

Forced Marriage

A Wrong Not a Right



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Ministerial Foreword

British society is based on equality and respect between people, regardless of their gender, race, faith or ethnicity. This is underpinned by a common culture of human rights, including the rights of children and young people.

We are proud of our diversity and the strength and richness that that brings. Families and family relationships are a bedrock of this society. We need to support them and to recognise they take many forms. But we also need to make clear that difference, diversity and cultural sensitivity are no reason to let abuse go unchallenged.

Forced marriage - that is a marriage without freely given consent - is wrong and every major world religion condemns it. It is an abuse of a person's human rights and a form of domestic violence¹. Together with partners across the public and voluntary sector, we have been working for many years to prevent forced marriages taking place and to support victims when it does. But we know that young men and women are still at risk. As part of our strategy for tackling forced marriage we want to consider the benefits and risks of creating a specific criminal offence relating to forced marriage. We recognise that this is an extremely sensitive issue, with no clear or easy answers. We would value the insight and experience of all our partners, and of the individuals who have first hand experience of these issues. We hope that you will respond to this consultation document and help us to find the right way forward.

Home Secretary



¹ References in this consultation paper to "domestic violence" do not apply to Scotland. The definition of domestic abuse in Scotland covers abuse of women by partners and ex-partners only and as such would not encompass forced marriage. The Scottish Executive-chaired National Group to Address Violence Against Women is considering its strategic approach to wider violence against women issues which would include forced marriage.

Executive Summary

Executive Summary

There is currently no specific criminal offence of 'forcing someone to marry' within England, Wales, Scotland or Northern Ireland, although it is a clear abuse of human rights and a form of domestic violence². The law does provide protection from the crimes that can be committed when forcing someone into a marriage. Perpetrators - usually parents or family members - could be prosecuted for offences that can be associated with forcing someone into marriage, including kidnap, false imprisonment, assaults, harassment, child cruelty, sexual offences, failing to ensure attendance at school and murder.

The consultation seeks views on whether a specific criminal offence would help us to combat forced marriage. It also seeks views on how any proposed offence might be formulated and issues surrounding its enforcement such as the extent to which our criminal law could apply to acts undertaken overseas. The consultation also seeks views on what the penalties of such a possible offence should be.

Arguments against creating a specific criminal offence include:

- the risk that the fear of their families being prosecuted may stop victims from asking for help;
- the risk that parents may take children abroad, and marry them off or hold them there, at an earlier age to avoid increased risks of prosecution in Britain;
- that there are already sufficient criminal offences and protective measures that can be used;
- that if it were very difficult to mount a successful prosecution the new offence might be routinely flouted with impunity;
- that a new offence would disproportionately impact on Black and Minority Ethnic communities and might be misinterpreted as an attack on those communities;
- that families concerned may not feel

implicated by such an offence because many may believe their children did consent to the marriage, even though that consent was obtained under duress;

- that implementing a new offence would be expensive and the funds might be better spent on improving support for those at risk;
- that increased risks of prosecution or threat of prosecution would make it harder for victims to reconcile with their families;
- that increased involvement in criminal prosecutions could be harrowing for victims who wanted to move on; and -
- that there are other better non-legislative means of working within communities to change views and tackle the abuse.

Arguments for creating a specific offence include:

- that primary legislation could change public opinion, and thus perception and practice;
- that it could have a strong deterrent effect;
- that it could empower young people with more tools to negotiate with their parents and in some cases with parents facing pressure from relatives;
- that it could simplify and clarify matters for public sector employees tackling this issue; and -
- that it would make it clearer what steps can be taken and easier to take action against perpetrators.

The relative number of advantages and disadvantages listed in this document is not any indication of whether a specific criminal offence would or would not help us to tackle the problem of forced marriage.

A key question is whether the potential longer term benefits of changing ingrained views on forced marriage and giving young people more tools to negotiate with their parents outweigh risks such as driving the problem underground and abroad.

² According to the newly established Government definition of Domestic Violence which includes domestic violence perpetrated by family members as well as intimate partners.

Chapter 1: Introduction

What is forced marriage?

What is forced marriage?

Forced marriage is a marriage conducted without the valid consent of one or both parties, where duress is a factor. Duress has been recognised by UK courts to include emotional pressure as well as criminal actions such as assault and abduction. It is a violation of internationally recognised human rights standards and a form of domestic violence.

The victims of forced marriage can be both men and women and marriages can take place either in the UK or abroad. There is a spectrum of behaviours behind the term forced marriage, ranging from emotional pressure, exerted by close family members and the extended family, to the more extreme cases, which can involve threatening behaviour, abduction, imprisonment, physical violence, rape and in some cases murder (often referred to as so called honour killings). So called 'community marriages' where one or both spouses do not give their full and free consent or are not old enough to consent are also a form of forced marriage.

Victims come from a variety of cultural backgrounds. Many cases brought to the attention of the Forced Marriage Unit involve families from the Indian sub-continent³, but other cases originate from East Asia, the Middle East, Europe and Africa. Forced marriage cannot be justified on religious or cultural grounds. No major world religion supports forced marriage.

What is the difference between forced marriage and arranged marriage?

A clear distinction must be made between a forced marriage and an arranged marriage.

In arranged marriages, the families of both spouses take a leading role in choosing the marriage partner but the choice of whether or not to accept the arrangement remains with the potential spouses. They give their full and free consent. By contrast, in a forced marriage, one or both spouses do not consent to the marriage or consent is extracted under duress. Duress includes both physical and emotional pressure.

The tradition of arranged marriage has operated successfully within many communities and many countries for a very long time and remains the preferred choice of some people.

What is the law on marriage?

England and Wales

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 years old; a person under the age of 18 years may not marry without parental consent⁴. 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 forced marriage is (provided it complies with the formalities) valid until it is voided in civil proceedings for nullity. Section 12c of the Matrimonial Causes Act 1973 states that a marriage shall be voidable⁵ if "either party to the marriage did not validly consent

³ This may reflect the demographics of ethnic minority communities in Britain.

⁴ In England and Wales. They may marry again at 16 in England and Wales if they are a widow/widower (Section 11 (a) (ii) Matrimonial Causes Act 1973)

⁵ 'Voidable' means that the marriage is valid until it is challenged by one of the parties, at which time the court can award a decree of nullity invalidating the marriage.

to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise". Duress is invariably a factor in forced marriages. The Court of Appeal has ruled that the test for duress for these purposes is simply "whether the mind of the applicant (the victim) has in fact been overborne, howsoever that was caused"⁶

A petition for nullity (to annul the marriage) must be sought within three years.

Scotland

In Scotland, the minimum age at which a person may marry is 16 years on the day of the marriage. Parental consent is not necessary. Both parties, however, must be capable of understanding the nature of a marriage ceremony and of consenting to marrying.

Under Scots Law, a marriage is void if either party was forced to marry against their will, for instance as a result of duress, or force and fear (true consent, and not merely the external appearance of consent, is essential for the constitution of marriage). A void marriage is regarded as never having taken place, however, a decree of nullity may be required from the Court of Session in order for the marriage to be treated as void and it is important, therefore, that appropriate legal advice is sought.

A Scottish court can take jurisdiction to decide on the question of whether a marriage is void on the basis of lack of consent, regardless of where that marriage was performed.

A forced marriage may also be dissolved by a decree of divorce, but many people prefer the recognition of the reality of the dissolution that nullity gives.

What protection is already afforded by criminal law?

Although there is currently no specific criminal offence of 'forcing someone to marry' within England and Wales or Scotland, the law does provide protection from the crimes that might be committed when forcing someone into a marriage. Depending on the circumstances perpetrators - usually parents or family members⁷ - could be prosecuted for a range of offences. These include:

England and Wales

- 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. Parents can be convicted of kidnapping their children. The offence is punishable by fine or imprisonment, or both. There is no maximum penalty.
- Child abduction. The Child Abduction Act 1984 makes it an offence 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,

⁶ Hirani vs Hirani (1984) 4 FLR 232 CA. A similar judgement was found in the case of P v R [2003] 1 FLR 661. However duress was not established in the case of Singh v Singh [1971] 2 All E R 828. In that case a 17 year old Sikh girl went through a civil ceremony of marriage arranged by her family. She had not met the groom prior to the marriage and did not take to him. She subsequently refused to go through the Sikh religious ceremony. She applied for nullity on the grounds that she had only gone through the ceremony in obedience to her parents' wishes and out of a sense of duty to them and Sikh customs. The court rejected her argument that her consent was vitiated by duress as there was no evidence that her will had been overborne or that her consent had been obtained through fear.

⁷ Perpetrators can also include members of the extended family, potential or, where the marriage has already taken place, in-laws and husbands, and members of the community.

in whose favour a residence order was in force with respect to the child. Offences contrary to the 1984 Act are punishable with up to 7 years' imprisonment. The Act also covers 'stranger abductions'.

