



Home Office

# FORCED MARRIAGE CONSULTATION

December 2011



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# Ministerial foreword



Marriage should be one of the happiest events in a person's life. But shockingly thousands of people each year are forced into marriage against their will. As the Prime Minister has said, forced marriage is little more than slavery. I am clear that forced marriage is a form of violence against women and men. We must do all we can to stamp out this appalling abuse.

Forced marriage happens in many communities and many different cultures. It is not connected with any one religion or any one nationality. I believe perceived cultural sensitivities should not stop us from doing more to tackle forced marriage – no culture should find it acceptable.

Over recent years the profile of forced marriage has risen and more is now being done to tackle it than ever before. Much of that has been down to the tremendous work of charities and other organisations working in this area. But government action can help too. The introduction of Forced Marriage Protection Orders, for example, was a positive step. But now we want to go further and criminalise breach of a Forced Marriage Protection Order. This will give a hard edge

to the deterrent. This consultation asks for views on how the criminalisation of breach of a Forced Marriage Protection Order should work. We would like your views on which model will be most effective.

There is widespread acknowledgement that forced marriage is an appalling act. I know that criminalisation is a subject on which there are a wide range of strongly held views. This consultation does not prejudge the outcome or the steps we should take. We genuinely want to hear the views of victims and those who work in this field before we come to a decision on the best way to protect vulnerable people.

One thing on which there should be no doubt is our determination to protect people from forced marriage and provide better support to victims of the practice. To do that, we will work closely with organisations already active in this area and with others who come into contact with victims and their families. I believe together we can make forced marriage a thing of the past.

A handwritten signature in black ink, appearing to read 'Theresa May'.

**Rt Hon Theresa May MP**  
Home Secretary and  
Minister for Women and Equalities

# 1. About this consultation

## SCOPE OF THE CONSULTATION

<b>Topic of the consultation:</b>	<p>This consultation is seeking views on whether a specific criminal offence would help us to combat forced marriage and, if so, how it would be formulated.</p> <p>We are also interested to hear views on how we might implement the criminalisation of breaches of the civil Forced Marriage Protection Orders.</p>
<b>Scope of this consultation:</b>	<p>This is a consultation to seek the views of key partners, and directly affected parties including victims of forced marriage, the police, local authorities, legal practitioners, third sector agencies, other government departments and all organisations with a direct interest in tackling forced marriage. The consultation is also available on the Home Office website and we also invite comments from members of the public.</p>
<b>Geographical scope:</b>	<p>England and Wales.</p>
<b>Impact assessment:</b>	<p>A consultation stage impact assessment is available on the Home Office website alongside this consultation.</p>

## BASIC INFORMATION

<b>To:</b>	<p>This consultation is open to the public</p>
<b>Duration:</b>	<p>12th December 2011 to 30th March 2012</p>
<b>Enquiries and Responses:</b>	<p><a href="mailto:ForcedMarriageConsultation@homeoffice.gsi.gov.uk">ForcedMarriageConsultation@homeoffice.gsi.gov.uk</a></p>
<b>Additional ways to become involved:</b>	<p>This will be an online consultation exercise. Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio.</p>
<b>After the consultation:</b>	<p>A response to the consultation responses will be published on the Home Office website.</p>
<b>Getting to this stage:</b>	<p>The Home Office has worked closely with other Government Departments to explore the issues under consideration and to develop proposals.</p>
<b>Previous engagement:</b>	<p>A national consultation was carried out in 2005 on whether or not to introduce a specific criminal offence for forced marriage. Following this, the previous administration decided in 2006 not to make forced marriage a specific criminal offence.</p>

## 2. Introduction

### 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. The Universal Declaration of Human Rights, Article 16 (2) states clearly that ‘Marriage shall be entered into only with the free and full consent of the intending spouses.’

