

<b>Title:</b> Criminalising the breach of a forced marriage protection order <b>IA No:</b> MOJ191  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> HO, FCO, CPS	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 1 May 2013		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
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**Summary: Intervention and Options** **RPC Opinion:** RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
			No	NA
£m	£m	£m	No	NA

**What is the problem under consideration? Why is government intervention necessary?**  
 Currently, a breach of a forced marriage protection order (FMPO) in England and Wales is punishable only as a civil contempt of court. Speedy enforcement depends on whether the court attached a power of arrest to the order; if no power of arrest was attached, the victim must apply to the civil court for an arrest warrant. The Government wants to make the breach of a FMPO a criminal offence for which arrest without warrant is possible. This will require primary legislation.

**What are the policy objectives and the intended effects?**  
 The policy objective is to strengthen protection for victims and potential victims of forced marriage by enabling the police to arrest a person who breaches a FMPO without the need for the court to attach a power of arrest or for the victim to apply to the civil court for an arrest warrant. Criminal sanctions may also help to deter those subject to a FMPO from breaching the terms of the order, although the evidence on deterrence is mixed.

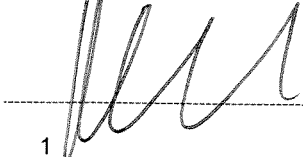
**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: do nothing  
 Option 1: make it a criminal offence to breach a FMPO

Under option 0 the law would remain as it currently stands. Option 1 is the preferred option and fulfils a commitment made by the Prime Minister in a speech that he gave on 11 October 2011.

<b>Will the policy be reviewed?</b> It will be reviewed. If applicable, set review date: By April/2018					
Does implementation go beyond minimum EU requirements?					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		

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

Signed by the responsible Minister:  Date: 8 May 2013

# Summary: Analysis & Evidence

Policy Option 1

Description: Criminalise the breach of a Forced Marriage Protection Order

## FULL ECONOMIC ASSESSMENT

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

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

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

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

Due to the very small number of cases in which breach proceedings have been brought to date and the uncertainty of the number of cases after criminalisation, overall costs have not been monetised but are assumed to be minimal. Costs per case for the criminal justice system are set out in the evidence base.

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

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

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

Victims may feel better protected by criminal sanctions.  
Speedier enforcement for breaches of FMPOs pursued through the criminal courts.

Key assumptions/sensitivities/risks

Discount rate (%)

The number of cases in which criminal proceedings for breach of a FMPO might be brought remains uncertain. Between November 2008 (when the civil legislation came into force) and the end of 2012 civil proceedings for breach were brought in 12 cases. We do not know whether the number of cases would rise, fall or remain at the same level when criminal sanctions for breach become available. But as the number of breach proceedings to date is very small we assume that any additional costs are likely to be minimal.

## BUSINESS ASSESSMENT (Option 1)

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

# Evidence Base (for summary sheets)

## Introduction

1. This impact assessment has been prepared by the Ministry of Justice in support of the measure to create a criminal offence of breaching a forced marriage protection order. The measure forms part of the Anti-Social Behaviour, Crime and Policing Bill, set to be introduced on 9 May 2013. The other forced marriage measures included in the Bill create offences of forcing a person to marry against that person's will and of luring a person abroad with the intention of forcing that person to enter into a marriage, and are the subject of a separate impact assessment prepared by the Home Office.

