

<b>Title:</b> Forced Marriage Criminalisation Consultation <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

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 whether there is a gap in the law and a specific criminal offence would help to combat forced marriage whilst ensuring such a step does not prevent or hinder victims from reporting what has happened to them.

**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 forced marriages.
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. Do nothing- continue current arrangements under existing law;  
Option 2. Make forcing someone to marry a criminal offence.

The preferred option will not be selected until after consultation.

<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?			Yes		
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: Do nothing - continue current arrangements under existing criminal law

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>	
Low						
High						
Best Estimate						
Description and scale of key monetised costs by 'main affected groups'						
No cost						
Other key non-monetised costs by 'main affected groups'						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>	
Low						
High						
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups'						
No benefit						
Other key non-monetised benefits by 'main affected groups'						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5

## BUSINESS ASSESSMENT (Option 1)

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

# Summary: Analysis & Evidence

# Policy Option 2

**Description: Making forcing someone to marry a criminal offence**

## FULL ECONOMIC ASSESSMENT

Price Base Year 2010/11	PV Base Year 2010/11	Time Period Years 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low: -14.4</b>	<b>High:</b>	<b>Best Estimate: -14.4</b>

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	10.5	0.5	14.4
<b>High</b>			
<b>Best Estimate</b>	10.5	0.5	14.4

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

There would be a one-off familiarisation opportunity cost to the police of £10.5m. This is *not* a financial cost.

A low case scenario has been modelled on the basis that offences currently flagged by the CPS as FM would be prosecuted under the new forced marriage offence. In addition it is assumed that there would be additional prosecutions in relation to the new forced marriage offence including "luring" someone into a forced marriage. Costs associated with this would fall upon the criminal justice system and are estimated to cost the prison service £0.24-0.32m per year, probation services £0.02m per year, HMCTS £0.09m per year and legal aid and CPS £0.02m per year each. This gives a total estimated annual cost to the CJS of around £0.5m

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

One-off CPS training costs have not been quantified.

There may be costs to victims if they now choose not to report cases to authorities for fear of their families being prosecuted.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>			
<b>High</b>			
<b>Best Estimate</b>	0	0	0

### 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'

There are already a range of criminal offences that tackle the behaviour typically associated with forcing someone to marry, for example kidnapping, false imprisonment, assault, harassment, child cruelty, child abduction and various sex offences. However, if there is a gap in the law, then a specific offence of forced marriage may help the CJS to deal with the perpetrators of forced marriage more effectively.

Furthermore, victims of forced marriage, their families, and society may feel better served if there was a specific criminal offence. There may also be a deterrent effect, which could reduce the number of offences. However the evidence of the existence and scale of a deterrent effect is mixed. As a result we have not quantified this. If victims choose not to report cases to authorities for fear of their families being prosecuted, there may be a fall in FMPO's applied for alongside a fall in criminal prosecutions and hence a corresponding fall in costs to HMCTS and legal aid.

Key assumptions/sensitivities/risks	<b>Discount rate (%)</b>	<b>3.5</b>
<p>While there may not be a gap in the current law there may be benefits to the creation of a new offence regardless. Because of the likely overlap with at least some existing criminal offences, we cannot estimate at this point whether the creation of a new offence would just lead to existing CPS flagged cases being prosecuted under a new forced marriage offence, or whether additional cases would enter the criminal justice system or whether victims fear of criminalising their families would actually lead to a fall in cases (both criminal and civil) entering the justice system. There is a risk that a new forced marriage criminal offence, would reduce reporting or the problem being taken overseas.</p>		

**BUSINESS ASSESSMENT (Option 2)**

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

# 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.

### **A.3 Consultation**

This Impact Assessment accompanies the Home Office document *Forced Marriage Criminalisation – A consultation*. The consultation seeks views on whether a specific criminal offence would help to combat forced marriage and ensure such a step does not prevent or hinder victims from reporting what has happened to them.

It is envisaged that the consultation will be open for comment from 12 December 2011 until 30 March 2012. Consultees are invited to offer views and comments on the policy options outlined, supporting evidence and associated costs and benefits whether quantitative or qualitative. We will take account of the evidence gathered through the consultation process in developing final policy proposals and the final Impact Assessment.