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. The types of behaviours engaged in by those forcing someone into a marriage, however, cover a broad spectrum and generally present as a package of behaviour, often over a period of time. These behaviours range from emotional pressure, exerted by close family members and the extended family, to more extreme cases, which can involve threatening behaviour, abduction, false imprisonment, physical violence, rape and in some cases murder (including so called ‘honour’ killings), many of which are crimes in their own right. Victims of forced marriage can be both women and men and may often include children; and the marriages may take place in the UK or overseas.

The families involved may come from a variety of cultural and religious backgrounds. Perpetrators usually comprise one or both parents or wider family members. It is rarely one individual acting alone.

Due to its nature many victims do not realise that they are the victims of a human rights abuse; many will never ask for help or will be prevented by their family (often the perpetrators) from doing so. This makes it difficult to know the full extent of the problem.

### FORCED MARRIAGE UNIT

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 victims who are British nationals 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. The FMU is aware of cases from Afghanistan, North and East Africa, Bangladesh, India, Iran, Iraq, Pakistan, Turkey. This list of countries is not exhaustive and there may be other communities in which forced marriage is practised.

While the full scale of the problem is not known, reported cases are rising year on year. In 2008 the FMU provided advice or support in 1618 cases, which rose to 1682 in 2009 and totalled 1735 in 2010. This has reflected the continued efforts of the Unit to raise awareness among victims and potential victims that forced marriage is unacceptable and help is available. It is evident that victims are increasingly recognising the warning signs and now have the confidence to come forward and seek help. This is also demonstrated by the rising number of applications for Forced Marriage Protection Orders, demand for which has been much higher than anticipated (more on the civil remedy is set out below).

## BACKGROUND TO THE CONSULTATION

On 17 May 2011 the Home Affairs Select Committee (HASC) published their 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 2011.

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.

## CURRENT LEGAL POSITION

### WHAT IS THE LAW ON MARRIAGE?

The Marriage Act 1949 (as amended) and the Matrimonial Causes Act 1973 govern the law on the validity of marriages in England and Wales. The minimum age at which a person is able to enter a valid marriage is 16; though a person under the age of 18 years may not marry without parental consent. In broad terms a marriage conducted abroad in accordance with the proper formalities required

by that country’s laws will generally be recognised in England and Wales, provided both parties have the legal capacity to marry. A polygamous marriage entered into by anyone domiciled in Britain is void. A marriage entered into without consent is not a valid marriage; but where a marriage has on the face of it complied with the formal and substantive requirements, it is presumed valid unless and until adjudged by a court to be void.

Section 12(c) of the Matrimonial Causes Act 1973 provides that a marriage shall be voidable if ‘either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise’. The Court of Appeal (‘Hirani v Hirani’ (1983) 4 FLR 232) stated that ‘the crucial question in all such cases is whether the threat, pressure or whatever it is, is such as to destroy the reality of the consent and overbears the will of the individual...’ The general position is that nullity proceedings (to void the marriage) must be instituted within three years from the date of the marriage. However section 13(4) of the Matrimonial Causes Act 1973 provides that where proceedings for nullity are brought on one of a number of grounds including on the basis of section 12(c) the court may grant leave for the institution of nullity proceedings after the expiration of the period of three years from the date of the marriage if the Judge is satisfied that the petitioner has at some time during that period suffered from mental disorder within the meaning of the Mental Health Act 1983, and the Judge considers that in all the circumstances of the case it would be just to grant leave for the institution of the proceedings. This may be relevant in cases involving incapacitated adults.

### WHAT IS THE LAW ON FORCED MARRIAGE?

The Forced Marriage (Civil Protection) Act 2007 provides a specific civil remedy to prevent forced marriage and to assist victims where a marriage has already taken place – the Forced Marriage Protection Order (FMPO). Between November 2008 when the 2007 Act came into force and June 2011, 339 orders were recorded.

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1 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>

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

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

A FMPO is an order which may contain any number of provisions as the court deems necessary to protect an individual who is at risk of forced marriage or who has already been forced into a marriage. This could include provisions not to threaten, harass or use force; to surrender a person's passport or any other travel document; and not to enter into any arrangements for the engagement or marriage of the Person to Be Protected (the victim), whether civil or religious, in the UK or abroad.