## Background

2. Forced marriage is recognised in the UK and elsewhere as a form of violence against women and men, domestic abuse, a serious abuse of human rights and, where a minor is involved, child abuse. A forced marriage is a marriage in which one or both spouses do not (or, in the case of some vulnerable adults, cannot) consent to the marriage but are coerced into it. The coercion can include: physical, psychological, financial, sexual and emotional pressure. Victims of forced marriage can be both women and men, and the marriages may take place in the UK or overseas.
3. The Forced Marriage (Civil Protection) Act 2007 (the "2007 Act") inserted a new Part 4A in the Family Law Act 1996 (the "1996 Act") which provides a civil remedy for victims and potential victims of forced marriage. Under the civil legislation, the court may make an order – a forced marriage protection order (FMPO) – for the purposes of protecting: (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage. A FMPO may contain such prohibitions, restrictions or requirements and any other such terms as the court considers appropriate for the purposes of the order. This could include, for example, provisions not to threaten, harass or use force; to surrender a person's passport or any other travel document; and not to enter into any arrangements for the engagement or marriage, whether civil or religious, of the person to be protected (the victim), in the UK or abroad. Between November 2008, when the 2007 Act came into force, and December 2012, 538 orders were made to prevent marriages from taking place and assist in repatriating victims.<sup>1</sup>
4. If a FMPO is issued with a power of arrest attached, a police officer may arrest without warrant a person whom the officer has reasonable cause to suspect is in breach of any of the provisions in the order. If a FMPO is issued without a power of arrest attached the person being protected by the order, the person who applied for the original order or any other person with the leave of the court may apply to the court for the issue of a warrant for the arrest of a person if they consider that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order.<sup>2</sup>
5. Breach of a FMPO is currently dealt with as a civil contempt of court and accordingly punishable with a fine or up to two years' imprisonment.

## ***Non-molestation orders***

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<sup>1</sup> Ministry of Justice Court Statistics Quarterly, October to December 2012, Table 2.12

<sup>2</sup> The 1996 Act provides that the court must attach a power of arrest to any order (other than an ex parte order) if the respondent has used or threatened violence against the person being protected, unless it considers that there would be adequate protection without the power. If an FMPO is issued with a power of arrest attached, a police officer may arrest without warrant a person whom the officer has reasonable cause to suspect is in breach of any of the provisions in the order; and any person so arrested must be brought before the court within 24 hours not taking account of Christmas Day, Good Friday and any Sunday.

6. Part 4 of the 1996 Act provides a civil remedy for molestation, violence and occupation. Its purpose is to protect people who experience domestic violence in a family relationship. Under the 1996 Act, the court can grant, amongst other things, a non-molestation order.
7. A non-molestation order is used to restrain someone from causing or threatening violence to the applicant or to any children, or from molesting them. The 1996 Act does not define molestation but it can include intimidation, pestering, threats and harassment.
8. The 2007 Act was modelled on the provisions in Part 4 of the 1996 Act as those provisions stood prior to the amendments made by the Domestic Violence, Crime and Victims Act 2004 (the "2004 Act"). So, as was originally the case for non-molestation orders, breach of a FMPO can only be dealt with as a civil contempt of court. However, the 2004 Act inserted a new section 42A into the 1996 Act which made breach of a non-molestation order a criminal offence. The section 42A offence, which came into force in July 2007, was introduced following concern that the civil procedure was ineffective in preventing and deterring domestic violence. The offence is committed by a person who without reasonable excuse does anything that that person is prohibited from doing by a non-molestation order. This made arrest without warrant possible for breach of a non-molestation order.
9. The offence of breaching a non-molestation order is triable either way with a maximum penalty on conviction on indictment of five years' imprisonment. In the Magistrates' Court the statutory maximum applies which is six months' imprisonment or a fine, or both.
10. The person who applied for the original order still has the choice of the mechanism by which a breach of a non-molestation order is dealt with. So they can either call the police to have the breach dealt with within the criminal courts, or they can make an application to the originating county court to have the breach dealt with as a civil contempt of court.
11. The two jurisdictions are mutually exclusive: if someone has been convicted of the breach in a criminal court they cannot be punished for civil contempt and vice versa.

### **Problem under consideration**

12. Currently, breach of a FMPO in England and Wales is not a criminal offence; it is punishable only as a civil contempt of court. So, if a FMPO is breached, speedy enforcement depends on whether the court attached a power of arrest to the order; if no power of arrest was attached, the victim must apply to the civil court for an arrest warrant.

### **Rationale for intervention**

13. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistribution reasons (e.g. to reallocate goods and services to the more needy groups in society).
14. In this case, intervention might be justified primarily on efficiency grounds. At the moment when a FMPO is breached, unless the court attached a power of arrest to the order, the victim has to apply to the civil court for an arrest warrant. By criminalising a

breach of a FMPO, the victim will be able to call the police, allowing for more effective action.