## **B. Rationale**

Forced marriage is a practice which results in considerable distress to victims and is estimated to affect between 5,000 and 8,000 people in England. Government intervention may be 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 the Home Affairs Select Committee (HASC) published their Eighth Report of Session 2010 – 12 on Forced Marriage. 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 also consider criminalising forced marriage. The report is a follow up to a more detailed report published by HASC in 2008, which drew attention to the abusive practice of forced marriage, highlighting its scale and suggested that there were weaknesses in the response previously taken. A number of recommendations were made for action to prevent forced marriage and provision of support to victims. The Government issued its response on 19th July.

On 10 October 2011, during his speech on Immigration the Prime Minister described forced marriage as 'the most grotesque example of a relationship that isn't genuine' and 'is little more than slavery'. He went on to announce the Government's intention to:

- (i) criminalise the breach of a Forced Marriage Protection Order;
- (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. In particular, the government is interested in ensuring the law is working as effectively as possible to tackle forced marriage.

## **C. Objectives**

The Government is interested in understanding whether there is currently a gap in the law in relation to forced marriage and if so whether a new criminal offence of forced marriage is necessary.

## **D. Options**

Option 1 is to continue current arrangement under existing criminal law (do nothing): The current arrangements provide the opportunity for victims to apply for a forced marriage civil protection order and / or report to the police who may then pursue any related criminal offences with the CPS. No new offence would be created, though the civil remedy would be reinforced by the breach of a FMPO becoming a criminal offence. There is also no additional cost.

Option 2 is to create a new criminal offence of forcing someone to marry: There has been some concern that the current civil remedy does not punish the perpetrators unless the case is brought back to the court for breach. A specific offence could have a deterrent effect and send a clear signal (domestically and abroad) that forcing someone to marry is unacceptable. It could empower young people to challenge their parents or families and provide the opportunity to punish the perpetrator(s).

However there is also concern that the prospect of criminalising a parent or other member of the family would deter victims from disclosing abuse and/or from applying for a civil injunction. The added prospect of appearing in criminal court could exacerbate this problem since most victims are very young and often wish to maintain their family relationships.

## **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.

An inherent difficulty of assessing this policy is that it is not clear whether there is a gap in the current law and hence what impact a new criminal offence of forced marriage would have to the volume of future cases.

For this reason it is not clear whether:

- (a) the creation of a new offence would just lead to existing CPS flagged cases being prosecuted under a new forced marriage offence,
- (b) whether additional cases would enter the criminal justice system suggesting that there is a gap in the current law
- (c) whether victims fear of criminalising their families would actually lead to a fall in cases (both criminal and civil) entering the justice system. There is a risk that a new offence of forcing someone to marry, would reduce reporting or the problem being taken overseas.

For the purposes of this impact assessment we have looked at a low case scenario modelled on the basis that offences currently flagged by the CPS as forced marriage would be prosecuted under the new offence of forced marriage. In addition it is assumed that there would be additional prosecutions in relation to the new forced marriage offence including acts of "luring" someone into a forced marriage. We assume – as a very conservative estimate - that the 13 Forced Marriage Protection Orders (FMPOs) currently made which included a provision to surrender the "Person To Be Protected's" passport / travel documents are our best currently available starting point to identify cases involving an element of "luring".

Annex 2 sets out a more detailed list of assumptions used to create a low case scenario of the costs and benefits that might result from creation of a new offence of “forced marriage” – Option 2. There were 20 criminal cases flagged as “forced marriage” by the CPS in 2010/11, 12 at Magistrates Court and 8 at Crown Court. The low case scenario modelled assumes that these 20 cases would be prosecuted under a new “forced marriage” offence (option 2) and would be subject to a degree of up-tariffing.

Note that although it is likely that more cases will enter the CJS than assumed in the low case, it remains a possibility that fewer cases will be seen, due to the fear of criminalising family members. The low case therefore provides an indicative scenario for the creation of a “forced marriage” offence but is not necessarily a “worst case” scenario.