- False imprisonment. False imprisonment is the unlawful and intentional or reckless constraint 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. There is no maximum penalty.
- Assault and battery. The term "assault" is frequently used to include both an assault and a "battery" but strictly an assault is an independent offence and should be treated as such. An assault is an act by which a person intentionally or recklessly causes another to apprehend immediate unlawful violence⁸; a battery is an act by which a person intentionally or recklessly applies unlawful violence to another person. Assaults, without any accompanying battery, and the most minor offences of "battery", will result in a charge of "common assault", contrary to section 39 of the Criminal Justice Act 1988, which is punishable with up to 6 months' imprisonment. A more serious act of violence may result in a charge of assault occasioning actual bodily harm (ABH), wounding or grievous bodily harm (GBH), depending on the circumstances and the nature of the injury. These offences are found in the Offences Against the Person Act 1861. The maximum penalty for ABH, GBH and wounding is 5 years; the maximum penalty for wounding or causing GBH with intent to do so is life. Emotional or psychological abuse leading to psychiatric injury to the victim can constitute assault occasioning actual bodily harm⁹.
- Threats to kill (section 16, Offences Against the Person Act 1861). A person who, without lawful excuse, makes to another person a threat to kill that person, intending that that other person would fear that the threat would be carried out, is guilty of an offence 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 created various offences including relating to abusive and threatening behaviour, including the offence of affray (the use or threat of unlawful violence causing a person to fear for their personal safety), which can be committed in dwellings and other private places as well as in public places. This offence is punishable with up to 3 years' imprisonment
- Harassment. Action short of violence and the immediate threat of it may amount to an offence under Section 2 of the Protection from Harassment Act 1997 if it is conducted on at least 2 occasions which leads to harassment, alarm or distress. The maximum penalty is 6 months imprisonment. If the course of conduct causes a fear of violence, an offence under Section 4 of that Act may be committed, attracting a maximum penalty of 5 years. Breach of an injunction

⁸ The threat of immediate unlawful violence is a crime. However, the threat of violence sometime in the future, perhaps conditional on a future event is not an offence. For example, it is not an assault if a father says to his daughter "unless you agree to this marriage I will beat you", because until the daughter indicates she will not agree then she may not apprehend immediate violence. By way of contrast a father who raises his fist to his daughter and is about to hit her commits an assault even if he actually does not because she shouts "OK I will marry him".

⁹ It is necessary for the assault to actually cause a psychiatric illness with psychological symptoms, as opposed to mere emotions such as fear, distress or panic. This was established in *R v Chan Fook* 1994 99 Cr.App.R.147 CA / Injury must be proved by expert psychiatric evidence-*R v Ireland* 1997 4 All ER 225 at 23-233, HL, approving *Chan-Fook*

or restraining order under that Act also carries a 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 or ill-treats them so as to cause unnecessary suffering or injury 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 may be established. For example, sexual intercourse without consent is rape¹⁰ and attracts a maximum penalty of life imprisonment. Anyone who aids and abets that offence is liable to the same penalty. If the victim is under 16, it is an offence to cause or incite a child to engage in sexual activity¹¹ or arrange or facilitate the commission of a child sex offence¹². The offences of trafficking for sexual exploitation¹³ may also be committed if travel of the victim within or out of the UK 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. These offences apply in some circumstances to acts committed outside the UK whether or not they constitute an offence in the country where they 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).

Scotland

- Abduction. This is a common law crime. Abduction for any purpose, including marriage, is criminal. The abduction need not be accompanied by assault or fraud in order to be characterised as a criminal act. The essential element of the crime of abduction is the deprivation of the victim’s personal freedom. There is no maximum penalty.
- Assault. Any attack upon the person of another is assault. “Attack” has a very wide meaning and an assault may still be committed in the absence of significant violence or injury to the victim. The deliberate use of threatening gestures in order to place a person in a state of fear and alarm for his safety is thought to be sufficient to constitute the crime of assault¹⁴. There is no maximum penalty.
- Breach of the peace. This is a very flexible common law offence with no maximum penalty. A breach of the peace may be generally described as conduct causing or likely to cause alarm or annoyance and so lead to a disturbance of the person alarmed or annoyed. The type of conduct covered by this offence might include behaviour associated with stalking and harassment.
- Breach of a Non-Harassment Order granted under the Protection from Harassment Act 1997 is a criminal

¹⁰ Section 1 Sexual Offences Act 2003

¹¹ Section 10, Sexual Offences Act 2003

¹² Section 14, Sexual Offences Act 2003

¹³ Sections 57-9, Sexual Offences Act 2003

¹⁴ Lord Advocate’s Reference (No. 2 of 1992) 1992 S.C.C.R 960

offence. The maximum penalty available for conviction on indictment is imprisonment for five years and a fine. The police have the power of arrest where there is breach of a Non-Harassment Order. A power of arrest allows the police to arrest without warrant, a person who appears to be in breach of the terms of an order or interdict.

- In the civil court it is open to someone to ask the court to grant an “interdict” to prohibit another person from taking a particular course of action. If someone is at risk of physical or mental abuse then it may be possible to obtain an interdict to protect against this. The Protection from Abuse (Scotland) Act 2001 allows a court to attach a power of arrest to any interdict granted for the purpose of protecting against abuse.
- Child cruelty. Where the victim is under 16, the offence under section 12 of the Children and Young Persons (Scotland) Act 1937 may be committed by a person with parental responsibilities (in relation to the victim) who wilfully assaults or ill-treats them or exposes them to assault or ill-treatment so as to cause unnecessary suffering or injury to health. The maximum penalty available for conviction on indictment is imprisonment for five years and a fine.
- Rape. Sexual intercourse by a man with a woman without the woman’s consent constitutes the crime of rape. There is no maximum penalty.
- Sexual offences. Depending on the circumstances of a particular case and the age of the victim, various offences under the Criminal Law (Consolidation) (Scotland) Act 1995 may be established.

For example, it is an offence to detain any female against her will with the intent that she may engage in unlawful sexual intercourse with men or with a particular man¹⁵.

Other offences that may be committed as part of forcing someone into a marriage include failing to ensure attendance at school, contrary to the Education Act 1996, immigration offences and murder.

Decisions whether to prosecute for criminal offences in any given case are for the police and the prosecuting authorities, taking into account both whether there is sufficient evidence available and whether a prosecution would be in the public interest.

Looking abroad legislation specific to forced marriage is rare. Norway has a specific offence of forcing someone into marriage and India, Pakistan and Bangladesh have laws against child marriage and abducting someone for the purpose of marriage against their will. Leaders in Saudi Arabia and Afghanistan have recently issued public statements condemning forced marriage.

What protection in civil law is available for children and vulnerable adults?¹⁶

Children at risk of being forced into a marriage are entitled to the statutory protection afforded by the public law aspects of the Childrens 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

¹⁵ Section 8(1)

¹⁶ See page 39 of Young people & vulnerable adults facing forced marriage: Practice Guidance for Social Workers available on the Home Office website

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.¹⁷

Police stationed at airports have successfully used the Emergency Protection Order provisions of section 44 of the Children Act to prevent a child being removed from the UK for the purposes of a forced marriage. 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.

In Scotland, Section 22 of the Children (Scotland) Act 1995 imposes a general duty on local authorities to safeguard and promote the welfare of children in their area.

The Children's Hearings System, also specified in the Act above, is capable of being used to protect children where compulsory measures of supervision are required. Grounds such as either being "exposed to moral danger" or being "likely to suffer unnecessarily or be impaired seriously in her health or development, due to a lack of parental care"¹⁸ can result in referral to a children's hearing to determine whether and what compulsory measures could apply.

Temporary or emergency measures will sometimes be necessary such as warrants or Child Protection Orders whereby a child

could be removed from her home to a place of safety or the prevention of the removal of a child from a specified place. Supervision Requirements are the most common outcome of this process and place a duty on a parent to give notice to the Principal Reporter in the hearings system of any proposal to take the child to live out with Scotland not later than 28 days prior to doing so. This proposal would then be considered by a reconvened hearing.

Outside the statutory obligations and duties of local authorities the courts private law jurisdiction can be used to protect a minor, on their own application or on the application of an interested person. The court's wardship powers were utilised in the case of *Re K.R. (a minor)* to protect a young girl from a forced marriage overseas, where she was being held against her will, and to facilitate her safe return to the UK¹⁹.

The options available for the protection of vulnerable adults are limited and will depend on the nature and definition of the "vulnerability". One course of action is to apply to the court through a "next friend" under the inherent jurisdiction of the court. The court then makes a "next friend" declaration on behalf of the vulnerable adult. This can lead to injunctions and other steps relating to the protection including barring from overseas travel or from undertaking a marriage etc. Other provisions of the Mental Health Act 1983 may also apply in certain specific cases.

In the recent *Re S.K.*²⁰ judgement, the Family Division of the High Court used its inherent jurisdiction to protect an adult at risk of forced marriage. In that case the court gave directions to ascertain whether or not the victim had been able to exercise

¹⁷ Section 20, Children Act 1989

¹⁸ In terms of subsection 52(2) (b) or (c) of the Children (Scotland) Act 1995

¹⁹ In *Re KR (A minor)* (1999) 2 FLR 542

²⁰ 2004 EWHC 3203

her free will in decisions concerning her civil status and her country of residence by requiring that she be seen by an appropriate official at the British High Commission overseas. These directions were accompanied by injunctive relief against named parties prohibiting them from threatening, intimidating or harassing her or using violence against her, an injunction against a marriage ceremony taking place. Where the whereabouts of a person (including a child) are unknown 'bench orders' or other directions can be made to secure the attendance of persons who have that knowledge at court to provide information about her whereabouts. In doing so the court set a precedent that it could intervene to help vulnerable people in these circumstances outside the narrow criteria of childhood and vulnerability previously understood.

Victims can also obtain non-molestation orders through the civil courts, with powers of arrest attached in appropriate cases. The range of people against whom such orders can be obtained is extensive.²¹

How does this relate to human rights?