15. Intervention may also be justified on equity grounds, as making it easier for a breach of a FMPO to be dealt with would make it re-balance the law in favour of the victims.
16. On 17 May 2011 the Home Affairs Select Committee (HASC) published its Eighth Report of Session 2010 – 12 on Forced Marriage<sup>3</sup>. Whilst acknowledging that victims and professionals were using the provisions of the 2007 Act, the Committee said that the evidence presented to it suggested inadequacies in the monitoring of compliance with a FMPO after it is made and a lack of effective action in cases where an order is breached. The Government response<sup>4</sup>, published in July 2011, accepted that it was timely to review some aspects of the civil legislation again and remained open to considering making it a criminal offence to breach a FMPO.
17. On 10 October 2011, in a speech about immigration, the Prime Minister announced that the Government intended to criminalise the breach of a FMPO and to consult on making it an offence to force someone to marry<sup>5</sup>:

“Now, of course the most grotesque example of a relationship that isn’t genuine is a forced marriage, which is of course completely different from an arranged marriage where both partners consent, or a sham marriage where the aim is to circumvent immigration control or make a financial gain. Forced marriage is little more than slavery. To force someone into marriage is completely wrong and I strongly believe this is a problem we should not shy away from addressing because of some cultural concerns. I know there’s a worry that criminalisation could make it less likely that those at risk will come forward, but as a first step I’m announcing today that we will criminalise the breach of forced marriage prevention orders. It is ridiculous that an order made to stop a forced marriage isn’t enforced with the full rigour of the criminal law. I’m also asking the Home Secretary to consult on making forcing someone to marry an offence in its own right, working closely with those who provide support to women forced into marriage to make sure that such a step would not prevent or hinder them from reporting what has happened to them.”

18. The subsequent consultation, published by the Home Office in December 2011, sought views on *how* to criminalise the breach of a FMPO<sup>6</sup>. The Government’s preferred option was to follow the approach taken to criminalising the breach of a non-molestation order in section 42A of the Family Law Act. As set out in the summary of responses to the consultation published in June 2012<sup>7</sup>, a large majority (71%) of respondents agreed with that proposal. The forced marriage protection order breach offence, which is modelled on the offence of breaching a non-molestation order, fulfils the commitment made by the Prime Minister in October 2011.

### **Policy objective**

19. The policy objective is to strengthen protection for victims and potential victims of forced marriage by enabling the police to arrest a person who breaches a FMPO without the need for the court to attach a power of arrest or for the victim to apply to the civil court for

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<sup>3</sup> REPORT *Forced Marriage, 17 May 2011* (Eighth Report, Session 2010-11, HC 880)  
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>

<sup>4</sup> [www.official-documents.gov.uk/document/cm81/8151/8151.pdf](http://www.official-documents.gov.uk/document/cm81/8151/8151.pdf)

<sup>5</sup> <http://www.number10.gov.uk/news/prime-ministers-speech-on-immigration/>

<sup>6</sup> <http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/>

<sup>7</sup> <http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/forced-marriage-response?view=Binary>

an arrest warrant. Criminalisation may also help to deter those subject to a FMPO from breaching the terms of the order. However, the evidence on deterrence is mixed.

### **Affected stakeholder groups, Organisations and Sectors**

20. The proposals as set out in this impact assessment will have effect in England and Wales only. The main groups affected by the proposals are:

Victims of forced marriage;  
Police forces;  
Her Majesty's Courts and Tribunals Service (HMCTS);  
National Offender Management Service (NOMS);  
Crown Prosecution Service (CPS);  
Legal Aid Agency;  
Local authorities in England and Wales;  
Legal practitioners;  
Third sector agencies;  
Other government departments – UKBA, Home Office, Department for Education, Forced Marriage Unit;  
Organisations with a direct interest in tackling forced marriage; and  
The public.

### **Options considered**

#### **Option 0: Do Nothing**

21. Under this option the law would remain as it currently stands so breach of a FMPO would continue to be punishable only as a civil contempt of court and enforcement, in cases where no power of arrest is attached to the order, would require the victim to apply to the civil court for an arrest warrant.