## **OPTION 2 – Make forcing someone to marry a criminal offence**

### **COSTS**

#### **One-off-costs**

This option is likely to require one-off familiarisation costs to the police resulting from the training or reading time involved in acquiring sufficient knowledge to deal with a new offence. This would be an opportunity cost, e.g. spending an hour training rather than investigating a crime, rather than a financial cost. In 2009/10 there were approximately 11,000 officers ranked inspector or above and 227,000 officers ranked sergeant or below<sup>1</sup>. The unit cost of police time is approximately £59 per hour for inspectors and above, and £36 per hour for sergeants and below<sup>2</sup>. Our low case scenario assumes one hour of training required by all officers resulting in a one-off cost of £10.5m. For simplicity this has been modelled as a single year, catch-all cost. In reality there is likely to be variation in the familiarisation times of different officers and the cost is likely to extend over a number of years rather than occurring in the first year of the policy. The assumption of one hour may be an over-estimate if existing training on procedures for dealing with forced marriage can be adapted with little or no opportunity cost.

There may also be additional training costs for CPS prosecutors.

There would be increased costs on the third sector. Charities may see an increase in demand to provide one to one support, in addition to costs associated with increasing awareness in schools and refuge accommodation. In addition staff in these organisations, and health professionals and social workers will need to be trained in relation to the new legislation.

#### **Ongoing costs**

Families could adopt new approaches in relation to the new criminal offence. Some victims of forced marriage may be taken abroad and suffer as families move overseas to avoid prosecution, but also some victims and witnesses may not report potential forced marriages for fear of criminalising family members or their communities. These costs to victims have not been quantified.

An increase in HMCTS costs is expected as a result of the up-tariffing of existing forced marriage cases, and new additional “luring” offences going through the criminal justice

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<sup>1</sup> Source: CIPFA data (2009/10)

<sup>2</sup> Source: Annual Survey of Hours and Earnings (ASHE), CIPFA, uprated to 2010/11 prices.



system. These are estimated to amount to £86,000 annually. In addition to this, legal aid costs are estimated to be approximately £24,000 per year and costs to the CPS are estimated to be around £23,000 per year.

There will be an impact on HM prisons service. Assuming that offenders serve half their sentence in prison and half on probation, there would be an upward pressure on prison places of around 8 places, at an estimated cost of £240,000 per year up until the end of the spending review in 2014/15. From 2015/16 onwards this is estimated to rise to £320,000 per year. The probation cost is estimated to be around £23,000 per year from 2013/14 onwards.

Therefore, given the evidence and assumptions above, creating a new forced marriage offence would cost the UK a minimum of **£10.5m in one-off (opportunity) costs plus ongoing costs of around £0.4m a year rising to £0.5m a year.** This equates to **approximately £14.4m in present value (PV) over 10 years.**

The estimates above for ongoing costs are conservative and depict a low case scenario. It is important to note that given the risks identified, the costs could be significantly higher. If for example the volume of new criminal forced marriage cases increased then the costs to the criminal justice system could be significantly higher.

## BENEFITS

The new offence may help the CJS to deal with the perpetrators of forced marriage more effectively. Victims of forced marriage, their families, and wider society may feel better served by the level of punishment delivered by the CJS.

There may be some potential benefits to future victims if the message sent out by criminalising forced marriage has the effect of deterring individuals from forcing or luring people into forced marriages. However the evidence of the existence and scale of a deterrent effect is mixed. As a result, this has not been quantified. Since forced marriage is primarily a one-off offence there is unlikely to be a reduction in prevalence through the incarceration of offenders.

If victims choose not to report cases to authorities for fear of their families being prosecuted, there may be a fall in civil FMPO's applied for and hence a fall in costs to HMCTS and legal aid.

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

N/A

## F. RISKS

It should be noted that these estimates are sensitive to the various assumptions that were made because of a lack of evidence. The table below highlights some of the key risks.

