMPO, fearing that the police / CPS might then prosecute members of their family for an associated criminal offence.

Furthermore, it is possible that perpetrators may resort to subterfuge to lure their children abroad to be married and restrict victims' accessibility to support agencies for help.

## **G. Enforcement**

Enforcement of this policy will be by the police and the CPS, with overview from the Home Office.



## H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

<b>Option</b>	<b>Costs</b>	<b>Benefits</b>
<b>2</b>	£NK	£NK
	One-off drafting and familiarisation costs (police); if more cases prosecuted then increased costs, to HMCTS, CPS, legal aid and potential increased costs to prisons/probation if custodial sentences are used.	Benefits to victims if they feel that breach of FMPO is being punished more effectively. CJS costs could decrease if fewer breaches occur.

Source: HO analysis

The Government is committed to criminalising breach of FMPOs as part of ongoing efforts to more effectively tackle forced marriage.

## I. Implementation

The Prime Minister has made a commitment to criminalise the breach of Forced Marriage Protection Order. The necessary provision making breach a criminal offence will need to be identified.

## J. Monitoring and Evaluation

The Prime Minister has made a commitment to criminalise the breach of Forced Marriage Protection Order. The necessary provision making breach a criminal offence will need to be identified.

## K. Feedback

The Forced Marriage Unit meet on a quarterly basis with all NGOs tackling forced marriage by through the roundtable meetings. The Home Secretary chairs the *Violence against Women and Girls Inter Ministerial Group* which meets on average every 3 months and consists of representatives from all government departments – other stakeholders (such as the specialist women’s sector) attend every other meeting. Updates on development and progress will be shared via these meetings.

## L. Specific Impact Tests

### Annex 1. Specific Impact Tests

**Statutory Equality Duties**  
Equality Impact Assessment

We are aware that forced marriage happens in many different communities across England and Wales. Information collected by the Forced Marriage Unit in 2010 (1735 instances where the FMU have given advice or support related to a possible forced marriage) shows that:

- forced marriage impacts more on women than men - 86% involved female victims and 14% involved male victims (<0.5% unknown).
- there is a higher incidence amongst South Asian communities. Countries of origin: Pakistan (52%), Bangladesh (10.3%), India (8.6%), Africa (5%), Turkey (1.7%), Iran (1.3%), Iraq (1.2%), Afghanistan (1%), and other known countries (9.3%). 14.6% of cases were solely linked to the UK or were of unknown origin.
- of 240 assistance cases where age was known, 64% involved adults and 35.4% involved minors (those under 18). 13.5% involved minors who were 16 and under. Of all 1735 instances where FMU have provided assistance or support where age was known, the oldest victim was 73 and the youngest was 12.
- in 70 (4%) of the cases brought to the FMUs attention, the victim was disabled: (50 victims had learning disabilities, 17 physical disabilities and 3 had both).
- 36 (2%) of those cases brought to the FMUs attention involved victims who identified themselves as LGBT.

In relation to applications for Forced Marriage Protection Orders 116 applications and 149 orders (excludes other disposals: transfers, undertakings) were made in 2010. There were 105 female applicants and 11 male applicants and 57 applicants were under 17.

We will take account of the evidence gathered through this consultation to give due regard to the impact it will have on different groups and the potential impact on the protected characteristics (age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership) in order to develop the final policy proposals. The final stage Impact Assessment will reference the evidence gathered against protected characteristics.