A breach of the order is currently dealt with as a civil contempt of court punishable with a fine or a custodial sentence of up to two years' imprisonment.

The Government has now made a commitment to make breach of the FMPO a criminal offence – this is discussed in chapter 3.

## CIVIL REMEDIES FOR CHILDREN AND VULNERABLE ADULTS

A child means a person who has not reached their 18th birthday and includes young people aged 16 and 17 who are living independently as defined in the Children's Act 1989 and 2004. Children at risk of being forced into a marriage are entitled to the statutory protection afforded by the public law aspects of the Children Act 1989. In England and Wales section 31 of the Children Act 1989 provides for care and protection orders on the application by a local authority, to place a child under the age of 17 under the care of that local authority.

While such an order is in place, no person may remove the child from the UK without the consent of every person with parental responsibility, including the local authority. The Children Act confers duties and powers on local authorities in respect of providing support and accommodation for young people in circumstances where they are in need, or where it would help safeguard a child's welfare.

Police stationed at airports have successfully used the Emergency Protection Order (EPOs) provisions of section 44 of the Children Act to prevent a child being

removed from the UK for the purposes of a forced marriage. In 2010 over 1000 EPOs were made although it is not possible to identify how many were used specifically for this purpose.<sup>4</sup> Police can also use their powers under section 46 of the Children Act to remove a child to suitable accommodation where a police officer had reasonable cause to believe that the child would otherwise be likely to suffer significant harm.

Where a person lacks, or there is reason to believe that they lack, mental capacity to consent to marriage, then an application can be made under the Mental Capacity Act 2005 to the Court of Protection which can make orders, for example, prohibiting the taking out of the jurisdiction or arranging the marriage of the person. Even if the person has the necessary mental capacity, but is a 'vulnerable adult'<sup>5</sup>, in some circumstances an application can be made to the High Court for the exercise of its power under its inherent jurisdiction to ensure that the person is exercising free will in the decisions they are making.

There is no specific criminal offence in England and Wales of 'forcing someone to marry'. The types of behaviours prevalent when forcing someone into a marriage can, however, constitute a variety of existing offences, including some very serious ones. This is covered in more detail in chapter 4.

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4 Court Statistics Quarterly Q2 2011 bulletin – published 29 September 2011 <http://www.justice.gov.uk/downloads/publications/statistics-and-data/courts-and-sentencing/family-matters-tables-chp2-2010.xls>

5 A vulnerable adult is someone aged 18 or over: Who is, or may be, in need of community services due to age, illness or a mental or physical disability; Who is, or may be, unable to take care of himself/herself, or unable to protect himself/herself against significant harm or exploitation ('No Secrets', Home Office/Department of Health, 2002)

# 3. Breach of Forced Marriage Protection Orders

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>6</sup> in May 2011 on progress made since their initial report on Domestic Violence, 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>7</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 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.

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

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



## OPTIONS FOR THE BREACH MODEL

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 FMPOs.

### BREACH OF DOMESTIC VIOLENCE NON-MOLESTATION ORDERS

On 1 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 of 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.

## 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 warrant 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.

## QUESTIONS

Please provide additional information to support your response.

- Do you think that the model for breaching FMPOs should follow that for breach of non-molestation orders? Specifically:
  - should it be an offence to breach any/all provisions contained in the order; with no specific power of arrest required;
  - if the CPS decides that there is not enough evidence to provide a realistic prospect of a criminal conviction, or that a prosecution is not in the public interest, should victims still have the choice to return the case for committal in the civil court; and
  - what penalty should apply for the maximum sentence for breach of a FMPO (in England and Wales breach of a non-molestation order or a restraining order currently attracts a maximum sentence of five years).
- Do you think there is another model, e.g. in Scotland or any other jurisdiction that would be more suited?
- Do you think that other named respondents who knew that an order had been breached but did nothing should also be liable to prosecution for breach of an order? Please explain your answer. If yes, what level of involvement should attract such prosecution? What scale of penalties should apply?