<b>Table E6: Risks</b>	
<b>Assumption</b>	<b>Risks</b>
HMCTS costs	Court costs may be higher than the averages assumed as there may be additional costs associated with the translation of court documentation and the use of interpreters during court hearings. There may be additional savings if some cases decide to only follow the new criminal offence route and no longer go down the FMPO civil route.
Volume of cases	We have only looked at a baseline scenario, this represents our best estimate of the minimum number of cases we expect to see prosecuted under new

	<p>legislation. In practice it is likely that we would see more cases prosecuted under a forced marriage offence.</p> <p>If contrary to expectations – we were to see fewer cases than anticipated being prosecuted, then there is a risk that this would be for undesirable reasons – namely that victims and witnesses decide not to speak out for fear of their family or communities being criminalised. This could possibly cross over to the civil process if victims fear third party reporting or CPS taking up cases from the civil courts which result in criminalising a member of their family. This risk is supported by the results of a recent survey<sup>3</sup> where 57% of 74 response suggested victims would be less likely to seek help if forcing someone to marry became a criminal offence. The level of penalties could also influence the future volume of cases.</p> <p>We have made simplifying assumptions over what the new forced marriage offence may look like, however in reality this could be different and result in much higher costs. There is a small chance that costs here could be reduced, but we think this is unlikely.</p> <p>There is also a risk that any proposed offence could be changed during passage through Parliament.</p>
Definition of new offence	
0% guilty plea rate for “luring” someone into a forced marriage	A higher guilty plea rate is expected in reality, however due to a lack of reliable data on which to base this we were not able to model this impact.
100% conviction rate for “luring” someone into a forced marriage	The conviction rate is expected to be lower in reality than modelled, however due to a lack of data this was not modelled. There is a chance that some defendants may be acquitted, which would result in lower costs than those modelled in this paper. In addition, fewer defendants may be successfully prosecuted as the offence would have to meet a criminal standard of proof “beyond reasonable doubt”.
Appeals	We have not quantified the cost of any appeals relating to forced marriage cases. There is a risk that there could be appeals, which could increase costs.
Defendants per case	There is a risk that there could be more than 1.3 defendants per case.
Legal aid	<p>We assume that at the Magistrates Court, 80% of defendants are eligible to legal aid. However in reality this could be lower.</p> <p>We assume that at the Crown Court, all defendants pass the Interest of Justice test and Means tests, making them eligible for legal aid. In reality the cost implication may be lower, as some defendants may have to contribute towards the legal aid cost of their defence.</p> <p>Average legal aid costs per case may be higher as cases may require interpreters, to attend meetings between the victim and their solicitor, for the translation of relevant case documents.</p> <p>The unit costs are for 2010/2011 and have not been adjusted to represent the Legal Aid Reforms which will commence in Autumn 2011.</p>
Interpreter Costs	These have not been quantified and would be an additional burden to be borne by each CJS agency (e.g. HMCTS, CPS, LSC, and police).
Custodial sentence length	Crimes that fall under the category of ‘more serious violence’ cover a wide range of offences, which carry different sentences. Therefore, the true custodial sentence length could be lower or higher than assumed, which would result in lower/higher costs.
CPS costs	There is a risk that CPS prosecuting costs for cases could be higher as there may be additional cases that go down the criminal route. This may occur where currently the victim opts for civil measure but in future if brought to the attention of the CPS might be prosecuted regardless of victims’ wishes.
Police costs	There is a risk that police costs could be higher or lower depending on the time it takes to undergo training.

<sup>3</sup> Exploring the viability of creating a specific offence for forced marriage in England and Wales: Dr Aisha K Gill, July 2011

## 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>	£14.4m (present value over 10 years covering opportunity cost to police through one-off familiarisation and ongoing prison and probation services, CPS, HMCTS, legal aid through additional cases and up-tariffing.)	£NK
	CPS training costs, ongoing police enforcement costs, victim costs if cases now unreported.	Benefits to victims through potential deterrence effect

Source: HO analysis

No preferred option will be selected until the consultation has been completed.

## I. Implementation

Subject to the outcome of the consultation, an appropriate legislative vehicle may need to be identified and used to create a new offence if that course of action is taken.

## J. Monitoring and Evaluation

Subject to the outcome of the consultation, an appropriate legislative vehicle may need to be identified and used to create a new offence if that course of action is taken.

## 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

See Annex 1.

# Annex 1. Specific Impact Tests

## Statutory Equality Duties

### Equality Impact Assessment

Forced marriage is a problem faced by 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 the FMU's 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 and 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.

