

Title: Criminalisation of Forced Marriage IA No: Lead department or agency: Home Office Other departments or agencies: MoJ, FCO, CPS	Impact Assessment (IA)			
	Date: 26/04/2012			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
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Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
-£20.7m	N/A	N/A	No
			NA

What is the problem under consideration? Why is government intervention necessary?

Forced marriage is an appalling practice that is recognised in the UK and elsewhere as a form of violence against women and men; domestic abuse; a serious abuse of human rights and, where a minor is involved, child abuse. In 2011, the Government's Forced Marriage Unit provided advice or support in over 1500 cases - this does not reflect the full scale of the abuse, and according to NGOs many more cases are not reported. The Government sought views on whether a specific criminal offence would help to combat forced marriage whilst ensuring such a step does not deter victims from reporting what has happened to them.

What are the policy objectives and the intended effects?

The Government is committed to tackling forced marriage. The policy objective is to ensure the Government tackles forced marriage cases effectively. On the whole the Government wishes:

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

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

Option 1. Do nothing- continue current arrangements under existing law;
 Option 2. Make forcing someone to marry a criminal offence.

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

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

Signed by the responsible Minister: Date:

Summary: Analysis & Evidence

Policy Option 2

Description: Make forcing someone to marry a criminal offence

FULL ECONOMIC ASSESSMENT

Price Base Year 2010/11	PV Base Year 2010/11	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -13.4	High: -36.0	Best Estimate: -20.7

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	10.6	1	0.32	13.4
High	10.6		2.97	36.0
Best Estimate	10.6		1.18	20.7

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

There would be a one-off familiarisation opportunity cost to the police of £10.6m. This is *not* a financial cost. There will be a one-off training cost to the CPS of up to £0.05m.

A 'no change' scenario has been modelled on the basis that offences currently flagged by the CPS as FM would be prosecuted under the new forced marriage offence. In addition it is assumed that there would be additional prosecutions in relation to the new forced marriage offence including "luring" someone into a forced marriage. Costs associated with this would fall upon the criminal justice system and are estimated to bring opportunity costs to the prison service of £0.61-0.81m per year, probation services £0.01m per year, HMCTS £0.19m per year, legal aid £0.15m per year and CPS £0.09m per year each. This gives a total estimated annual cost to the CJS of around £1.18m.

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

There will be a one-off cost to the Government of creating primary legislation. There may be costs to victims if they now choose not to report cases to authorities for fear of their families being prosecuted.

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

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

N/A

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

If a specific offence of forced marriage existed, this may allow the CJS to better target their powers against those who force someone to marry. However there are already a range of criminal offences that tackle the behaviour typically associated with forcing someone to marry, for example kidnapping, false imprisonment, assault, harassment, child cruelty, child abduction and various sex offences.

Nevertheless victims of forced marriage, their families, and society may feel better served if there was a specific criminal offence. There may also be a deterrent effect, which could reduce the number of offences and benefit potential victims of forced marriage. If victims choose not to report cases to authorities for fear of their families being prosecuted, there may be a fall in FMPO's applied for alongside a fall in criminal prosecutions and hence a corresponding fall in costs to HMCTS and legal aid.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Due to the likely overlap with at least some existing criminal offences, we cannot estimate at this point whether the creation of a new offence would just lead to existing CPS flagged cases being prosecuted under a new forced marriage offence, or whether additional cases would enter the criminal justice system or whether victims fear of criminalising their families would actually lead to a fall in cases (both criminal and civil) entering the justice system. This is why we have provided 'increase' and 'decrease' estimates to illustrate the potential change in costs. There is a risk that a new forced marriage criminal offence, would lead to the practice of forced marriage going underground or the problem being taken overseas.		

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

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

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

In 2011, the FMU provided advice or support in almost 1500 cases, but we know that this does not reflect the full scale of the abuse, and many more cases are not reported. Research carried out by the then Department for Children, Schools and Families in 2009 estimated that the national prevalence of reported cases of forced marriage in England was between 5000 and 8000.¹ Forced Marriage cases tend to involve young women and young men although it does impact more on women than men 78% involved female victims and 22% involved male victims. The FMU is aware of cases from, Afghanistan, North and East Africa, Bangladesh, India, Iran, Iraq, Pakistan and Turkey. This list of countries is not exhaustive and there may be other communities in which forced marriage is practised.