"Marriage shall be entered into only with the free and full consent of the intending spouses" (Universal Declaration of Human Rights, Article 16 (2))

"State parties shall ensure on a basis of equality of men and women... the same right to choose a spouse and to enter into marriage only with their full and free consent". (Convention to Eliminate All Forms of Discrimination Against Women - CEDAW, Article 16 (1) (b))

"A woman's right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human

being." (General Recommendation No 21, UN Committee on the Elimination of All Forms of Discrimination Against Women.)

"Everyone has the right to liberty and security of person" (Article 5 of the Human Rights Act 1998).

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right." (Article 12 of the Human Rights Act 1998)

"No marriage shall be legally entered into without the full and free consent of both parties" (UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1).

"The UN recognises forced marriage as a form of contemporary slavery, trafficking and sexual exploitation." (UN working group on contemporary forms of slavery 28th Session Geneva June 2003)

How does this relate to wider government initiatives?

This consultation needs to be seen in the context of the Government's wider work to combat forced marriage. This includes casework to advise people of their options and rescue and repatriate them if they ask for help having been taken abroad to be forced into a marriage. The Government has also provided guidance for Police, Social Services, education professionals and Foreign and Commonwealth Office consular staff on handling forced marriage cases, commissioned research and has undertaken a wide variety of media and outreach work.²²

²¹ Family Law Act 1996

²² See the Home Office and Foreign and Commonwealth Office websites at www.homeoffice.gov.uk and www.fco.gov.uk

In turn this work to combat forced marriage needs to be seen in the context of the Government's wider work to tackle violence and to ensure that people can live without fear, whether from racist attacks on the streets or from domestic violence in the home. The Government agreed an umbrella definition of domestic violence which now includes abuse perpetrated by family members²³ as well as intimate partners. The Domestic Violence Crime and Victims Act 2004²⁴ brought in some significant improvements to benefit victims of domestic violence. Measures include common assault being made an arrestable offence, making breaches of non-molestation orders a criminal offence and enabling courts to impose restraining orders when sentencing for any offence. Other non-legislative steps include improvements to how statutory agencies handle domestic violence, e.g. the CPS published revised guidance in February 2005 which included information on how prosecutions can be taken forward even in cases where the victim does not want to testify. The National Report [March 2005] also set out 12 Commitments including, the expansion of specialist Domestic Violence courts, piloting the first integrated domestic violence court and support for those who provide advice and support services.

How prevalent is forced marriage?

Forced marriage is in many ways a hidden problem. Many victims do not realise that they are the victims of a human rights abuse; many will never ask for help. As such it is difficult to know the extent of the problem. The Forced Marriage Unit deals with approximately 250 forced marriage cases a year, but we know many more cases exist that are not reported. Approximately 15% of these cases involve male victims. The Unit are aware of cases from Pakistan, Bangladesh, India, Yemen, Mauritius, Turkey, Sri Lanka, Tanzania, El Salvador, Somalia, Mali, America and Hong Kong. Over half the cases reported to us involve families of Pakistani origin. The next largest group are Bengali, followed by Indian families. This list of countries is not exhaustive and we suspect that there many other communities experience problems of forced marriage.

Question 1: Have you encountered the problem of forced marriage? How were these cases brought to your attention? How many cases are you aware of? What were the age, gender and ethnic background of the victims?

²³ Family members are defined as mother, father, son, daughter, brother, sister, and grandparents, whether directly related, in laws or step-family

²⁴ which applies in England, Wales and Northern Ireland

Case Study

A (female) was forced by her parents to marry her cousin B (male), from their village, back home. When they first told her about the idea she made it clear that this was not what she wanted but they insisted that she do as she was told. A did not feel that she could go against her parent's wishes - she didn't want to hurt them, despite her friends urging her to take a stand.

She married her cousin, but was desperately unhappy and after two months she attempted suicide. Fortunately a friend found her in time and she was unsuccessful. A remains with her husband, although he treats her badly. She suffers from depression and attends an Asian women's support group following a referral by her GP. A says she can't leave her husband because it would bring shame on her family and hurt her parents.

Chapter 2: Arguments for and against criminalisation

Arguments for and against criminalisation

There are good arguments for and against introducing a specific offence on forced marriage. We have articulated some of these arguments below.

Against

2.1 Driving the problem further underground

There are concerns that criminalisation could dissuade victims from seeking help. People affected by attempts to force them into marriage are already extremely vulnerable, and often nervous about approaching any form of authority. The fear that their parents might be prosecuted as a result of their seeking assistance could put them off approaching statutory agencies completely - some potential victims might rather go through with a forced marriage than risk the possibility of being seen as responsible for their parents prosecution. Many practitioners and women's organisations share this concern.

The Forced Marriage Unit deals with over 250 cases of forced marriage a year. In nearly all these cases the potential victims seek assurances from caseworkers that their parents will not be prosecuted before they accept offers of help. Even when we take a seemingly small step of involving the courts (such as getting an order to prevent the potential victim being taken out of the country) the victim will usually retract their forced marriage claims and demand that we leave them and their family alone.

Views within the police are mixed. However a recent meeting of the Association of Chief Police Officers (ACPO) working group on forced marriage discussed criminalisation and shared the concern that it could dissuade victims from approaching authorities for

help. The working group is made up of practitioners from around the country, who between them deal with hundreds of cases each year. Their concerns are supported by the fact that in the 165 cases reported to the Metropolitan Police over the last two years all the victims requested confirmation that no prosecution would result against their parents or other family members.

Question 2: Do you think victims and potential victims would be less likely to seek help if forcing someone to marry became a criminal offence? In what ways might this risk be reduced?

2.2 Removal of victims from the United Kingdom

In order to avoid any possibility of prosecution there is the risk that some parents would circumvent any new criminal offence by taking their children back to their homeland early (in the early teens or younger) and then leave them there until they get married and have children at 16-20. Through depriving them access to the schooling and life opportunities available in the UK there is a greater chance that the victim will accept the marriage due to lack of other options.

The number of minors involved in Forced Marriage Unit cases has increased significantly over the last couple of years. It appears that parents are taking their offspring overseas younger. This may be for a variety of reasons but may include the fact that younger children will be less aware of their rights and more vulnerable to being emotionally or physically bullied into marriage. A specific offence against forced marriage might unintentionally increase this trend with children being taken overseas and 'prepared' for marriage over

an extended period. This would clearly be highly detrimental for the young person and would also make it harder for us to identify potential forced marriage cases before they went overseas.

Parents who relocate their minor children are perfectly within their rights to do so.

The related issue of extra-territorial effect is explored in section 3.2

Question 3: Do you think that families might seek to find a way around a new law by taking potential victims abroad? In what ways might this risk be mitigated?

2.3 Are there already sufficient criminal offences and protective measures that can be used?

As outlined in chapter 1 perpetrators can be prosecuted for offences including threatening behaviour, assault, kidnap, murder and rape. For children, care and protection orders, wardship powers, emergency protection order provisions are also available. Similarly domestic violence is tackled using existing offences such as assault, ABH rather than a specific offence of 'domestic violence'. Criminalisation will bring victims' cases into the public arena; and is to be contrasted with the anonymity and privacy that the civil family law process provides.

Question 4: Do you think there are already sufficient criminal offences and protective measures? Are they being used to full effect? If not, what suggestions would you make to encourage better use of existing law?

2.4 Potential lack of prosecutions.

There are concerns that it would be very difficult to mount a successful prosecution using the new offence, particularly as many victims are reluctant to see their families get into trouble. There might also be evidential difficulties, particularly in Scotland where there would require to be corroboration of both the *mens rea* and *actus reus* of the offence. Some commentators fear that the law would be routinely flouted, with apparent impunity and that this would devalue the offence and result in an even greater sense of powerlessness among victims.

The law against forced marriage in Norway has only resulted in one prosecution to date. Our own laws against female genital mutilation²⁵ have recently been revised to increase their effectiveness. No prosecutions have yet been brought in respect of our domestic offences although prosecutions have occurred in France (under general rather than a specific female genital mutilation offensive).

Question 5: Would the potential of few prosecutions devalue a new offence?

2.5 Disproportionate impact on Black and Minority Ethnic communities

A new offence would undoubtedly have a disproportionate impact on Black and Minority Ethnic communities. There are concerns that this might be misinterpreted as an attack on those communities. There is also a danger that it might be misused against them. For example, a jilted boyfriend reporting a non-existent abuse as a means of revenge against the daughter

²⁵ The Female Genital Mutilation Act 2003 replaced the Prohibition of Female Circumcision Act 1985.

who dumped him, a racist making unfounded accusations or a child falsely accusing their family of forcing them into marriage²⁶. There are also concerns that an offence might be misapplied, or applied without sufficient sensitivity, by some members of the enforcement agencies. However, difference, diversity and cultural sensitivity are no reason to let abuse go unchallenged and these risks can be mitigated by thorough investigation of claims and appropriate training and monitoring.

Question 6: Is there a risk that the disproportionate impact on Black and Minority Ethnic communities will be misunderstood or handled badly? In what ways could such risks be reduced?

2.6 Perceptions of the persons to whom a new offence would apply.

Many of the perpetrators involved in forced marriage may not feel implicated by a new offence. This is because many may believe the victims did consent to the marriage, even though that consent was obtained under duress or may not acknowledge the gravity of their actions. Indeed many victims are not aware that forced marriage is an abuse of their human rights. Without a realisation of where the law applies, much of its power would be diminished. However an effective communications strategy, which engaging with affected communities and their leaders, would help to tackle these issues.