#### **Option 1: make it a criminal offence to breach a FMPO**

22. Under this option breaching a FMPO would become a criminal offence for which arrest without warrant is possible. This would enable the police to arrest a person who breaches a FMPO without the need for the court to attach a power of arrest or for the victim to apply to the civil court for an arrest warrant.

23. The Government has decided to pursue this option and to model the new offence of breach of a FMPO on the provisions in section 42A of the Family Law Act 1996 in relation to breach of a non-molestation order. The offence will therefore be triable either way with a maximum penalty on conviction on indictment of five years imprisonment, or a fine, or both; and a maximum penalty on summary conviction of 6 months' imprisonment or a fine, or both. The new offence will enable the police to arrest for breach of a FMPO without the need for the courts to attach a power of arrest, or for the victim to apply to the civil court for an arrest warrant. As with non-molestation orders, however, for a victim who does not want to pursue criminal proceedings, the option will still remain of applying for an arrest warrant for breach of a FMPO in the civil court.

## Cost-benefit analysis

### GENERAL ASSUMPTIONS & DATA

24. FMPOs were introduced by the Forced Marriage (Civil Protection) Act 2007 on 25 November 2008. There were on average 113 applications per year for FMPOs during the period 2009-2012, with 133 orders made<sup>8,9</sup>. 12 breach hearing cases have been recorded since November 2008 up until the end of 2012, giving an average of approximately three breach hearings per year. While other orders were made in some cases, for example, extending the original order, breach was only proven in one case since November 2008. In some instances this was due to unwillingness on the part of the victim to cooperate. This highlights a difficulty in appraising this policy. The practice of forced marriage undoubtedly causes significant emotional harm to victims. Although criminalisation could reduce the likelihood of such harm through prevention, it is not clear that this benefit would necessarily outweigh the emotional cost to victims of having their relatives sent to prison.
25. The very small number of proceedings for breach of a FMPO in the civil courts means that it is not possible to model confidently the likely number of proceedings that might be brought in the criminal courts. There could be an increase (relative to the current low volume) due to an increase in exposure and perceived increased chance of an acceptable resolution; or potentially a decrease due to an unwillingness to subject family members to criminal proceedings. Or the number of proceedings could remain the same if victims decide to go through the civil rather than the criminal route.
26. Although there is no direct comparator that can help us identify the likely number of criminal proceedings for breach of a FMPO, a useful parallel may be drawn with proceedings for breach of a non-molestation order. As indicated above, both orders are intended to prevent the victim from similar types of behaviour albeit in different contexts.
27. Proceedings for breach of a non-molestation order were brought in approximately 10% of cases in which non-molestation orders were made between 2009 and 2011. For 2011, of the 2,515 who were sentenced 21% were given a custodial sentence (4 months average), 11% were given a suspended sentence, 3% were given a community sentence, 16% were given a fine (which averaged at £168), 15% were given an absolute or conditional discharge and 34% were otherwise dealt with.
28. For prison costs, we make a standard assumption that the defendant will serve half of the sentence given. For fine payments we have assumed a 75% payment rate. For victim surcharge we have assumed a variety of payment rates, which are all highly uncertain. For ongoing CPS costs we only cost the cases which lead to a proceeding in court. Several assumptions are used in generating court time and unit costs. Please see HMCTS costs below for these.

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<sup>8</sup> The number of orders made generally exceeds the number of applications as FMPOs are sometimes made during the course of applications for other family orders, and there is no differentiation between interim orders and final orders.

<sup>9</sup> Court Statistics Quarterly, July to December 2012, Table 2.12 – <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/csq-q4-2012/court-stats-quarterly-q4-2012.pdf>

## COSTS

### One-off costs

29. **Police:** Option 1 is likely to require one-off costs of familiarisation for the police (training, or reading time involved in becoming aware of/familiar with the new offence). The IA on criminalisation of forced marriage has estimated one hour of training required by all officers resulting in a one-off cost of £10.6m.<sup>10</sup> We assume that the familiarisation costs would include not only aspects of forced marriage but also breaches of a FMPO.
30. **CPS:** Crown Prosecution Service (CPS) prosecutors would also incur one-off familiarisation costs. The CPS expects these costs to be minimal.