A.2 Groups Affected

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

The main groups affected by these proposals are:

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

A.3 Consultation

The Home Office document *Forced Marriage Criminalisation – A consultation* was launched on 12 December 2011. The consultation sought views on whether a specific criminal offence would help to combat forced marriage and ensure such a step does not prevent or hinder victims from reporting what has happened to them.

The consultation closed on 30 March 2012. Consultees were invited to offer views and comments on the policy options outlined, supporting evidence and associated costs and benefits whether quantitative or qualitative.

We received responses from both stakeholder organisations and members of the public. A clear overall majority of respondents, 80%, believe the current civil remedies and criminal sanctions for forced marriage are not being used effectively. Over half of respondents (54%) believe a criminal offence of

¹ Department for Children, Schools and Families, *Forced Marriage-Prevalence and Service Response*, DCSF-RB128, July 2009

forced marriage should be created. 37% do not think that an offence should be created; 9% of respondents were undecided.

We have taken account of the evidence gathered through the consultation process in developing final policy proposals and the final Impact Assessment.

B. Rationale

Forced marriage is a practice which results in considerable distress to victims and is estimated to affect between 5,000 and 8,000 people in England.² Government intervention may be necessary to:

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

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

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

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

The Government is therefore committed to doing more to tackle forced marriage and, through the consultation, ensuring the law is working as effectively as possible to tackle forced marriage.

C. Objectives

Government intervention may be necessary to:

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

D. Options

Option 1 is to make no changes (do nothing):

The current law provides the opportunity for victims to apply to the court for a Forced Marriage Civil Protection Order (FMPO) and / or report to the police who may then pursue any related criminal offences with the CPS. No new offence would be created, though the civil remedy would be strengthened by the breach of a FMPO becoming a criminal offence. There is also no additional cost.

Option 2 is to create a new criminal offence of forcing someone to marry:

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

However there is concern that the prospect of criminalising a parent or other member of the family would deter victims from disclosing abuse and/or from applying for a civil FMPO. The added prospect of appearing

² Department for Children, Schools and Families, *Forced Marriage-Prevalence and Service Response*, DCSF-RB128, July 2009

in criminal court could exacerbate this problem since most victims are very young and often wish to maintain their family relationships.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

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

For this reason it is not clear whether:

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

For the purposes of this impact assessment we have looked at a range of scenarios modelled on the basis that offences currently flagged by the CPS as forced marriage would be prosecuted under the new offence of forced marriage. In addition it is assumed that there would be additional prosecutions in relation to the new forced marriage offence including acts of "luring" someone into a forced marriage. We assume – as a very conservative estimate - that the 63 Forced Marriage Protection Orders (FMPOs) made in 2010/11 which included a provision to surrender the "Person To Be Protected's" passport / travel documents are our best currently available starting point to identify cases involving an element of "luring".

Annex 1 sets out a more detailed list of assumptions used to create a range of scenarios of the costs and benefits that might result from creation of a new offence of forced marriage – Option 2. There were 23 defendants convicted of a criminal offence which was flagged as forced marriage by the CPS in 2010/11, 10 at Magistrates Court and 13 at Crown Court. The 'no change' scenario modelled assumes that these 23 defendants would be prosecuted under a new forced marriage offence (option 2) and the sentences would be subject to a degree of up-tariffing. As mentioned previously, we do not know whether the number of forced marriage offences will increase, decrease or stay the same following the criminalisation of forced marriage. Our 'decrease' scenario assumes that the number of defendants that would be prosecuted under a new forced marriage offence would be halved (therefore 12 defendants) and our 'increase' scenario assumes that the number of defendants convicted would double (46 defendants).

For the 'no change' estimate of the volume of additional "luring" offences it is assumed that it is equal to the number of Forced Marriage Protection Orders (FMPOs) currently made which included a provision to surrender the "Person To Be Protected's" passport / travel documents. For the 'increase' and 'decrease' scenarios the volumes are doubled and halved respectively.

It is important to note that these are scenarios only and are in no way indicative of what we expect will actually occur once forced marriage is criminalised.

The additional costs created by this option to the Criminal Justice system may be absorbed within existing resources and should therefore be viewed as **opportunity costs**.