Question 7: To what extent would perpetrators feel implicated by a new offence? How could we help them to understand the difference between arranged marriages, where the spouses give their full and free consent,

and forced marriages, where one or both parties do not consent or consent under duress?

2.7 Expense

Creating and implementing a new offence would be a resource intensive process. The expense involved might be justified not only in the benefits of a new offence, but also the opportunity to raise awareness of forced marriage as a human rights abuse and of the help on offer that this process would bring. However it could also be argued that the resources might be better spent on other things such as education and refuges. Estimated costs are set out in the annexed partial regulatory impact assessment.

Question 8: Would the expense of creating a new offence be justified? Might the resources be better used on other work?

2.8 A potential bar to future reconciliation

In many cases, despite what has taken place and the danger it may pose, victims want to be reconciled to their families. In some cases reconciliation has been possible but in other cases not, and in some cases where this has taken place it has taken a long time. There is a fear that the creation of a criminal offence, and any prosecutions that result or are considered, would result in a greater breakdown within the family unit and would make reconciliation harder to achieve.

Question 9: Would the potential for prosecution make it harder for victims to reconcile with their families?

²⁶ There have been some limited instances where young people have falsely accused their families of forcing them into marriage when in fact parents had simply imposed curfews to get them to return home at a reasonable hour.

2.9 Involvement in criminal prosecutions could be particularly harrowing for victims of this abuse.

Criminal prosecutions, particularly if the defendant(s) plead not guilty can be complex and lengthy. Some victims may find satisfaction in the knowledge that the perpetrator is being brought to justice by the state and therefore, not directly by them. However others may find the process harrowing and it may frustrate their desire to 'move on'. However this is an issue for other sensitive crimes (such as rape and sexual assault) where offences are in place and prosecutions are undertaken in the public interest.

Criminalisation will extend the class of interested parties and will increase the number of people who have an interest in the prosecution not proceeding. Victims are likely to come under pressure from the wider community not to support a prosecution. Some victims may also be, or may feel, at further risk of reprisal during a subsequent criminal, but this may also be the case in other criminal prosecutions and can be mitigated by protection from the Police and civil courts.

Question 10: Would any increased involvement in criminal prosecutions make it harder for victims to move on?

2.10 There are other non-legislative means of working within communities to change views.

The Government has been working together with statutory agencies, voluntary and community organisations to communicate the unacceptability of forced marriage and

to provide front line workers with training and resources to tackle it. We have done this through ministerial statements, conferences, media events, leaflets, information on the internet, training seminars and guidance for Police, Social Services and most recently for education professionals. We are committed to continuing this work, but are aware that there are still many families and communities where perpetrators still force people into marriage believing that it is right and in their best interests.

Question 11: Do you think that non-legislative measures are sufficient to combat this problem? What more can the Government and its partners do to communicate the unacceptability of forcing someone to marry?

Question 12: Are there any other potential disadvantages to creating a specific offence of forcing someone to marry, that we have not discussed?

On the otherhand there are some strong arguments in favour of creating an offence of forcing someone to marry.

For

2.11 Primary legislation could change practices by changing public opinion

The introduction of primary legislation has historically been a significant factor in the shaping of public opinion. This in turn affects public practices. For example, although a very different issue, the introduction or extension of laws against drink-driving seem to have helped change attitudes towards that behaviour²⁷. Criminalising forcing someone to marry would send a strong message that forced marriage is not

²⁷ von Hirsch, A., Bottoms, A., Burney, E., and Wikstrom, P-O (1999): Criminal deterrence and sentence severity - an analysis of recent research. University of Cambridge, Institute of Criminology. Hart Publishing: Oxford. The effect of laws on female genital mutilation would be a closer parallel but there is not yet any research evidence as to its effect.

a private matter nor an acceptable cultural institution but a dangerous and damaging abuse of a person's rights. Because everyone is subject to the criminal law, some people believe that the introduction of a specific criminal offence would have the greatest impact on public opinion. It would also provide a standard to which to hold people account. However, others believe that this would not be the case and as set out in section 2.6 some families may not believe the new offence applies to them and may resent or ignore it.

"That law is for gorahs²⁸". A comment heard by caseworkers in relation to the laws on female genital mutilation.

Question 13: Do you think that criminalising forcing someone to marry would change public opinion, particularly in those communities most affected?

2.12 A specific offence could have a deterrent effect.

It is also argued that introducing a specific criminal offence could provide a strong deterrent effect. However public perception of any new laws are key to its deterrent value. For a new offence or new enforcement strategy to have deterrent effect, people must be aware of it, believe it will apply to them, and be prepared to change their behaviour to avoid risk of getting caught. Successful prosecutions, and the greater the number, would increase the power of the deterrent²⁹. However as discussed in section 2.6 those involved may not feel that a new law would apply to them. There is also a possibility that a new law might be ignored and/or might be flouted as an act of defiance. It is also possible that any perpetrators, successfully prosecuted, could become

"martyrs" to a law that could be perceived as unfair.

Question 14: Do you think that criminalising forcing someone to marry would provide a strong deterrent? How could we maximise that effect?

2.13 Empowering victims with more tools to negotiate with their parents and in some cases empowering parents facing pressure from relatives.

In many cases of forced marriage, or attempted forced marriage, victims do not want to leave their families. However standing up to family pressure can often be difficult and can go against cultural norms, particularly when victims are dependent on their family and have little leverage. It may be that the existence of a criminal offence of forcing someone to marry could help them to persuade their parents that such behaviour isn't right and could be risky for the family. In some cases a parent or both parents may themselves be under pressure from their spouse, extended families members, in the UK and abroad, and from the wider community. The creation of an offence of forcing someone to marry might similarly help them to stand up to pressure to marry off their children.

Question 15: Do you think that criminalising forcing someone to marry would provide victims with more tools to negotiate with their relatives?

2.14 Making it clearer and easier for people to tackle the problem.

It is argued that creating a specific offence of forcing someone to marry would simplify

²⁸ Commonly understood to refer to 'white people'.

²⁹ The Halliday Report (Making Punishments Work: Review of the sentencing framework for England and Wales): Appendix 6 published by the Home Office in July 2001

and clarify matters on how people view and how they respond to forced marriage. There are concerns that many public sector agencies are not clear about how far they can intervene and the difference between arranged and forced marriage. The creation of a new offence, and associated publicity, could clarify the issue and result in a more robust response.

Question 16: Do you think that the creation of a new criminal offence would make it clearer and easier for people to tackle the problem?

2.15 Bringing perpetrators to justice

A new criminal offence could make it easier to bring the perpetrators of forced marriage to justice. Although some victims would not want to see their friends or family members

prosecuted, there are some who would want to see people brought to account for their actions.

Question 17: Would a new criminal offence help to bring perpetrators to justice? How important is that to victims and to the community at large?

2.16 The balance

A key question is whether the potential longer term benefits of changing ingrained views on forced marriage and giving victims more tools to negotiate with their parents outweigh risks such as driving the problem underground and abroad.

Question 18: On balance, should the Government introduce a criminal offence for forced marriage?

Case Study

S (female), a 16-year-old British national of Bangladeshi origin was bright with a good record at school until 14-years-old. From that stage, her motivation for school work decreased, she began to truant and was increasingly withdrawn. Marks on her wrists and back raised concerns of self-harm and violence.

Teachers referred her to the school counsellor and the school nurse. S maintained that it was a family generational clash and was anxious that no one should talk to her parents as this would "make things worse". After GCSEs the girls were supposed to attend school for various formalities about moving up to the sixth form or careers advice etc. S. did not turn up for these classes. A teacher contacted the family. They said the whole family had gone to Bangladesh to see a sick relative, that S. liked it a great deal and seemed to be in love with someone there, so she had stayed when the others came back. They said they wouldn't be surprised if she got married and stayed out there for quite a while.

The teacher contacted FMU fearing that this may be against S's wishes. FMU liaised with various parties to try to locate her family address overseas and the victim was made a ward of the High Court which required that she be produced at the British High Commission for them to interview her and offer her assistance.

She came and was interviewed alone. It transpired she was already married and had consummated the marriage. She did not appear happy but did not state that she had been forced and clearly did not wish to cause trouble for her family. She said that she was due to come back to the UK the following week to apply for her husband so no need for an emergency repatriation.

Back in the UK, she ran away from home and went to a refuge from where she phoned FMU. She said she had been raped but that she had not felt able to say that earlier and did not want trouble for her parents. She explained that she had for 3 years known there was a risk of forced marriage at the age of 16 but she didn't know who to turn to or who to trust and was embarrassed and frightened both for herself and her family. She explained that one day she had returned from school, had had tea and fallen deeply asleep. When she woke up she was at the airport and did not know what was happening but before she knew it the whole family were boarding a flight to Bangladesh. She was told it was an emergency as their father's mother was on her deathbed. On arrival she was locked up, everything taken from her, she suffered intense emotional pressure and some physical abuse and was made to understand that she could only return to the UK once married. She had said 'no' throughout, including at the ceremony, but this had been entirely disregarded by everyone. She was considering getting a divorce or annulment.

Chapter 3: The practicalities of a possible criminal offence

The practicalities of a possible criminal offence

This chapter outlines some of the possibilities of what an offence might involve. The ideas have purposefully been left fairly broad so as to maximise discussion.

3.1 The substance of a possible new offence.

There are a number of options the Government could consider if it were to formulate a possible new offence.