## Annex 2. Detailed methodology behind low case scenario for Option 2

### ASSUMPTIONS & DATA

For the purpose of this impact assessment we have looked at a low case scenario and assumed that a new criminal offence of “forced marriage” is created. There are a number of difficulties in defining a criminal offence of forced marriage that would encapsulate all the behaviours involved. Despite this, for the purposes of modelling we assume the following impacts:

- The current cases that flow through the criminal justice system which are flagged as “Forced Marriage” cases by the CPS would, in the future, flow through the criminal justice system, but under the new “forced marriage” offence. This, however, assumes that all the cases flagged by the CPS are ones where they knew at the charging stage that the offence was taking place in the context of a forced marriage situation, whereas it may be that in some cases the full circumstances of the case only become apparent during the trial.
- For the purposes of the exercise we have assumed that the new “forced marriage” offence would be an either way offence, with a maximum sentence of life imprisonment. This is because the most serious offence currently used in forced marriage cases could attract life imprisonment<sup>1</sup>. This is not to suggest that all forms of criminal behaviour involved in forced marriage do or should attract that penalty. Given the wider scope of the new offence, we assume that there would consequently be an element of up-tariffing of sentences because:
  - a) Some cases now dealt with as summary offences would in this scenario become either-way cases giving the defendant the option to elect for trial by jury.
  - b) Some of the lower end offending (be that current summary or either way cases) would – as a result of creating an offence with a high maximum tariff - be committed to or elect trial by jury in the Crown Court when it would currently be dealt with by the magistrates’ courts. The effect of this is uncertain but could lead to higher sentences.
  - c) Because of the broad nature of the offence, the maximum sentence would need to be high and we anticipate this would lead to average sentence lengths in both the magistrates’ and Crown Court rising.

**Table E1: Number of defendants prosecuted under a new “Forced Marriage” offence**

	Base case <sup>2</sup>	Future case
<b>Magistrates</b>	12	8
<b>Crown Court</b>	8	12
<b>Total</b>	<b>20</b>	<b>20</b>

Source: CPS data on forced marriage flagged cases 2010/11, HO/MOJ assumptions

**Table E2. Average sentence lengths (months)**

	Base case	Future case
<b>Magistrates</b>	3.2	3.6
<b>Crown Court</b>	17.1	22.8

Source: Table A5.1 of MOJ sentencing tables 2010, HO/MOJ assumptions

- We also assume that the new “FM” offence would now cover the acts of “luring” someone into a forced marriage thereby also creating a criminal offence of “luring”. We assume – as a very conservative estimate - that the 13 Forced Marriage Protection Orders (FMPOs) currently made which included a provision to surrender the “Person To Be Protected’s” passport / travel

<sup>1</sup> For example, grievous bodily harm with intent, kidnap and false imprisonment.

<sup>2</sup> The base case figures represent those criminal cases currently flagged as “forced marriage” by the CPS.

documents are our best currently available starting point to identify cases involving an element of “luring”.

- We assume that all of these 13 cases would not only go through the civil route of a FMPO in order to protect the victim, but that some of the (typically multiple) defendants associated with the cases would now also be prosecuted through the criminal courts.
- We assume that for each of these 13 cases there are 1.3 “defendants” who would – under new legislation - be prosecuted for “luring” someone into a forced marriage. This assumption is based on CPS data on criminal cases flagged as involving a forced marriage and is believed to be more representative of the number of defendants per case involved in a criminal proceeding rather than a civil proceeding because the burden of proof threshold for criminal and civil cases is different. This number differs from the number of ‘respondents’ in civil cases which, based on recent court based information for 2010 is an average of 2.5 respondents per case. Depending on the drafting of the new offence this could be a more appropriate baseline. If this number was applied this would increase the costs on the criminal justice system.