OPTION 2 – Make forcing someone to marry a criminal offence

COSTS

One-off-costs

This option is likely to require one-off familiarisation costs to the police resulting from the training or reading time involved in acquiring sufficient knowledge to deal with a new offence. In 2009/10 there were approximately 11,000 officers ranked inspector or above and 227,000 officers ranked sergeant or below³. The unit cost of police time is approximately £59 per hour for inspectors and above, and £36 per hour for

³ Source: CIPFA data (2009/10)

sergeants and below⁴. Our low case scenario assumes one hour of training required by all officers resulting in a one-off cost of £10.6m. For simplicity this has been modelled as a single year, catch-all cost. In reality there is likely to be variation in the familiarisation times of different officers and the cost is likely to extend over a number of years rather than occurring in the first year of the policy. The assumption of one hour may be an over-estimate if existing training on procedures for dealing with forced marriage can be adapted with little or no opportunity cost.

There will be additional training costs for CPS prosecutors which could cost up to £50k.⁵

There would be increased costs on the third sector. Charities may see an increase in demand to provide one to one support, in addition to costs associated with increasing awareness in schools and refuge accommodation. In addition staff in these organisations, and health professionals and social workers will need to be trained in relation to the new legislation. It has not been possible to quantify this cost.

Ongoing costs

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

The 'no change' scenario which has been modelled assumes that the 23 defendants who were convicted of offences flagged as "Forced Marriage" by the CPS would be prosecuted under a new "forced marriage" offence (option 2) and would be subject to a degree of up-tariffing. In addition, the 63 FMPOs made in 2010/11 which included a provision to surrender the "Person To Be Protected's" passport / travel documents would be prosecuted under the new "luring" element of the offence.⁶

An increase in HMCTS costs is expected as a result of the up-tariffing of existing forced marriage cases, and new additional "luring" offences going through the criminal justice system. These are estimated to amount to £189,000 annually. In addition to this, legal aid costs are estimated to be approximately £147,000 per year and costs to the CPS are estimated to be around £85,300 per year.

There will be an impact on HM prisons service. Assuming that offenders serve half their sentence in prison and half on probation, there would be an upward pressure on prison places, at an estimated cost of £608,000 per year up until the end of the spending review in 2014/15. From 2015/16 onwards this is estimated to rise to £810,000 per year. The probation cost is estimated to be around £11,000 per year from 2013/14 onwards.⁷

It is important to note that the above costs should be viewed as **opportunity costs**. The additional costs created by this option to the Criminal Justice system may be absorbed within existing resources.

There will also be an additional opportunity cost to police officers in the time spent enforcing this new offence. In the 'no change' estimate, where the number of cases of forced marriage are equal to the number currently flagged as 'forced marriage' which have gone through the criminal justice system, there will be no additional cost to the police in the time spent arresting potential offenders. There will, however, be an additional cost to police due to the new "luring" element. It is assumed that it takes the police 5.8 hours for an arrest, at a cost of £35.88 per hour, and that every offence proceeded against will require an arrest.⁸ In the 'no change' estimate scenario the cost will be £21.2k.

⁴ Source: Annual Survey of Hours and Earnings (ASHE), CIPFA, uprated to 2010/11 prices.

⁵ Crown Prosecution Service estimate based on cost of providing e-learning to CPS prosecutors.

⁶ The 63 cases are assumed to equal 102 defendants, 1.6 defendants per case (See the Risk section for explanation).

⁷ It must be noted that we have assumed that there is no cost of probation for sentences under 12 months (from the 2010/11 Ministry of Justice Reoffending Compendium <http://www.justice.gov.uk/downloads/statistics/mojstats/2011-compendium-reoffending-stats-analysis.pdf>)

⁸ Time for arrest taken from Deehan, A., Marshall, E., Saville, E., (2002), "Drunks and Disorder: Processing Intoxicated Arrestees in two city-centre custody suites", Home Office. £35.88 is the estimated hourly wage of a sergeant or below, calculated in 2008 using CIPFA (Chartered Institute for Public Finance and Accounts) and ASHE (Annual Survey of Hours and Earnings) data. The underlying data have not been updated; hourly costs have been uprated to account for inflation using the Treasury GDP deflator series