Option A: Grouping and renaming existing criminal activities

A new offence, with a title clearly referring to forced marriage, could be limited to where a person commits one of a group of existing criminal offences for the purposes of forcing someone to marry - such as the use or threat of immediate unlawful violence, the use or threat of unlawful violence in the future (in Scotland only), imprisonment and other existing criminal activities. Most threats to commit criminal offences³⁰ in England and Wales, financial threats, threats of exclusion from the family and social ostracism would therefore not be covered.

In addition to the mental element required by the existing offence, the new offence would require that the purpose of the behaviour be to bring about a marriage without the full and free consent of one or both parties. It would not require that the marriage actually took place.

Any collection of offences, grouped and renamed, when carried out for the purpose of forced marriage would need to carry the maximum penalty of the most serious

offence within the group. The Government would consider a number of groupings, for example to avoid grouping sexual offences committed for the purpose of forced marriage with less serious offences committed for the same end. The Government would also consider excluding the most serious offences (such as murder and rape) from such a grouping so that they could only be prosecuted under the existing names of those offences.

For example, a father who beat his son into agreeing to marry a wife of his choice could be prosecuted under this proposal. However a father who threatened not to talk to his son again if he didn't marry a wife of his choice could not be prosecuted under this offence.

Some of the advantages of this option are that:

- It could make it clearer and easier for public authorities to prosecute actions that are already criminal by raising their awareness of the crimes perpetrators can commit to bring about forced marriages.
- Unlike financial, emotional and social threats, there is general agreement that these actions are justly and proportionally criminal.

However there are some serious disadvantages:

- It would essentially simply duplicate the existing criminal law and would not increase the scope of the criminal law.
- Proving both the commission of an offence and the motive (e.g. assault and intention to bring about a marriage without the full and free consent of one or both parties) would be more difficult than having to prove the commission of the offence

³⁰ For example, in England and Wales, the threat of assault at an unspecified point in the future is not currently a criminal offence. The circumstances in which it is an offence to threaten to commit an offence are limited. They include the following:

- Sections 2 - 4 of the Public Order Act 1986 can apply where immediate unlawful violence is threatened
- Section 16 of the Offences Against the Person Act 1861 - threats to kill
- Section 2 of the Criminal Damage Act 1971 - threats to destroy or damage property
- Section 21 of the Theft Act 1968 - blackmail.

alone (just proving that the assault took place regardless of the motive). In Scotland these elements would require to be proved by two independent sources of evidence.

- It might detract from the message that forcing someone into marriage by means of financial, emotional and social threats is wrong as it is a form of domestic violence and an abuse of human rights.

Option B: An offence threatening to perpetrate existing criminal activities for the purpose of bringing about a marriage without the full and free consent of one or both parties

A new offence could cover any threat of a criminal action when the purpose of the behaviour was to bring about a marriage without the full and free consent of one or both parties. The substantively new element of this offence would be the inclusion of threats of criminal offences (e.g. non-specific threats of non-immediate violence such as the threat to beat someone if they did not marry a wife of the family's choosing), which in England and Wales, save for a small number of specific instances (e.g. threats to kill), are not currently criminal³¹. It would not require that the marriage actually took place.

It can be argued that there are other circumstances in which the threat of criminal activities are equally repugnant as when used for the purpose of forcing someone into marriage (for example, when used to obtain sexual favours). The reason for considering criminalising the threat of criminal activities in this context, when the threat of criminal activities are not normally criminal of themselves more generally, is the profoundly damaging consequences that can result when a

person is forced to marry (e.g. rape).

For example, an uncle who threatened to beat his nephew if he did not agree to marry a wife of his choice could be prosecuted under this proposal. However an uncle who threatened to cut his nephew off if he didn't marry a wife of his choice could not be prosecuted under this offence.

Some of the advantages of this option are that:

- It would add something substantive to the criminal law in England and Wales.
- Unlike financial, emotional and social threats, the criminalisation of threats of criminal offences intended to bring about a forced marriage are more likely to be perceived as fair and proportionate.

Some disadvantages of this option are that:

- The introduction of a new form of offending below the threshold of current criminality would set a precedent, the narrow scope of which may not be easy to justify.
- It is doubtful whether the new offence would extend the scope of criminal law in Scotland.
- It might detract from the message that forcing someone into marriage by means of financial, emotional and social threats is wrong as it is a form of domestic violence and an abuse of human rights.

Option C: A criminal offence encompassing all the unacceptable behaviour (both that which is and is not currently criminal) intended to force someone into marriage.

An offence could encompass all unacceptable behaviour intended to force someone into marriage. It would include behaviour which is already criminal such as violence, abduction

³¹ Such conduct could, however, be prosecuted as a breach of the peace in Scotland at present depending on the circumstances in which the conduct was perpetrated.

and harassment and threats to commit such offences. But the offence could criminalise unacceptable behaviour intended to force someone into marriage by means that are not already criminal³². Depending on the circumstances, this could be repeated threats of social and financial ostracism coupled with intimidation based on threats of destroying family honour, as well as non-specific threats of violence. What patterns of behaviour are so unacceptable as to merit criminalisation will depend on all the circumstances. As such it may not be possible for an offence to be definitive about what patterns of conduct are covered. Rather it may be necessary to use a flexible concept such as “unacceptable pressure” or “unreasonable and oppressive behaviour” which could give the courts the means to ensure that the offence only applies in those circumstances that are so unacceptable as to render them criminal.

Where the behaviour is not criminal in its own right, the pattern of behaviour would be seen as a whole rather than each action as an individual incident. The new offence would require that the purpose of the behaviour be to bring about a marriage without the full and free consent of one or both parties. The offence would not require that a marriage actually took place.

For example, a mother who beat her 15-year-old daughter into agreeing to marry a husband of the family’s choice or who threatened to beat her or who repeatedly accused her of shaming the family and threatened to cut her off and turn her out on the streets if she did not agree to marry a husband of the family’s choice might be prosecuted under this offence.

Some of the advantages of this option are that:

- It would send a clear message that forcing someone to marry by non-violent means is also wrong.
- It could make it clearer and easier for public authorities to prosecute actions that are already criminal.

However there are some serious disadvantages:

- Although the use of financial and emotional threats may be morally repugnant to varying degrees, it would be a significant step to criminalise them and it is not clear that that families should be prosecuted for it. Although there is a legal obligation on parents to maintain their children until there are sixteen, there is no legal obligation on parents to love them nor to financially support them once they are over 16 years old³³.
- In similar situations, for example if a devoutly religious family wanted an unmarried son or daughter not to have sexual relations outside of marriage, to move in with a boyfriend or girlfriend, or to marry a live-in partner, or to stay in school after the age of 16 on pain of disassociation if they did not comply, it would not be clear that they should be prosecuted for this, although the result in some of these cases would not as clearly constitute a breach of human rights.
- The incursion of the criminal law into the area of emotional and psychological duress below the threshold of current criminality would set a very undesirable precedent.
- Criminalising anything other than the most extreme forms of emotional or

³² There is a parallel between this idea and the concept of blackmail in English law. A person is guilty of blackmail under section 21 of the Theft Act 1968 if, with a view to gain for himself or for another or with intent to cause loss to another, he makes unwarranted demand with menaces. In doing so the perpetrator threatens to do something which it is lawful for him to do (for example to disclose information to a third party) but they do it for an improper purpose and in a way which is unwarranted. Similarly in cases of forced marriage the perpetrator may threaten ostracism (which it is lawful for them to do) with the intention of bringing about a marriage without the full and free consent of both parties.

³³ The threat to evict and cut off financial support were sufficient to found duress, thereby rendering the marriage voidable, in the Hirani case.

psychological pressure may infringe the right to private and family life in Article 8 of the European Convention on Human Rights.

- It would be extremely difficult to draft an offence that set out in detail the boundary between acceptable and unacceptable parental and familial control of marriage arrangements, especially in the context of significant cultural divergence between ethnic groups.
- Although one individual (for example, a parent) may be responsible for a pattern of behaviour intended to bring about a forced marriage, in other circumstances the pressure may come from a range of individuals whose behaviour, if considered individually, might not necessarily be sufficiently unacceptable to justify taking criminal action against them.
- It would also duplicate some existing criminal provision.

Option D: Facilitating or bearing witness to a marriage in the knowledge or reasonable suspicion of the lack of consent of one of the parties.

An offence could catch those involved in facilitating or bearing witness to a marriage in the knowledge or reasonable suspicion that the marriage was to occur without the

full and free consent of one or both parties. Other existing offences would remain available where relevant. The means by which the marriage was brought about could still be taken into account by the court in sentencing as an aggravating feature if necessary but would not require proof as an element of the offence. Further investigation would be needed to determine exactly what behaviour would be criminalised, and how the offence would interact with existing powers and policies³⁴. The behaviour that would be criminalised could be focussed on the formalities such as signing documents, witnessing the marriage and other formal arrangements. The offence would catch all those who facilitated a marriage, including those who solemnise the marriage or otherwise conduct the ceremony³⁵, if they are aware, or can reasonably be expected to be aware, that the marriage is taking place in the absence of consent. In this analysis those involved directly in bringing about the marriage could be prosecuted as principals if, for example, their role was to ensure the attendance of either or both parties (the bride or the groom), to make other important wedding arrangements, or as secondary participants if their role was more ancillary. The offence would not criminalise people who simply attend the wedding not knowing that one or both spouses is being forced³⁶.

³⁴ In England and Wales, the Registrar General has provided instructions for registration officers where they consider that either party to a marriage is acting under duress. Unless they can establish, by separate questioning and in writing if necessary, that that party wishes to proceed with the marriage, they would stop the marriage.