### Ongoing costs

#### **Criminal Justice System**

31. The number of cases is a key consideration for the calculation of ongoing costs to the criminal justice system. Given the very small number of proceedings for breach of a FMPO in the civil courts, we cannot confidently estimate the number of proceedings for breach that may be brought in the criminal courts. However, we provide costs per case for each of the areas of the criminal justice system that could be impacted on.
32. **Police:** Enforcement could involve additional police time and resource in addition to one-off costs of familiarisation with the new offence. The unit cost of police time is approximately £57 per hour for inspectors and above, and £34 per hour for sergeants and below<sup>11</sup>.
33. **Crown Prosecution Service (CPS):** The CPS will incur costs in deciding whether to prosecute a case, and preparing the case for prosecution. These costs will vary according to whether a case is proceeded against in the Magistrates or in the Crown court.<sup>12</sup> CPS costs for the pre-charge decision of summons/prosecution are around £40 per decision. The CPS costs for prosecuting defendants are around £2,600 per defendant in the Crown court and about £150 in the Magistrates court.<sup>13</sup> (in 2011/12 prices)
34. **Her Majesty's Courts and Tribunal Service (HMCTS):** It is possible to obtain estimates for court costs by using data on court times for different offence groups and applying them to court costs per sitting days (each sitting day is assumed to be five hours). A breach of a FMPO would most likely fall under the category of "Other indictable offences", which takes an average of 159 minutes per case. This would mean a cost of about £700 per case in the Magistrates in 2011/2012 prices. Crown court cases would cost an average of around £1,300 in 2011/2012 prices (this includes a cost of around £50 for the Magistrates initial hearing).<sup>14,15</sup> The numbers of proceedings in each type of court

<sup>10</sup> The Home Office IA can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157832/forced-marriage.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157832/forced-marriage.pdf).

<sup>11</sup> Source: Annual Survey of Hours and Earnings (ASHE), CIPFA, 2011/12.

<sup>12</sup> Note that all proceedings commence at the magistrates court. Some cases will be dealt with entirely at this court ie. acquitted or convicted and sentenced. Some cases will go to the Crown Court for trial and some cases will be convicted at the magistrates but committed to the Crown for sentence. For the purposes of costs we disregard this last category on the basis that the main proceedings take place in the magistrates, and therefore that is where the bulk of the cost is incurred.

<sup>13</sup> Source: MoJ Criminal Justice System Cost-Benefit Framework. These figures are CPS -provided estimates of its average costs in 2008/09 for making pre-charging decisions and for prosecuting defendants in the Crown and Magistrates' Courts, uprated to 2011/12 prices using the GDP deflator. The figures are average total cost estimates since they are likely to contain some fixed costs of operation, but it has not been possible to infer what proportion is variable. Unfortunately, the figures are not available by type of offence or outcome. It should be noted that a significant change in the mix of cases by outcome, offence type or average number of defendants would lead to material changes in the average cost estimates.

<sup>14</sup> Source: Analytical Services, MoJ.



varies. For example, for proceedings for breaches of non-molestation orders in 2011, 84% were convicted in Magistrates courts and 16% in Crown courts.

35. **Legal Aid:** The breach of a FMPO does not fall under a specific legal aid offence group. The average legal aid spend for all offences is, therefore, appropriate in this case. It should be noted that legal aid cost is financial, an increase in one case would mean a direct increase to the legal aid spend. The average legal aid cost in the Magistrates was around £500 for 2011/2012 (Crime Lower Report, Legal Services Commission). In the Crown Court, the cost was about £4,000 for 2011/12 (Crime Higher Report, Legal Services Commission). A 50% eligibility rate would be assumed for the Magistrates court (where eligibility is means-tested) and 100% for the Crown. In the Crown Court, some individuals would be required to pay a contribution towards their legal cost.

36. **National Offender Management Service (NOMS):** The annual cost of a prison place is £28,000 in 2012/13 prices<sup>16</sup>. As an example, if one assumed that the average sentence length for breach of a FMPO would be akin to that for the breach of a non-molestation order, then the cost per prison place, using an average sentence length of 4 months (only half of which would be served), would be around £5,000. This figure could be higher or lower depending on the sentencing patterns which may occur for the new offence.