The following example below may help you to formulate your response.

### SCENARIO

The mother of the victim is aware that her husband and son have taken her daughter to Pakistan to be forced into marriage. She is also aware that one of the terms included on the Forced Marriage Protection Order forbids the respondents from taking the victim out of the UK to be married. The mother is also named as a respondent on the order. However, she does not inform the police or any other authority of the intention of her family members to force her daughter into marriage.

- What mechanisms, if any, do you feel would assist victims and witnesses, particularly the young, in disclosing the breach of an order? Please explain your answer.
- Do you feel that any other mechanisms, in addition to existing special measures (e.g. video-recorded statements, live links, screens) in court, need to be in place to help victims and witnesses of forced marriage, particularly the young, through the criminal justice process once any criminal prosecution proceedings take place? If yes, please explain your answer, giving examples of the types of mechanisms and resources needed.

## 4. Should forced marriage be a criminal offence?

The Government is seeking views on whether making forcing someone to marry should be a criminal offence or whether current arrangements provide adequate protection.

We are also interested in views on what more could be done to prevent forced marriage from happening.

There are clear arguments both for and against making forced marriage a criminal offence. A summary of the arguments is set out below:

### ARGUMENTS IN SUPPORT OF A NEW OFFENCE

#### **A new offence could have a deterrent effect and send a clear signal (domestically and abroad) that forcing a person to marry is unacceptable.**

The Government has been clear that forced marriage is an indefensible abuse of human rights, a form of violence against women and men and, where a minor is involved, child abuse. But we need to send a stronger, clearer message to communities and internationally that forced marriage will not be tolerated in this country, and that there will be consequences for those that commit this form of abuse. We are aware that a number of countries, for example in Denmark, have now criminalised forced marriage and we will be looking at their experiences during the consultation period.

#### **A new offence could empower young people to challenge their parents or families.**

Our first duty must always be to protect those at risk of forced marriage. Creating a specific offence of forced marriage could not only act as a deterrent to families who might otherwise resort to this form of abuse, but it could also give victims a stronger sense that what is happening to them is wrong because it is something that is against the law. This could make it easier for victims to challenge their parents and wider family.

#### **A new offence could make it easier for the police, social services, and health services to identify that a person has been forced into marriage as existing legislation may not be easily linked with forced marriages.**

As there is no offence of “forcing a person to marry against their will” to determine if the act has taken place, a number of offences may be taken into consideration. It could be argued that this may be complicated and confusing for those who may recognise a forced marriage but may not recognise that the offence committed is something else entirely (i.e. blackmail/ harassment etc). A specific offence could clarify issues for these bodies so that they are fully aware of when and how they can intervene and therefore provide a more effective response to potential victims and victims of forced marriage.

#### **A new offence would provide punishment to the perpetrator.**

Those who have forced or participated in forcing an individual to marry could be convicted of a specific forced marriage offence and sentenced accordingly if found guilty. Robust sentencing could be seen as acting as a deterrent by demonstrating that people are being brought to account for their actions.

## **ARGUMENTS IN SUPPORT OF KEEPING THE EXISTING ARRANGEMENTS**

### **Victims may stop asking for help and/or applying for civil remedies due to a fear that their families will be prosecuted and/or because of the repercussions from failed prosecutions.**

It is a major step for someone to take any sort of legal action against parents or other immediate family. There is a concern that there would be even more pressure not to report instances of forced marriage or attempted forced marriage if the reporter thought that members of the family would receive a criminal conviction. The allegation itself would also have to be proved to the criminal standard of proof - 'beyond reasonable doubt'. It is also possible that criminalisation would impact on the applications for the civil remedies available under the Forced Marriage (Civil Protection) Act 2007.

### **Parents may take their children abroad and force them to marry or hold them there, to avoid a prosecution taking place in the UK.**

There is a concern that more families might take their children overseas at a younger age and force them into marriage there, thereby perpetrating these offences overseas and avoiding proceedings in the UK.