³⁵ In England and Wales this would only apply to marriages after civil preliminaries

³⁶ Scotland - In Scotland, where the marriage is a religious marriage (i.e. one that is to be solemnised by an approved celebrant) section 14 of the Marriage (Scotland) Act 1977 provides that the celebrant shall not solemnise the marriage except in accordance with a form of ceremony which includes and is in no way inconsistent with the declaration specified in section 9 (3) of the Act. One of these declarations is a declaration by the parties, in the presence of each other, the celebrant and two witnesses that they accept each other as husband and wife. Section 24 (2) (d) of the 1977 Act provides that any person who solemnises a marriage in contravention of section 14 of the Act shall be guilty of an offence and shall be liable for a summary conviction to a fine not exceeding Level 3 on the standard scale.

Accordingly, where one party does not make a declaration of consent during a religious marriage ceremony, it is an offence for an approved celebrant to solemnise the marriage.

In relation to civil marriages which are solemnised by authorised registrars, there is no express provision requiring the form of ceremony to contain any particular declarations. However, similar to the position in England, in Scotland the Registrar general provides guidance to registrars in relation to the solemnisation of civil marriages which state that before the ceremony the registrar should privately interview the bride and the bridegroom together and should briefly explain to them the form of the ceremony will take. If (s)he has not done so on a previous occasion, (s)he should explain the legal impediments to marriage which included that "either party is incapable of understanding the nature of a marriage ceremony or of consenting to the marriage" The guidance also advises registrars that although no form of words is laid down, it is essential that a declaration by the parties is made, accepting one another as lawful husband and wife.

It has been suggested that this be triable either way with a maximum penalty of 5 years. This maximum is in line with other offending relating to the conduct of and solemnising of marriages.

For example, an officiating priest could be prosecuted for conducting the marriage of a young girl whom he knew did not consent to the marriage he was performing.

Some of the advantages of this option are that:

- It doesn't duplicate existing offences.
- It avoids the complicated issues around the level of coercion that has brought about the marriage, by focusing on the occasion of a marriage without full and free consent.
- It might be easier for victims if perpetrators were prosecuted for their part in a marriage without full and free consent, rather than abusing them.

Some of the disadvantages of this option are that:

- Victims might prefer the offence to address the behaviour towards them before the marriage took place, rather than the marriage itself.
- Religious leaders or registrars who perform ceremonies and witnesses are not the primary perpetrators of this form of abuse.
- The fact that so many forced marriages take place overseas may require the obtaining of evidence from jurisdictions where forged documents are easy to obtain, which for example may not bear the real name of the witnesses or officiating minister.

The Government is currently inclined away

from options A and C. We are inclined more towards option B, and potentially option D subject to further investigation into the interaction with existing powers and policies, were it to be decided that a specific criminal offence relating to forced marriage should be to be introduced.

Question 19: If the Government were to introduce a specific criminal offence relating to forced marriage, which of these options would be most effective and appropriate? What do you see as the advantages and disadvantages of each option?

3.2 Extra territorial effect

In many cases the final act of forcing someone into marriage happens overseas. Normally any new offence only applies if all or most of the activities constituting the offence take place in the UK. If a new law only applied in England, Wales and possibly Scotland, this might provide a greater incentive to forcing victims into marriage abroad.

However, it is possible for Parliament to give the courts of England and Wales jurisdiction to deal with certain offending when it occurs overseas. The inherent difficulties involved in the investigation and prosecution by United Kingdom authorities of offences committed outside the normal territorial jurisdiction dictate that this facility is restricted only to serious offending where the policy imperatives that support the extension of jurisdiction are very clear. For example, the law on female genital mutilation has been recently amended and allows prosecutions of UK nationals or permanent residents for relevant acts committed overseas. It is therefore an offence for a UK national or permanent resident to do any of the following

acts overseas: (a) committing an act of female genital mutilation; (b) assisting a girl to commit such an act herself; and (c) assisting a non-UK person to commit such an act overseas on a girl who is a UK national or permanent resident.³⁷

It is also necessary to consider the criteria of any proposed extra-territorial jurisdiction. Jurisdiction can be based, for example, upon the status of the perpetrator (national, permanent resident, non-national-non-resident) or the status of the victim (as before). It is also necessary to consider the level of involvement in the crime (primary, secondary). Where extra-territorial jurisdiction has been taken the policy of successive Governments is to normally restrict the scope of the extension of jurisdiction to offences committed abroad by UK nationals or UK permanent residents. Certain offending is of such a magnitude that the powers will, in keeping with the international consensus, have a wider scope in order to be effective (e.g. terrorism, genocide and other crimes against humanity), in which case the powers can have unfettered universal effect or are sometimes subject to limitation by reference to the nationality of the victim rather than the perpetrator, although the assumption of jurisdiction over offences committed abroad by non-nationals against nationals is a type of jurisdiction that has not generally been favoured within the international community.

On balance the Government believes that for any forced marriage offence the basis of any extra-territorial jurisdiction should be that both the perpetrator and the victim are British citizens or permanent residents. The Government believes that this would be commensurate with the seriousness and particular features of a possible new forced marriage offence.

If a new offence has extra-territorial jurisdiction, prosecutions would be likely to require the co-operation of local police forces and other bodies in the foreign countries where a forced marriage had taken place. Although the Government has been grateful for the support of public authorities in a number of foreign countries have assisted British nationals in escaping forced marriages, there would be practical difficulties involved in foreign public authorities collecting evidence, often in remote areas where forced marriage is not universally condemned. Consular staff are not permitted to investigate crimes, although they may give evidence in court. Additionally UK courts may not necessarily accept evidence collected overseas if they doubt the rigour involved in the investigation.

Question 20: Should an offence of forced marriage, apply when the offence takes place overseas? Would it be possible, in practice, to bring successful prosecutions in respect of forced marriages that take place overseas, especially in areas where it is not universally condemned?

3.3 Related offences

A substantive offence would attract the usual secondary and inchoate offences (attempt, conspiracy, incitement and aiding and abetting, including commanding and procuring). An attempt to commit an indictable offence is automatically an offence (Criminal Attempts Act 1981) and the Criminal Procedure (Scotland) Act 1995). Depending on what approach is taken to jurisdiction express provision may be needed to allow prosecution for secondary involvement by British nationals or residents in acts committed abroad against British victims that, if committed by people who

³⁷ The Prohibition of Female Genital Mutilation (Scotland) Bill will make it an offence in Scots law for a UK national or permanent UK resident to aid and abet female genital mutilation overseas, regardless of the nationality or status of the victim.

were not British nationals or residents, would not themselves be offences under UK law.

An example of a secondary participation would be a mother aiding and abetting her husband in assaulting his daughter in order get her to agree to marry a husband of their choice. In practice this might mean that she prevented her daughter from running away by blocking the door whilst her husband kicked and punched her.

An example of an inchoate offence would be incitement - encouraging and stirring people up to commit an offence. In practice this might be a grandfather encouraging and stirring his son up to ensure his granddaughter married the husband of the family's choice by the use or threat of violence.

3.4 Who would be guilty of the offence?

Many people can be involved in bringing about a forced marriage. It will often be the case that there is no single individual solely responsible for forcing someone to marry and that a number of people have contributed to the situation, often to varying degrees. For example in some cases a father may be the primary instigator of a forced marriage, supported by his wife. However it is also possible that one or both of them may be pressed to ensure their offspring are married by others in the community or the one from the other. That being said it is also possible that perpetrators could claim to be the victim of duress, when they are not. It may also be very difficult to determine who was the primary instigator. For example in one case handled by the Forced Marriage Unit, the victim believed that her father was the primary instigator when it was in fact her mother.

Question 21: Who should be prosecuted in the cases of forced marriage? Should you be prosecuted if you were also subject to duress? Should these decisions be left to the discretion of the prosecuting authorities?

3.5 How would guilt be proven?

There are concerns that in many cases it will be difficult to prove that actions were taken with the intention of bringing a marriage about or that a person facilitated a marriage in the absence of the consent of one of the parties. In criminal law the elements of any offence must be proved beyond reasonable doubt and is not subject to the balance of probabilities test found in civil law. The degree to which a case will depend on the evidence of the victim will vary but evidence which supports the victim's statement will of course be desirable. In some cases, for example there will be physical evidence, such as bruising from an assault, that the family resorted to physical violence to force their offspring into marriage. In other cases a prosecution may be much more dependent on the victim's testimony. The Government is aware that a prosecution that is entirely dependent upon the victim's evidence may give rise to problems such as the possibility of reprisals. In some cases the victim may not be certain to what extent they consented to the marriage, particularly if they were young. Prosecutions would not, however, proceed without a thorough examination of the evidence and the public interest in prosecuting and the type of issues that could arise in cases of forced marriage are already encountered in the prosecution of other offences in a domestic context.

Question 22: How should guilt be proven? Are there likely to be realistic cases of successful prosecution without a testimony from the victim?

3.6 Penalties

This consultation also seeks views on what the penalties of such a possible offence should be. The actual sentence given in a particular case is a decision for the court and depends upon the seriousness of the offence and the offender and any aggravating or mitigating factors.

Possible penalties include fines, community punishment, cautions, conditional cautions, conditional discharges and custody. Penalties for juvenile perpetrators might be different to those for adults. The Government would not recommend the use of mediation as an appropriate outcome of a criminal prosecution in such cases because of the complexities and control issues involved. Traditional domestic violence perpetrator programmes are also unlikely to be appropriate in many forced marriage cases as they have been primarily designed as a response to violence between intimate partners.