Estimated costs scenarios⁹

	Cost to HMCTS	Legal aid Cost	Cost to CPS	Cost to prison services (2011/2)	Cost to probation services (after Y0)	Cost to police	Total ongoing cost
'Increase' scenario	£441,000	£ 350,000	£ 205,000	£1,565,000	£ 49,000	£ 47,240	£2,660,000
'No change' scenario	£189,000	£ 147,200	£ 85,300	£608,000	£ 10,500	£ 21,200	£1,060,000
'Decrease' scenario	£135,000	£ 31,730	£ 16,930	£111,400	£- 7,410	£ 7,490	£295,000

Figures to 3.s.f

Therefore, given the evidence and assumptions above, our 'no change' estimate is that creating a new forced marriage offence would cost the UK a **£10.6m in one-off (opportunity) costs plus ongoing costs of around £1.06m a year rising to £1.26m a year after 2014/15**. This equates to **approximately £20.7m in present value (PV) over 10 years**.

BENEFITS

The new offence may allow the Criminal Justice System to better target their powers if a forced marriage criminal offence existed. Victims of forced marriage, their families, and wider society may feel better served by the level of punishment delivered by the CJS.

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

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

ONE-IN-ONE-OUT (OIOO)

N/A

F.RISKS

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

Table E6: Risks

Assumption	Risks
HMCTS costs	<p>Court costs may be higher than the averages assumed as there may be additional costs associated with the translation of court documentation and the use of interpreters during court hearings.</p> <p>There may be additional savings if some cases decide to only follow the new criminal offence route and no longer go down the FMPO civil route.</p>
Volume of cases	<p>If contrary to expectations – we were to see fewer cases than anticipated being prosecuted, then there is a risk that this would be for undesirable reasons – namely that victims and witnesses decide not to speak out for fear of their family or communities being criminalised. This could possibly cross over to the civil process if victims fear third party reporting or CPS taking up cases from the civil courts which result in criminalising a member of their family. The level of</p>

⁹ It must be noted that the annual cost of a place in prison will rise from £30,000 to £40,000 after 2014/15.

penalties could also influence the future volume of cases.

Definition of new offence	<p>We have made simplifying assumptions over what the new forced marriage offence may look like, however in reality this could be different and result in much higher costs. There is a small chance that costs here could be reduced, but we think this is unlikely.</p> <p>There is also a risk that any proposed offence could be changed during passage through Parliament.</p>
0% guilty plea rate for “luring” someone into a forced marriage	<p>A higher guilty plea rate is expected in reality, however due to a lack of reliable data on which to base this we were not able to model this impact.</p>
100% conviction rate for “luring” someone into a forced marriage	<p>The conviction rate is expected to be lower in reality than modelled, however due to a lack of data this was not modelled. There is a chance that some defendants may be acquitted, which would result in lower costs than those modelled in this paper. In addition, fewer defendants may be successfully prosecuted as the offence would have to meet a criminal standard of proof “beyond reasonable doubt”.</p>
Appeals	<p>We have not quantified the cost of any appeals relating to forced marriage cases. There is a risk that there could be appeals, which could increase costs.</p>
Defendants per case	<p>There is a risk that there could be more than 1.6 defendants per case.</p> <p>We assume that at the Magistrates Court, 80% of defendants are eligible to legal aid. However in reality this could be lower.</p> <p>We assume that at the Crown Court, all defendants pass the Interest of Justice test and Means tests, making them eligible for legal aid. In reality the cost implication may be lower, as some defendants may have to contribute towards the legal aid cost of their defence.</p>
Legal aid	<p>Average legal aid costs per case may be higher as cases may require interpreters, to attend meetings between the victim and their solicitor, for the translation of relevant case documents.</p>
Interpreter Costs	<p>These have not been quantified and would be an additional burden to be borne by each CJS agency (e.g. HMCTS, CPS, LSC, and police).</p>
Custodial sentence length	<p>Crimes that fall under the category of ‘more serious violence’ cover a wide range of offences, which carry different sentences. Therefore, the true custodial sentence length could be lower or higher than assumed, which would result in lower/higher costs.</p>
CPS costs	<p>There is a risk that CPS prosecuting costs for cases could be higher as there may be additional cases that go down the criminal route. This may occur where currently the victim opts for a civil measure but in future, if the case is brought to the attention of the CPS, the defendant might be prosecuted regardless of the victims’ wishes.</p>
Police costs	<p>There is a risk that police costs could be much lower as we have used a high estimate of the number of police who would need to be trained.</p>
Extra-territorial Jurisdiction (ETJ)	<p>If the government decides to extend ETJ to include the forced marriage offence, there could be more offences of forced marriage and luring with increased costs brought to the CJS. These costs have not been quantified as the decision of whether to extend ETJ has not yet been made.</p>