Out of the 116 applications made for FMPOs in 2010, 21 applicants were already abroad at the time of application (18%).

### **An increased risk that prosecution, or threat of prosecution, may make it more difficult for victims to reconcile with their families.**

There was also a concern that there could be a negative impact on victims who might feel let down by the justice system, if charges could not be brought or the defendant were acquitted. There is also the matter that the criminal process takes longer and victims may withdraw under pressure from their family. Although victims could still have the option to take the civil protection order route, repercussions from the failed criminal case in relation to family and community may mean they do not have the confidence to continue to pursue a civil remedy.

### **The behaviour criminalised may overlap with existing offences.**

There are already existing criminal offences considered by the CPS in relation to forced marriage (set out in option 1). Creating a specific offence could cause duplication with those criminal offences which already exist. The Government is committed to avoiding unnecessary criminal offences that lead to confusion on the part of both practitioners and the general public.

In either jurisdiction, criminal or civil, it is important that victims, witnesses and applicants seek out and have access to effective advice about the options available and the likely outcomes. There will be cases where the victim simply chooses not to take any formal court action but is able to either resolve the

situation, or escape it, with the assistance of outside support. This support, whether it is provided by the third sector or statutory agents, must include appropriate risk assessment processes and adequate safety planning, as set out in the Multi Agency Practice Guidelines: Handling Forced Marriage Cases.<sup>8</sup>

<sup>8</sup> <http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf>

## **OPTION 1 – CONTINUE CURRENT ARRANGEMENTS UNDER EXISTING CRIMINAL LAW**

The CPS considers a wide range of offences when reviewing a forced marriage case. During 2010-2011, 49% of cases charged for offences in a forced marriage context were successfully prosecuted.<sup>9</sup> The CPS does now flag ‘honour based’ violence (HBV) and forced marriage. Many of the key components of what a “forced marriage offence” might look like are already covered in legislation. For example:

### **KIDNAPPING**

Kidnapping is a common law offence committed by the taking or carrying away of one person by another, by fraud or force, without the consent of the person so taken or carried away, and without lawful excuse. The maximum penalty is life imprisonment. The consent of the Director of Public Prosecutions is required before a prosecution can be instituted in respect of a kidnapping if it was committed against a child under the age of 16 by a person ‘connected with’ the child within the meaning of section 1 of the Child Abduction Act 1984.

### **FALSE IMPRISONMENT**

False imprisonment at common law is the unlawful and intentional or reckless restraint of the victim’s freedom of movement from a particular place. Restraining a child within the realm of reasonable parental discipline is not unlawful. It is a common law offence, punishable by fine or imprisonment, or both. The maximum penalty is life imprisonment.

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<sup>9</sup> CPS data is available through its Case Management System (CMS) and associated Management Information System (MIS). The CPS collects data to assist in the effective management of its prosecution functions. The CPS does not collect data which constitutes official statistics as defined in the Statistics and Registration Act 2007. This data has been drawn from the CPS’s administrative IT system, which, as with any large scale recording system, is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the CPS

The official statistics relating to crime and policing are maintained by the Home Office and the official statistics relating to sentencing, criminal court proceedings, offenders brought to justice, the courts and the judiciary are maintained by the Ministry of Justice.

### **CHILD ABDUCTION**

The Child Abduction Act 1984 (the 1984 Act) makes it an offence under section 1 of that Act for a person ‘connected with’ a child under 16 to take or send the child out of the UK without appropriate consent. This would be relevant, for example, to a case where one parent took a child out of the UK without the consent of the other parent, in whose favour a residence order was in force with respect to the child. The DPP’s consent is required before a prosecution for an offence under section 1 of the 1984 Act is instituted. It is also an offence for other people (i.e. people who are not ‘connected with’ the child) without lawful authority or reasonable excuse to, take or detain a child under the age of 16 so as to remove the child or keep the child out from the lawful authority of any person having lawful control of the child. Offences contrary to the 1984 Act are punishable with up to 7 years’ imprisonment.