Forcing someone to marry can have terrible consequences, including rape, suicide and lives of abuse and virtual imprisonment. Given these potential consequences would more punitive penalties (such as fines or imprisonment) be appropriate and provide a stronger deterrent. However although the Government is aware of some victims who would want to see their perpetrators brought to justice, it would also be concerned that heavy penalties might deter victims from asking for help, as many will not want to see their families get into trouble.

The penalties for any offence that encompassed existing criminal behaviour would need to have regard for the maximum penalty for the most serious existing criminal offence that the conduct encompassed. In the options A and C the penalty of the most serious offence is life.

A prosecution under a new forced marriage offence would not necessarily prohibit prosecutions under other existing offences.

Question 23: If a specific offence was created what should the penalties be?

3.7 Automatic links to civil law and other protective measures

We would welcome any comments or suggestions on whether or not the criminal and civil processes should be linked, and if so, how the processes between a successful prosecution and the formal annulment of a marriage might be brought together for the benefit of the victim(s).

A marriage is 'voidable' for lack of consent (section 12(c) of the Matrimonial Causes Act 1973). A conviction in whatever format would not mean that a marriage is automatically void and it would therefore subsist until the court (i.e. the family court) annulled it. The criminal court does not have jurisdiction to annul a marriage and therefore a successful prosecution does not in itself annul the marriage. The party who did not give consent to the marriage would have to petition the family court under section 12(c) to annul it. The relevance of a successful prosecution for the new offence would be that it is evidence for the family court when deciding whether or not a valid consent had been given.

According to current best practice the Police will inform Social Services at the outset of any criminal investigation where there is a continuing risk posed to a minor victim or any other children in a family, so that they can assess that risk and take appropriate action.

It has also been suggested that a successful prosecution might be lead to a removal of a non-national spouse who had been granted leave to enter or remain by deception. This would require careful exploration and due consideration would need to be given to any right of appeal, obligations under the European Convention on Human Rights and domestic laws (including the Immigration Rules).

Where there are concurrent criminal and civil processing the questions about disclosure and contamination of evidence arise. There is a risk that the civil relief and protection that a victim requires could be delayed, by the need to protect the prosecution rights of the defendants.

3.8 Civil partnerships, prevention of marriages and deception in marriages

If it were to be an offence to force someone into a marriage, it would be logical to extend this protection to people being forced into civil partnerships. However there is no reason to suspect that people would be forced into civil partnerships. A logical counter question is also, if it were a specific offence to force someone to marry, whether it should similarly be an offence to prevent someone from marrying or to force them to divorce. There also exists a problem of spouses being tricked into marrying a different person to the person they had agreed to marry. However these subjects raise other complex issues and is beyond the scope of this consultation.

Question 24: Should there also be a specific offence of forcing someone into a civil partnership?

Question 25: Are there any other practical aspects we need to consider?

Chapter 4: Other ways to get the message across

Other ways to get the message across

If the Government were to introduce a new specific offence we recognise that this would not be a cure-all. Any new offence would go hand in hand with other existing and planned work to combat forced marriage.

The Government has made repeated statements that forcing someone into marriage is unacceptable. Many service providers, black and minority ethnic women's groups, other NGOs, community groups and faith leaders have been very vocal in communicating the same message. For example the Metropolitan Police recently held a conference to discuss how best to combat forced marriage and a conference of Imams was organised in Tower Hamlets where the incompatibility of forced marriage with Islam was made clear and participants spoke against the practice in their mosques. Some survivors have also very bravely shared their stories publicly to encourage other people at risk.

The Forced Marriage Unit has worked with partners to produce guidelines for Police, education professionals and Social Services³⁸ and is now embarking on a similar project with the health sector. However some commentators are concerned that at the grass roots level some service providers are still concerned that tackling forced marriage will be seen as meddling in religious traditions and cultural norms. Because of this some victims of forced marriage seeking help may have felt they had been denied access to services that would have been available to women fleeing other forms of violence and abuse.

We continue to welcome the assistance of community and religious leaders, and other countries, in combating forced marriage.

Question 26: How successful has the Government been in communicating the unacceptability of forced marriage, particularly that force can include emotional as well as physical force?

Although it is not a new criminal offence, another option the Government could consider would be to introduce an aggravated sentencing feature. This would result in offenders receiving harsher sentences for existing criminal offences where the intent was to bring about a forced marriage than they otherwise would for a similar offence not involving forced marriage.

For example, a brother convicted for assault could be given an extra 18 months in prison because his motivation behind the assault was to force his sister into marriage.

The advantage of this option is that:

- It would stress that some of the activity already used to bring about forced marriages is already criminal.

Some of the disadvantages are that:

- It is not clear, on a case by case basis, whether the motivation of forcing an individual to marry warrants a higher penalty than some other vicious, sadistic or callous motivations. For example, it is not clear that a father who assaulted his daughter in order to force her into marriage has committed a more serious crime than one who assaulted his daughter sadistically.
- The courts are already able to take account of all the particular features of a case in a much more nuanced way and are already able to award a more severe

³⁸ These are available electronically at <http://www.homeoffice.gov.uk/comrace/race/forcedmarriage/index.html>

penalty where this is appropriate. The courts in England and Wales are assisted by the Sentencing Guidelines Council, who have recently concluded a consultation in relation to domestic violence and will be issuing revised guidance in due course.

- This would be an unusually detailed statutory aggravation and could lead to calls for many other detailed aggravations, which could in turn distort and frustrate sentencing statute.
- Furthermore, given the lack of prosecutions under existing offences it is unlikely that the existence of an aggravated offence or sentencing feature would make a real difference to those at risk of this offence.

Similarly, the Government could consider creating new aggravated offences, but this would carry similar disadvantages to those set out above.

Question 27: In what other non-legislative ways could the Government communicate this message?

Question 28: How could the Government encourage community leaders and other organisations to help communicate this message? If you would be willing to help communicate this message please do contact the Forced Marriage Unit who would be pleased to work with you.

If we have been relatively successful in communicating the unacceptability of forced marriage, it may be that, rather than investing resources in changing the attitudes and behaviour of potential perpetrators, resources might be better invested in the means to empower people to withstand the pressure - for example by ensuring viable alternative support mechanisms (refuge places, counselling support, support for civil proceedings etc).

Question 29: What more needs to be done to empower people to withstand pressure?

Chapter 5: The Consultation Process

The Consultation Process

This consultation document draws on the views and insights expressed by many who work with victims and those at risk of being forced into marriage and those who have been through that experience themselves. We recognise that this is a difficult and complex question with arguments on each side. We would welcome views from everyone with an interest in this issue and the criminal law more generally. This document will be widely circulated, and available on both the Home Office and Foreign and Commonwealth Office websites.

We would like to encourage Women's and Victims groups, Criminal Justice System agencies and faith organisations and community groups to use this document as a basis for local consultation. We will be supporting a number of local consultation groups. If you are interested in holding or attending a discussion group to consider the issues raised by this consultation please contact Anna Bishop at the address given below if you are based in England and Wales or Eileen Flanagan if you are based in Scotland at the Scottish Executive, Equality Unit, Gender Equality Team Telephone: 0131 244 5209 E-mail. Eileen.Flanagan@scotland.gsi.gov.uk

The Government would welcome written responses to this consultation, especially, but not exclusively, to the questions set out in the consultation document.

How to respond

Please send written responses by 5 December 2005 including your name, organisation (if any), address and e-mail address, to:

Anna Bishop
Forced Marriage Unit
Freepost PH12
G 55 Old Admiralty Building
London
SW1A 2PA
Telephone: 020 7008 8759
E-mail: anna.bishop@homeoffice.gsi.gov.uk

The information you send us may be passed to colleagues in the Government and related agencies. We may also want to publish it in a summary of responses to this consultation. We will assume that you are content for us to do this, and that if replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisations IT systems, unless you specifically include a request to the contrary in the main text of your submission to us. Please ensure your response is marked clearly if you wish your response and name to be kept confidential. We are happy to do so.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. Submissions from respondents may also be subject to release under the Freedom of Information Act 2000. If you have instructed us accordingly, we will ensure that your views are not attributed should they be released in this way.

Further paper copies of this document are available from:

Forced Marriage Unit
Old Admiralty Buildings
London SW1A 2PA
Telephone: 020 7008 0243

Please contact the Forced Marriage Unit should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

Cutting red tape

The Government is committed to avoiding and reducing red tape created by policy in public, private and voluntary sectors. A partial

Regulatory Impact Assessment (RIA) and Public Services Threshold Test is being undertaken and is attached at Annex B. A Race Equality Impact Assessment Initial Screening Test is also being undertaken and is attached at Annex C.

Next steps

We will publish a summary of the consultation responses within 3 months of the close of the consultation exercise and a Government response as shortly thereafter as possible. These will be made available on both the Home Office and Foreign and Commonwealth Office websites and will be drawn to the attention of everyone who responds to the consultation.

Annex A: Further information regarding Government consultations

Consultation Co-ordinator

If you have any complaints or comments about the consultation process, you should contact the Home Office consultation co-ordinator by e-mailing pio.smith31@homeoffice.gsi.gov.uk.