**Table E3: Number of defendants prosecuted under the new “luring” element of a Forced Marriage offence**

	Base case	Future case
<b>Magistrates</b>	0	12
<b>Crown Court</b>	0	5
<b>Total</b>		<b>17</b>

Source: HMCTS FamilyMan Data 2010/11, CPS data on forced marriage flagged cases 2010/11, HO/MOJ assumptions

- For the purposes of this IA, it is assumed that the new “luring” offence would be triable either way, with a maximum sentence of 2 years imprisonment. However, it should be noted that if it is decided after considering consultation responses that this behaviour should be criminalised, the maximum penalty will not necessarily be 2 years. Furthermore, we have used the offence of “assault with intent to resist arrest” as a proxy to obtain average sentence lengths for this element of the new offence. This is a conservative estimate as under existing criminal law, evidence of forced marriage is an aggravating factor in sentencing (whereas the averages below do not relate to cases involving forced marriages). We accept that the offence of ‘assault with intent to resist arrest’ involves different criminal behaviour than that associated with “luring” someone in order to force them to marry. This offence has been used as a proxy for the purposes of this IA as it also carries a maximum penalty of 2 years and the data on average sentence lengths was readily available.

**Table E4: Average sentence lengths (months)**

	Base case	Future case
<b>Magistrates</b>	0	2.9
<b>Crown Court</b>	0	6.3

Source: MOJ statisticians, 2010

- It is assumed that the CPS would incur costs in prosecuting defendants in the Crown and Magistrates’ Courts. Costs from creating a new “forced marriage” criminal offence would arise from:
  - (1) higher CPS prosecution costs for cases moving up to the Crown Court
  - (2) CPS prosecution costs associated with the new “luring” into a forced marriage cases where currently there are none.
- The Ministry of Justice (MOJ) Criminal Justice System Cost Benefit Framework provides estimates of the CPS’s average costs in 2008/09 for prosecuting defendants in the Crown and Magistrates’ Courts.

- Other unit costs for the Criminal Justice System (CJS) were sourced from the Ministry of Justice (MoJ) Cost-Benefit Framework and Legal Services Commission (LSC) statistics pack 2010/11.

**Table E5: CJS Unit Costs (2008/09 prices)**

	Magistrates	Crown Court	Other
CPS cost per defendant	£137	£2,397	-
Defence representation cost per case (legal aid) (2010/11 prices)	£473	£2,457	-
HMCTS cost (per session in magistrates and per sitting in the crown court)	£1,972	£4,381	-
Probation Service Costs	-	-	£2,800

Source: MoJ Cost-Benefit Framework Feb 2010, LSC stats pack 2010/11

- To keep prices constant, CJS unit costs have been updated from 2008/9 or 2009/10 prices to 2010/11 prices using GDP deflators where relevant.
- It is assumed that the average number of defendants per case is 1.3 throughout, which is based on CPS 2010/11 data on cases flagged as “forced marriage” cases.
- We assume a 100% conviction rate for the offence of “luring” someone into a forced marriage. In reality the conviction rate will be lower, however we do not have any data on which to base an appropriate conviction rate for an offence that currently does not exist. There are therefore risks around this modelling assumption which are highlighted further on. Given the conservative assumptions around the volumes and number of defendants per case, we feel that the assumptions made on the conviction rate for the “luring” offence still reflect a reasonable low case scenario.
- It is assumed that there are no guilty pleas for “luring” someone into a forced marriage offence. Again we would normally expect at least some guilty pleas, but due to a lack of reliable data on which to base the guilty plea rate for an offence that does not currently exist, we have been unable to model this. There is therefore a risk around this modelling assumption and this is reflected in the risks section. The figures relating to this are however so small that the difference is not significant to the costing.
- Annual prison costs have been estimated to be around £30,000 per year to the end of this SR period (2014/15). This will increase to £40,000<sup>3</sup> per year in the next SR (post 2014/15).
- It is assumed that there could be one-off costs to the police of becoming familiar with the new “FM” offence. In England and Wales, there are around 11,000 police officers (inspectors or above) and their average hourly wage is around £59 per hour. In addition, there are around 277,000 police officers (sergeant or below) and their average hourly wage is around £36 per hour<sup>4</sup>.

<sup>3</sup> Source: MoJ

<sup>4</sup> Police officer numbers are from the 2009/10 Chartered Institute of Public Finance & Accountancy (CIPFA). Police officer salaries are from the Annual Survey of Hours and Earnings (ASHE) and CIPFA, which have been up rated to 2010/11 prices.