### **ASSAULTS**

Acts of and threats of immediate unlawful violence constitute an assault. There are a range of different offences to cover ‘assault’ depending on the injury caused. The relevant offence may be common assault or battery under section 39 of the Criminal Justice Act 1988 (which has a maximum penalty of six months’ imprisonment, or a level 5 fine, or both), assault occasioning actual bodily harm (which can include psychiatric injury) under section 47 of the Offences Against the Person Act 1861 (maximum sentence five years’ imprisonment or an unlimited fine, or both), unlawful wounding under section 20 of the Offences Against the Person Act 1861 (maximum sentence five years’ imprisonment or an unlimited fine, or both) and wounding with intent to do grievous bodily harm under section 18 of the Offences Against the Person Act 1861 (maximum penalty life imprisonment).

### **THREATS TO KILL**

A person who, without lawful excuse, makes to another person a threat to kill that person or a third person, intending that that other person would fear that the threat would be carried out, is guilty of an offence under section 16, Offences Against the Person Act 1861 and liable to a maximum penalty of 10 years’ imprisonment. The threat need not be immediate;

therefore a threat 'if you do X/do not do X, I will kill you' would be covered by this legislation.

### **PUBLIC ORDER OFFENCES**

The Public Order Act 1986 (1986 Act) created various offences. For example the offence of affray (see section 3 of the 1986 Act). A person commits affray if they use or threaten unlawful violence towards another and their conduct is such as would cause a person of reasonable firmness present at the scene to fear for their personal safety (the maximum penalty is 3 years' or a fine or both). The following sections of the 1986 Act may also be applicable: sections 4 (fear or provocation of violence – maximum penalty six months' or level 5 fine or both), 4A (intentional harassment, alarm or distress – maximum penalty six months' or level 5 fine or both), and 5 (harassment, alarm or distress – maximum penalty level 3 fine).

### **HARASSMENT (INCLUDING STALKING)**

An offence under Section 2 of the Protection from Harassment Act 1997 (the 1997 Act) will be committed if a person pursues a course of conduct which amounts to harassment of another and which the offender knows or ought to know amounts to harassment of the other. A 'course of conduct' must involve in the case of conduct in relation to a single person, conduct on at least two occasions, in the case of conduct in relation to two or more persons, conduct on at least one occasion in relation to each of those persons. The maximum penalty is 6 months imprisonment. If the course of conduct causes another to fear, on at least two occasions, that violence will be used against them, an offence under Section 4 of the 1997 Act may be committed, attracting a maximum penalty of 5 years. The 1997 Act also gives the criminal court power to impose a restraining order or the High Court or county court power to impose an injunction. Breach of an injunction or restraining order under the 1997 Act carries a maximum 5-year penalty.

### **CHILD CRUELTY**

Where the victim is under 16, a parent or 'person who has attained the age of 16 and has responsibility for' the child who wilfully assaults, ill-treats, neglects, abandons, or exposes them or causes or procures them

to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause them unnecessary suffering or injury to health could be charged with the offence of child cruelty under section 1 of the Children and Young Persons Act 1933. The maximum penalty is 10 years' imprisonment.