37. The average cost for probation is around £2,800 per start in 2011/12 prices.<sup>17,18</sup>

38. Any increase in cases proceeded against would be associated with additional costs to the Crown Prosecution Service (CPS), HM Courts and Tribunals Service (HMCTS) and legal aid.

## **BENEFITS**

39. It is possible that there could be a decrease in FMPO breaches due to the deterrence effect of criminalisation. However the evidence on deterrence is mixed and cannot confirm that any such effect is likely.

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

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

## **HM Government**

42. The amount collected in fine revenue is likely to be small. In the case of non-molestation orders, the average fine for breaching an order was £168 for 2011. The assumed payment rate would be 75%<sup>19</sup>

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<sup>15</sup> It is important to note that the data on court costs has several limitations. Some limitations are as follows: The timings data are based on the time a legal adviser is present in court, and this is used as a proxy for court time; timings do not take into account associated administrative time related to having a case in court (so the costings are an underestimate); timings data refer to February 2009 and any difference could influence costings;

<sup>16</sup> NOMS(2011), NOMS management accounts addendum

<sup>17</sup> The costs are based on the 2008/09 cost in the Ministry of Justice Cost Benefit Framework., with SR real efficiencies from 2010/11 applied, and converted into 2011/2012 real figures using the GDP deflator series as published on the HM Treasury website.

<sup>18</sup> Per start refers to per person who starts a community sentence or goes onto the licence part of their custodial sentence.

<sup>19</sup> Until recently the data available on the 'payment rate' of financial penalties was limited and based on the ratio between the value of fines imposed in one year and the value of receipts in the same year. This rate fluctuated yearly. The ratio of the value of fines collected to the value of fines imposed was around 65% in 2009/10 and around 75% in 2010/11 and around 85% in 2011. These can only be treated as approximate payment rates as not all the fines collected in a year will have been imposed in that year. Given this, we assume a baseline payment rate of around 75%.

## Criminal Justice System

43. The number of cases is a key consideration for the calculation of on-going benefits to the criminal justice system. Given the very small number of proceedings for breach of a FMO in the civil courts, we cannot confidently estimate the number of proceedings for breach that may be brought in the criminal courts. However, we provide benefits per case for each of the areas of the criminal justice system that could be impacted on.

## Victim Surcharge

44. Victim surcharges have been introduced to all sentences as of the latter part of 2012. The victim surcharge is an amount paid by offenders that contributes towards the cost of support services for victims. Until recently the victim surcharge was only payable on fines. It has now been extended to cover fines, conditional discharges, custodial and community sentences, with the level of the contribution more proportionate to the seriousness of the offence.

Table 1: Outcome of prosecution, level of victim surcharge and assumed payment rates

Outcome of prosecution	Surcharge	Payment rate <sup>20</sup>
Fines and Conditional Discharges	£20	70%
Community sentence	£60	60%
Custodial Sentence (6 months or below)	£80	40%
Custodial sentence (6 months to 2 years)	£100	40%
Custodial sentence (over 2 years)	£120	40%

45. The above table shows the range of victim surcharges. The victim surcharge per case will be dependant on the outcome of the prosecution, so one could expect a victim surcharge between the £20 and £120 range. The surcharge received is dependant on the future volume of convictions and the spread of disposals (the end result of a trial at court). We cannot say the average income from victim surcharge for an individual case with these unknowns.

## ONE-IN-TWO-OUT (OITO)

46. This measure does not regulate nor deregulate business so is outside the scope of the One-in, Two-out rule. Any impacts on third sector agencies (e.g. more victims possibly seeking support) would be indirect impacts and are therefore not in scope of OITO.

## Risks/Uncertainties

47. **Number of cases:** Very few breaches of FMOs have been recorded to date and only one has been proven. There is a risk that criminalising breaches will have little effect.

48. **Impact on victims:** Victims may not wish to pursue or support a criminal conviction since this could result in a family member being criminalised. It could also increase their vulnerability and risk their safety since many victims are very young and are still living at

<sup>20</sup> All these payment rates are assumptions and are highly uncertain. Please see: 'Victim and Witness Consultation Response' (available online at: <https://consult.justice.gov.uk/digital-communications> for more information.

home. If there are few successful prosecutions, this could deter victims from reporting a criminal action or even extend to deterring them from making a civil application, fearing that the police / CPS might pick up on the related criminal offence.