Alternatively you may wish to write to him at the address below:

Pio Smith
Consultation Coordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
London SW1P 4DF

Please note that the Consultation Co-ordinator is not in a position to deal with questions regarding the content of this document, only the consultation process. Please refer all questions regarding forced marriage to the Forced Marriage Unit.

This consultation follows the Cabinet Office Code of Practice on Consultation - the criteria for which are set below.

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at: www.cabinet-office.gov.uk/regulation/Consultation

Annex B: Partial Regulatory Impact Assessment and Public Services Threshold Test

Please note that this assessment relates only to England and Wales. Agencies and their associated costs will be different in Scotland.

1. Title of Proposal

Whether to create a specific criminal offence relating to forced marriage.

2.

(i) Purpose and intended effect of measure

To prevent forced marriages and to ensure there is public recognition of the unacceptability of forced marriage.

(ii) Background

The scale of the problem of forced marriage and the number of prosecutions that would result from a criminal offence are not known. Indeed, this consultation seeks to better understand both of those issues. As such it is extremely difficult to estimate the costs related to a criminal offence of forcing someone to marry. For the purposes of this partial regulatory impact assessment and public services threshold test we have assumed a very few number of cases each year, 10 prosecutions and convictions, because of likely reluctance on the part of some victims to see their families prosecuted, the difficulty of collecting evidence abroad and other limiting factors.

(iii) Risk assessment

There are a number of risks associated with the creation of such an offence, including:

- The risk that the fear of their families being prosecuted may stop victims from asking for help.

- The risk that parents may take children abroad, and marry them off or hold them there, at an earlier age to avoid increased risks of prosecution in Britain.
- Because of the difficulty in collecting evidence and the reluctance of many victims to testify against family members it may be difficult to bring a successful prosecution. This could devalue a new offence.
- A new offence would disproportionately impact on Black and Minority Ethnic communities and might be misinterpreted as an attack on those communities.
- Implementing a new offence would be expensive and the funds might be better spent on improving support for those at risk.
- Increased risks of prosecution or threat of prosecution would make it harder for victims to reconcile with their families.
- Increased involvement in criminal prosecutions could be harrowing for victims who wanted to move on.

3. Options

Option 1 - Continue to tackle forced marriage with existing legislation and non-legislative measures.

The Government can continue through strong messages given by ministers, officials and external partners to stress the unacceptability of forced marriage. By distributing leaflets, providing advice on websites and providing training and guidance for professionals, we can continue to reach out to potential victims to ensure that they are aware of other options. Within the constraints of the victims' wishes we can

continue to make the fullest possible use of existing legislation and protective measures.

Option 2 - Creating an offence of forcing someone to marry

The Government could introduce a new offence of forcing someone to marry. The detail of a new offence would be informed by this consultation process.

4. Benefits

The potential benefits of introducing a new offence are:

- that primary legislation would change public opinion;
- that it would have a strong deterrent effect;
- that it could empower young people with more tools to negotiate with their parents and in some cases with parents facing pressure from relatives; and -
- that it could simplify and clarify matters for public sector employees tackling this issue.

5. Costs

Creating a specific criminal offence would involve costs in the following areas.

Implementation costs

There are numerous sources of reference and guidance upon the criminal law. These are regularly and routinely updated. We envisage that it will be possible to incorporate this change as part of such an update without incurring significant additional cost. The

Police and CPS would need to update their operational documents in greater detail, the costs of which are outlined below.

Cost to Frontline Public Sector staff

An average Police cost for responding to a case of domestic violence is £1000. The investigation of any cases with an overseas element would cost substantially more. Based on the consideration of 10 additional cases a year, the cost to the Police in respect of responding to new reports could be approximately £10,000 a year. Training for Police would involve additional costs, estimated at £100,000 in the first year.

Downstream Criminal Justice System Costs

The estimated cost to the Crown Prosecution Service of reviewing and prosecuting an average of 10 cases each year would be £10,000 in the first year of implementation and subsequent years. In the first year the CPS would also need to provide training for CPS prosecutors at an estimated cost of £100,000.

There may be additional costs associated with extra court cases as a result of the proposal. It is not possible to provide precise estimates for court costs because a lot will depend on the length of the trial. An average legal aid costs for a crown court trial are £14,000. Average crown court costs are approximately £3,700 per day. There may also be duty solicitor costs at the police station, which are £270 per suspect interviewed. There is also the cost of any administrative hearing in the magistrate's court of £110. The estimated average annual cost would be approximately £200,000.

Additional costs to the National Offender Management Service (NOMS) may also be

incurred. The consultation seeks views on what appropriate penalties might be and so these cannot be quantified at this stage.

Total estimated costs would be £420,000 in the first year of implementation and £220,000 in subsequent years.

6. Equity and Fairness

A race equality impact assessment initial screening test is being undertaken and is annexed together with this partial assessment.

7. Enforcement and Sanctions

The consultation seeks views on what appropriate penalties might be and so these cannot be quantified at this stage.

8. Consultation

A consultation is underway.

9. Monitoring and Review

The courts and the CPS in particular would maintain records of prosecutions/convictions obtained under the new provision.

10. Summary

The results of this consultation will inform our recommendation.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Home Office

Annex C: Race Equality Impact Assessment - Initial Screening Test

<p>Name of policy on which legislation:</p> <p>Forced Marriage</p> <p>Lead policy Official (including contact details):</p> <p>Anna Bishop, Forced Marriage Unit. Tel: 020 7008 8759</p>
<p>What is the purpose of the proposed policy (or the changes you want to make to a policy)?</p> <p>Do not complete this section if you have already completed a partial or full RIA</p>
<p>An initial partial RIA and PST are being undertaken.</p>
<p>What are you are trying to achieve through the proposed policy, and why?</p> <p>Do not complete this section if you have already completed a partial or full RIA</p>
<p>An initial partial RIA and PST are being undertaken.</p>
<p>Who is intended to benefit from the proposed policy, and how?</p> <p>Do not complete this section if you have already completed a partial or full RIA</p>
<p>The potential victims of forced marriage who would otherwise be at risk of being forced into a marriage. All members of society who would otherwise be at risk of committing human rights abuses.</p>
<p>Are there associated aims of the proposed policy? What are they?</p> <p>Do not complete this section if you have already completed a partial or full RIA</p>
<p>No</p>
<p>Is responsibility for the proposed policy shared with another department or authority or organisation? If so, what responsibility, and which bodies?</p> <p><i>You should make every effort to involve partners or collaborators in a policy in the screening process, and in any subsequent assessment of the policy, if the screening shows it is relevant to race equality. In situations where your plans involve working in partnership with another public authority or contracting implementation of the policy out to another organisation, you will find the Commission for Racial Equality Guidance on partnerships helpful in this regard</i></p> <p>http://www.cre.gov.uk/.</p>

This screening test is being undertaken by the joint Home Office and Foreign and Commonwealth Office Forced Marriage Unit. Views are being sought from all our partners as part of the consultation process.

Will the proposed policy involve, or have consequences for, the people your authority serves and employs?

Yes. The policy being considered would impact on everyone in society by making it illegal to force someone into marriage.

Could these consequences differ according to people's racial group, for example, because they have particular needs, experiences or priorities?

Yes. Although forced marriage is a problem that cuts across many cultures and nationalities, we are aware of a particular high incidence in England and Wales amongst south Asian communities.

Is there any reason to believe that people could be affected differently by the proposed policy, according to their racial group, for example in terms of access to a service, or the ability to take advantage of proposed opportunities?

Yes. Because of the demographics of minority communities in England and Wales, the criminalisation would be likely to have a greater impact on south Asian communities.

Is there any evidence that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups?

No. The proposed policy would not be directly discriminatory - it would not make particular rules for particular racial groups. However this policy being considered would be likely to have a particular impact on the south Asian community.

Indirect discrimination occurs where there is a requirement or condition which is applied equally to everyone and which:

- i) can only be met by a considerably smaller proportion of people from a particular racial group
- ii) is to their detriment
- iii) cannot be justified on non-racial grounds

The proposed policy would not be indirectly discriminatory because (i) forced marriage is

<p>not the preserve of any one particular racial group and the Government is aware of it happening in a number of racial groups (ii) being prohibited from forcing someone else into marriage and thereby committing domestic violence and an abuse of human rights is to no-one's detriment and (iii) the prohibition with criminal sanctions against forcing someone else into marriage and thereby committing domestic violence and an abuse of human rights is entirely justifiable on non-racial grounds.</p> <p>Forcing someone to marry is a violation of internationally agreed human rights. No one currently has the right to force another person into marriage. As such the policy being considered would not deprive anyone, whether from one racial group or more generally, of a right they currently enjoy.</p>
<p>Is there any evidence that people from some racial groups may have different expectations of the policy in question?</p>
<p>Yes. There may be some resistance to the policy being considered from the some people minority communities it would particularly affect. There may also be resistance to the courts determination that force/duress can include emotional pressure.</p>
<p>Is the proposed policy likely to affect relations between certain racial groups? for example because it is seen as favouring a particular group or denying opportunities to another</p>
<p>Although many leaders from black and minority ethnic communities have been very vocal in the condemnation of forced marriage, it is possible that the policy being considered could be seen as an intrusion into minority cultures.</p>
<p>Is the proposed policy likely to damage relations between any particular racial group (or groups) and your authority?</p>
<p>Although many leaders from black and minority ethnic communities have been very vocal in the condemnation of forced marriage, it is possible the policy being considered could be resented as an intrusion into minority cultures and religions.</p>

Results of Initial Screening

A full race relations impact assessment would be needed if the policy was to be considered further.