### **SEXUAL OFFENCES**

Depending on the circumstances of a particular case and the age of the victim, various offences under the Sexual Offences Act 2003 (the 2003 Act) may be committed. The 2003 Act has a number of offences which cover non-consensual sexual activity and other forms of sexual exploitation such as trafficking into, within, or out of the UK for sexual exploitation. For example, sexual intercourse (by penile penetration) without consent is rape and attracts a maximum penalty of life imprisonment. Less serious forms of non-consensual sexual activity such as 'touching' could be considered as 'sexual assault' which carries a maximum penalty of 10 years' imprisonment. A person consents to sexual activity if they agree by choice and have the freedom and capacity to make that choice. Anyone who aids and abets an offence is liable to the same penalty. There are also a range of 'child' sex offences for cases where the victim is under 16. For example it is an offence to cause or incite a child to engage in sexual activity, or to arrange or facilitate the commission of a child sex offence in any part of the world and these offences carry maximum penalties of 14 years imprisonment. The offences of trafficking into, within or out of the UK for sexual exploitation may also be committed if travel of the victim is arranged in the belief that it is likely that a relevant offence (such as rape or a child sex offence) will be committed against them. There is, for example, extra-territorial jurisdiction for all child sex offences (sections 5 – 15) under the 2003 Act, if committed by a United Kingdom national, as well as for the main sex offences (sections 1-4) where the victim is under 16 years of age. This means that these offences apply to acts committed outside the UK whether or not they constitute an offence in the country where they took place. Where the offender is a United Kingdom resident there is extra-territorial jurisdiction



over these offences where the act would constitute an offence under the law in force in the country where it took place.

## **BLACKMAIL**

Blackmail is an offence contrary to section 21 of the Theft Act 1968, which is punishable with up to 14 years' imprisonment. It is committed when a person makes an unwarranted demand with menaces, with a view to a gain for himself or another person or with intent to cause loss to another person (gain or loss being construed as extending only to money or other property).

## **OPTION 2: MAKING FORCING SOMEONE TO MARRY A CRIMINAL OFFENCE**

At present, there is no specific offence of forcing someone to marry and so to determine if the act has taken place, one or more of the above offences will have to be considered. It could be argued this may be complicated and confusing for those who may recognise a forced marriage but may not recognise that the offence committed is something else entirely (i.e. blackmail/ harassment etc). A new offence could also be a deterrent to those families that seek to force someone to marry against their will.

A key consideration therefore in creating a criminal offence is whether there is any behaviour that would constitute such an offence that is not already covered by existing criminal offences. . Realistic threats of violence, or actual violence – which are of course already recognised forms of criminal behaviour - are perhaps at one end of the spectrum: “I will kill you if you do not marry him,” if made in the right circumstances where the victim believed the threats to be real and capable of being carried out, would seem to meet the requirement. But at the other end it is much more difficult to know where the particular behaviour should be criminalised. For example a parent may threaten a son who got his girlfriend pregnant with being disinherited if he does not marry her. Although this threat may be very real, the son may not feel obliged to succumb to this threat as he may well have other ways of supporting himself. If he

does not succumb but the threat is made, should the parents be guilty of an offence of attempting to force him to marriage?

Another suggestion that is sometimes made is that there should be an offence of luring someone into a forced marriage. Quite apart from the issue as to what behaviour would be captured that is not already criminal, there would be a need carefully to define the offence. So, an example of behaviour that might be made an offence is when parents say that the grandmother is near to death on the pretext of the family travelling abroad to visit her for the last time when in fact the purpose is solely to force someone into a marriage.

## **QUESTIONS**

Please provide additional information to support your response.

- Do you believe that the current civil remedies and criminal sanctions are being used as effectively as they could be in tackling forced marriage? If not, what more do you think can be done to prevent forced marriage including ensuring victims are not deterred from reporting?
- Do you think a criminal offence should be created for the act of forcing someone to marry against their will? If so, how do you think the offence should be defined?
- What issues should be considered to ensure that a new offence does not deter people from reporting the crime?
- Do you think there should be an offence of luring someone abroad; luring someone to this country or indeed within this country; or from one country to another for the specific purpose of forcing them to marry?
- How far do you think a person's circumstances and age influence their approach/ attitude in seeking protection/ justice?

- Do you think that the creation of a new criminal offence would make the law clearer?
- Do you think the creation of a new criminal offence would make it easier for professionals to tackle the problem?
- Do you think that criminalising forcing someone to marry would change public opinion towards forced marriage, particularly in those communities most affected?



# 5. Groups affected by this consultation

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 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 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 organisations 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.