G. Enforcement

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

H. Summary and Recommendations

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

Table H.1 Costs and Benefits		
Option	Costs	Benefits
2	£22.0m (present value over 10 years covering opportunity cost to police through one-off familiarisation, CPS training costs and ongoing police enforcement, prison and probation services, CPS, HMCTS, legal aid, and police costs through additional cases and up-tariffing.)	£NK
	Victim costs if cases now unreported, cost to the Government of drafting primary legislation, cost to the third sector of increased focus on Forced marriage.	Benefits to victims through potential deterrence effect. Allow CJS to better target their powers, victims feel better served by level of punishment delivered by CJS. Potential fall in FMPOs and criminal prosecutions if victims deterred from reporting cases.
Source: HO analysis		

Whilst the stated NPV of Option 2 is negative it must be noted that the potential benefits have not been monetised. It is therefore possible that Option 2 represents better value for money than Option 1.

I. Implementation

Once a decision has been reached on how we proceed, an appropriate legislative vehicle will need to be identified and used to create a new offence if that course of action is taken.

J. Monitoring and Evaluation

Once a decision has been reached on how we proceed, an appropriate legislative vehicle may need to be identified and used to create a new offence if that course of action is taken.

K. Feedback

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

L. Specific Impact Tests

Annex 1. Detailed methodology behind low case scenario for Option 2

ASSUMPTIONS & DATA

For the purpose of this impact assessment we have looked at a range of scenarios. There are a number of difficulties in defining a criminal offence of forced marriage that would encapsulate all the behaviours involved. Despite this, for the purposes of modelling we assume the following impacts:

- The current cases that flow through the criminal justice system which are flagged as “Forced Marriage” cases by the CPS would, in the future, flow through the criminal justice system, but under the new “forced marriage” offence. This, however, assumes that all the cases flagged by the CPS are ones where they knew at the charging stage that the offence was taking place in the context of a forced marriage situation, whereas it may be that in some cases the full circumstances of the case only become apparent during the trial.
- For the purposes of the exercise we have assumed that the new “forced marriage” offence would be an either way offence, with a maximum sentence of life imprisonment. This is because the most serious offence currently used in forced marriage cases could attract life imprisonment¹. This is not to suggest that all forms of criminal behaviour involved in forced marriage do or should attract that penalty. Given the wider scope of the new offence, we assume that there would consequently be an element of up-tariffing of sentences because:
 - a) Some cases now dealt with as summary offences would in this scenario become either-way cases giving the defendant the option to elect for trial by jury.
 - b) Some of the lower end offending (be that current summary of either way cases) would – as a result of creating an offence with a high maximum tariff - be committed to or elect trial by jury in the Crown Court when it would currently be dealt with by the magistrates’ courts. The effect of this is uncertain but could lead to higher sentences.
 - c) Because of the broad nature of the offence, the maximum sentence would need to be high and we anticipate this would lead to average sentence lengths in both the magistrates’ and Crown Court rising.

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

	Base case ²	Future case ³
Magistrates	10	8
Crown Court	13	15
Total	23	23

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

Table E2. Average sentence lengths (months)

	Base case ⁴	Future case ⁵
Magistrates	3.2	3.6
Crown Court	19.1	22.8

Source: Table A5.10 of MOJ sentencing tables 2010, HO/MOJ assumptions

- We also assume that the new “Forced Marriage” offence would now cover the acts of “luring” someone into a forced marriage thereby also creating a criminal offence of “luring”. We assume – as a very conservative estimate - that the 63 Forced Marriage Protection Orders (FMPOs) currently made which

¹ For example, grievous bodily harm with intent, kidnap and false imprisonment.

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

³ We have assumed that 25% of cases that currently go through the Magistrate court will now go through the Crown court.

⁴ To estimate the average sentence lengths for the base case we have used the average sentence lengths for convictions that were flagged as ‘Forced marriage’

⁵ We have used the average sentence lengths for ‘Offences against the person’ as a proxy for the future average sentence length of ‘Forced Marriage’

included a provision to surrender the “Person To Be Protected’s” passport / travel documents are our best currently available starting point to identify cases involving an element of “luring”.