49. **Spread of Disposals:** We do not know what the spread of disposals will be for breaches, if sentencing weighs towards custodial sentences, then the impact of criminal breach cases would be markedly higher than other disposals.
50. **Legal aid:** There is a 50% assumed eligibility rate for legal aid in the Magistrates Court, in practice this could be higher or lower. In the Crown Court, some individuals may need to pay a contribution towards their legal costs, we are unable to estimate this proportion.
51. **Payment rate for fines and victim surcharge:** The payment rates for victim surcharge are highly uncertain; this could mean that the revenue made could vary substantially from estimates.
52. **Deterrence effect:** The evidence on deterrence is mixed, and the evidence on deterrence related to increasing the severity of punishment is weak. Thus the impact of deterrence is highly uncertain.

## Summary and Recommendation

53. Given the small numbers and the uncertainties around costs and benefits, it is difficult to assess the net cost and benefit position of this proposal. However, the table below outlines the costs and benefits of the proposed changes.

Table 2: Summary of Costs and Benefits

Option	Costs	Benefits
1	£NK	£NK
	One-off drafting and familiarisation costs (police and CPS); if more cases proved then there may be increased costs to prisons, probation service, HMCTS and legal aid. The CPS will incur prosecution costs.	Possible reduced victim costs through deterrence effect, although evidence is mixed. CJS costs could decrease if fewer breaches occur. There could be some fine revenue and victim surcharges.

54. Option 1 is the preferred option. The Government is committed to making it a criminal offence to breach a FMPO as part of ongoing efforts to tackle forced marriage more effectively.

## Enforcement and implementation

55. Enforcement of the new offence will be for the police and the Crown Prosecution Service. Existing guidance on the Forced Marriage (Civil Protection) 2007 published on the Ministry of Justice website (including *Forced Marriage Protection Orders - A Guide to the Court Process*) will be updated as necessary. Data on criminal court proceedings for breach of a FMPO will be collected and published annually.

## Specific Impact Tests

See Annex 1 (Statutory Equality Duties)

## STATUTORY EQUALITY DUTIES

In accordance with our duties under the Equality Act 2010 we have considered the likely impact on individuals with protected characteristics of the Government's decision to make it a criminal offence to breach a forced marriage protection order (FMPO).

Forced marriage is, by its nature, a hidden practice so the full scale of the problem is unknown. Victims of forced marriage can be male and female although evidence suggests that most cases involve young women and girls aged between 16 and 25<sup>21</sup>.

### Latest available data

Forced marriage happens in many different communities across England and Wales. The Government's Forced Marriage Unit (FMU), a joint initiative of the Home Office and the Foreign and Commonwealth Office, provides direct assistance to victims and potential victims of forced marriage. In 2012 there were 1485 instances where the FMU gave advice or support related to a possible forced marriage. Analysis of the data collected in those cases shows that:

- 82% involved female victims and 18% involved male victims;
- the countries from which the majority of victims originated were Pakistan (47%), Bangladesh (11%), India (8%), Afghanistan (2.1%), Somalia (1.2%), Turkey (1.1%) and Iraq (1%);
- where the victim's age was known, 65% involved adults and 30% involved minors (those under 18).
- of the cases involving minors 37% involved minors who were 16 or under;
- of the cases where age was known, the oldest victim was 71 and the youngest was 2; and
- there were 22 instances (1.5%) involving victims who identified as lesbian, gay, bisexual or transgender (LGBT).

Ministry of Justice statistics<sup>22</sup> indicate that, in relation to FMPOs, 123 applications and 157 orders (excludes other disposals: transfers, undertakings) were made in 2011<sup>23</sup>. There were 119 female applicants and 4 male applicants and 65 applicants were 17 or under. 414 orders were made since implementation of the Forced Marriage (Civil Protection) Act 2007 (in November 2008) up to the end of 2011.

### Evidence gathered through consultation

A consultation paper published by the Home Office in December 2011 sought views on: *whether* to make it a criminal offence to force a person to marry against that person's will; and *how* to criminalise the breach of a FMPO (to fulfil a commitment made by the Prime Minister to make breach of a FMPO a criminal offence).