## QUESTIONS

- Do you have any data or other information on the demographic profile of people who are forced into marriage or who force someone into marriage? If so please provide data or source of data.
- Do you think any of the proposals would have a particular impact on people who fall within one of the protected characteristics listed above? If so please provide details.

## 6. Timescales/next steps

A response to the consultation responses will be published on the Home Office website.

If, following consideration of the consultation responses the Government's preferred way forward is to make forcing someone to marry a criminal offence, we will work to develop this option into a formalised approach.

# 7. Consultation information

## CONFIDENTIALITY & DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the government or related agencies. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## GOVERNMENT'S CODE OF PRACTICE ON CONSULTATION

This Consultation follows the Code of Practice on Consultation – the criteria for which are set out below:

### Criterion 1 – When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

### Criterion 2 – Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

### Criterion 3 – Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

### Criterion 4 – Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

### Criterion 5 – The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

### Criterion 6 – Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

### Criterion 7 – Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience. The full Code of Practice on Consultation is available at: <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

## CONSULTATION CO-ORDINATOR

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Adam McArdle. Please DO NOT send your response to this consultation to Adam McArdle. The Co-ordinator works to promote best practice standards set by the Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at:

[Adam.McArdle2@homeoffice.gsi.gov.uk](mailto:Adam.McArdle2@homeoffice.gsi.gov.uk) or

alternatively write to him at:

Adam McArdle  
Consultation Coordinator  
Home office  
Performance and Delivery Team  
Better Regulation team  
3rd Floor Seacole  
2 Marsham Street  
London  
SW1P 4DF

## 8. Summary of consultation questions

- Do you think that the model for breaching FMPOs should follow that for breach of non-molestation orders? Specifically:
  - should it be an offence to breach any/all provisions contained in the order; with no specific power of arrest required;
  - if the CPS decides that there is not enough evidence to provide a realistic prospect of a criminal conviction, or that a prosecution is not in the public interest, should victims still have the choice to return the case for committal in the civil court; and
  - what penalty should apply for the maximum sentence for breach of an FMPO (in England and Wales breach of a non-molestation order or a restraining order currently attracts a maximum sentence of five years).
- Do you think there is another model, e.g. in Scotland or any other jurisdiction that would be more suited?
- Do you think that other named respondents who knew that an order had been breached but did nothing should also be liable to prosecution for breach of an order? Please explain your answer. If yes, what level of involvement should attract such prosecution? What scale of penalties should apply?
- What mechanisms, if any, do you feel would assist victims and witnesses, particularly the young, in disclosing the breach of an order? Please explain your answer.
- Do you feel that any other mechanisms, in addition to existing special measures (e.g. video-recorded statements, live links, screens) in court, need to be in place to help victims and witnesses of forced marriage, particularly the young, through the criminal justice process once any criminal prosecution proceedings take place? If yes, please explain your answer, giving examples of the types of mechanisms and resources needed.
- Do you believe that the current civil remedies and criminal sanctions are being used as effectively as they could be in tackling forced marriage? If not, what more do you think can be done to prevent forced marriage including ensuring victims are not deterred from reporting?
- Do you think a criminal offence should be created for the act of forcing someone to marry against their will? If so, how do you think the offence would be defined?
- What issues should be considered to ensure that a new offence does not deter people from reporting the crime?
- Do you think there should be an offence of luring someone abroad; luring someone to this country or indeed within this country; or from one country to another for the specific purpose of forcing them to marry?
- How far do you think a person's circumstances and age influence their approach/ attitude in seeking protection/ justice?
- Do you think that the creation of a new criminal offence would make the law clearer?
- Do you think the creation of a new criminal offence would make it easier for professionals to tackle the problem?
- Do you think that criminalising forcing someone to marry would change public opinion to forced marriage, particularly in those communities most affected?
- Do you have any data or other information on the demographic profile of people who are forced into marriage or who force someone into marriage? If so please provide data or source of data.
- Do you think any of the proposals would have a particular impact on people who fall within one of the protected characteristics listed above? If so please provide details.



**Home Office**