- We assume that all of these 63 cases would not only go through the civil route of a FMPO in order to protect the victim, but that some of the (typically multiple) defendants associated with the cases would now also be prosecuted through the criminal courts.
- We assume that for each of these 63 cases there are 1.6 “defendants” who would – under new legislation - be prosecuted for “luring” someone into a forced marriage.⁶ This assumption is based on CPS data on criminal cases flagged as involving a forced marriage and is believed to be more representative of the number of defendants per case involved in a criminal proceeding rather than a civil proceeding because the burden of proof threshold for criminal and civil cases is different. This number differs from the number of ‘respondents’ in civil cases which, based on recent court based information for 2010 is an average of 2.5 respondents per case. Depending on the drafting of the new offence this could be a more appropriate baseline. If this number was applied this would increase the costs on the criminal justice system.

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

	Base case	Future case
Magistrates	0	74
Crown Court	0	28
Total		102

Source: MOJ Statisticians, 2010/11,

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

Table E4: Average sentence lengths (months)

	Base case	Future case
Magistrates	0	2.9
Crown Court	0	6.5

Source: MOJ statisticians, 2010

- It is assumed that the CPS would incur costs in prosecuting defendants in the Crown and Magistrates’ Courts. Costs from creating a new “forced marriage” criminal offence would arise from:
 - (1) higher CPS prosecution costs for cases moving up to the Crown Court
 - (2) CPS prosecution costs associated with the new “luring” into a forced marriage cases where currently there are none.
- The Ministry of Justice (MOJ) Criminal Justice System Cost Benefit Framework provides estimates of the CPS’s average costs in 2008/09 for prosecuting defendants in the Crown and Magistrates’ Courts. These have been uprated to 2010/11 prices.
- Other unit costs for the Criminal Justice System (CJS) were sourced from the Ministry of Justice (MoJ) Cost-Benefit Framework and Legal Services Commission (LSC) statistics pack 2010/11.

⁶ The number of defendants per case is calculated from those defendants finalised in the year 2011/2012, based on CPS data, and therefore may be an underestimate.

Table E5: CJS Unit Costs (2010/11 prices)

	Magistrates	Crown Court	Other
CPS cost per defendant	£143	£2,500	-
Defence representation cost per case (legal aid) (2010/11 prices)	£473	£4,000	-
HMCTS cost (per session in magistrates and per sitting in the crown court)	£1,313	£2,021	-
Probation Service Costs	-	-	£2,700
Prison Service Costs			£30,000

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

- It is assumed that the average number of defendants per case is 1.6 throughout, which is based on CPS 2010/11 data on cases flagged as “forced marriage” cases.
- We assume a 100% conviction rate for the offence of “luring” someone into a forced marriage. In reality the conviction rate will be lower, however we do not have any data on which to base an appropriate conviction rate for an offence that currently does not exist. There are therefore risks around this modelling assumption which are highlighted further on. Given the conservative assumptions around the volumes and number of defendants per case, we feel that the assumptions made on the conviction rate for the “luring” offence still reflect a reasonable low case scenario.
- It is assumed that there are no guilty pleas for “luring” someone into a forced marriage offence. Again we would normally expect at least some guilty pleas, but due to a lack of reliable data on which to base the guilty plea rate for an offence that does not currently exist, we have been unable to model this. There is therefore a risk around this modelling assumption and this is reflected in the risks section. The figures relating to this are however so small that the difference is not significant to the costing.
- Annual prison costs have been estimated to be around £30,000 per year to the end of this SR period (2014/15). This will increase to £40,000⁷ per year in the next SR (post 2014/15).
- It is assumed that there could be one-off costs to the police of becoming familiar with the new “FM” offence. In England and Wales, there are around 11,000 police officers (inspectors or above) and their average hourly wage is around £59 per hour. In addition, there are around 277,000 police officers (sergeant or below) and their average hourly wage is around £36 per hour⁸.

⁷ Source: MoJ

⁸ Police officer numbers are from the 2009/10 Chartered Institute of Public Finance & Accountancy (CIPFA). Police officer salaries are from the Annual Survey of Hours and Earnings (ASHE) and CIPFA, which have been up rated to 2010/11 prices.