Respondents included victims of forced marriage and key stakeholders directly involved in supporting them. Whilst opinion was divided on whether to criminalise forced marriage itself, there was broad support for new legislation to criminalise the breach of a FMPO which many

<sup>21</sup> Statistics provided by the Forced Marriage Unit

<sup>22</sup> MoJ Analytical Services

<sup>23</sup> The number of orders made generally exceeds the number of applications as FMPOs are sometimes made during the course of applications for other family orders, and there is no differentiation between interim orders and final orders.

considered would bolster the effectiveness of the Forced Marriage (Civil protection) Act 2007. A large majority of respondents (71%) supported the Government's proposal to model the new offence on the existing offence of breach of a non-molestation order (which a court may make to protect a person from domestic violence).

### **Equality impacts**

The above data suggests that the majority of cases of forced marriage involve victims of South Asian origin and that a large majority of victims are young women and girls aged 16-25. So there are likely to be differential impacts on victims in terms of race, sex and age. The available data does not enable us to identify the potential for differential impacts on victims with other protected characteristics.

As cases of forced marriage tend to involve family members, it is likely that perpetrators of the new offence (i.e. people who breach the terms of a FMPO) will also predominantly be of South Asian origin. So there is likely to be a differential impact on perpetrators in terms of race but the available data does not enable us to identify the potential for differential impacts on perpetrators with other protected characteristics.

Female victims from South Asian communities in particular may feel that they are 'dishonouring' their families by reporting a breach to the police and this could act as a barrier to the effectiveness of the new offence. Such victims could fear that reporting a breach of a FMPO to the police will lead to greater ostracism within their family and the wider community, and so fail to report the breach because of the fear of criminalising, and bringing 'shame' on their family. However, while the proposal could appear disproportionately to affect South Asian communities, it is victims from those very communities, where forced marriage is most prevalent, that the new offence is intended to protect.

Along with the Government's wider work to tackle forced marriage (see below) we believe that the new offence will have a positive impact by offering greater protection to victims of forced marriage generally and to the communities deemed more at risk of forced marriage in particular. The new offence will enable the police to arrest a person who breaches a FMPO without the need for the court to attach a power of arrest or for the victim to apply to the civil court for an arrest warrant, so enforcement will be quicker. However for a victim who does not want to pursue criminal proceedings, the option will still remain of pursuing civil proceedings for contempt of court as is currently the case.

We believe that any adverse impact on perpetrators from South Asian communities is justified. Forced marriage is an unacceptable practice and those who breach the terms of a court order that is intended to protect victims from being forced into marriage against their will should face the threat of criminal sanctions.

### **Wider measures in support of legislation**

Making it a criminal offence to breach a FMPO is part of a package of legislative measures which also includes making it an offence to force a person to marry against that person's will.

The Government recognises that legislation alone is not enough to tackle such a sensitive and complex issue as forced marriage so it remains focused on prevention and increasing support and protection for victims and those at risk of becoming victims. To that end, the Government has announced additional funding for a programme of work to support the new legislation on forced marriage. This will include:

- delivering a nationwide community engagement programme through regional road shows and debates supported by multilingual posters;

- helping those working in education and safeguarding children to identify the earliest signs that a child may be at risk of forced marriage and know what action to take;
- ensuring that victims receive the right support in a joined-up way by expanding the current training and guidance for frontline professionals - including the CPS, police, judiciary, health agencies, and social services - and ensuring that local authorities identify a single point of contact in every local authority to provide a more effective and responsive service for victims; and
- providing emotional and practical support for victims in the six months following their repatriation to the UK by the FMU.

The outreach work to support the new legislation will involve working with forced marriage support groups to ensure that information about the new legislation reaches the most vulnerable groups, particularly young women from the communities most affected by forced marriage.

### **Monitoring**

We will use court statistics on proceedings brought for breach of a FMPO in the criminal jurisdiction to monitor how widely the legislation is being used. Additionally, we will also work closely with the FMU to obtain feedback from forced marriage support groups on how the legislation is working and its impact on the target groups.