



Women's Resource Centre

Briefing on the Home Office's consultation on Forced Marriage: 'Forced Marriage: A Wrong not a Right'

15/11/2005

Does your organisation work with those forced into marriage or in a related field? If it does then there is an opportunity to contribute your experiences and expertise into the Home Office's consultation paper on the criminalisation of forced marriages.

The deadline for responses to the consultation is **Monday 5th December 2005**.

(Please note the WRC are not responding to this particular paper)

BACKGROUND

'Forced Marriage: A Wrong not a Right', a consultation paper on forced marriage, was published in August 2005 by the Home Office to prompt public debate on whether the criminalisation of forced marriage would help to combat forced marriages in the United Kingdom. The Home Office deals with approximately 250 cases of forced marriages each year.

There is currently no specific criminal offence of 'forcing someone to marry' within the UK, although victims are afforded some protection from forced marriages by criminal and civil law. In England and Wales, the Matrimonial Causes Act of 1973 allows victims who 'did not validly consent...whether in consequence of 'duress, mistake, unsoundness of mind or otherwise', to obtain nullification within the first three years of the marriage. Furthermore, UK law provides protection from crimes such as kidnapping, child abduction false imprisonment and rape that might be committed when forcing someone into a marriage. Under civil law, children at risk of being forced into a marriage are entitled to the statutory protection afforded by the Children's Act 1989, which confers powers to local authorities to help safeguard a child's welfare.

KEY AREAS

The Home Office's newly created Forced Marriage Unit explores two principle issues in the consultation paper:

- The ways in which an offence might be formulated
- The ways in which a new law might be enforced

KEY ISSUES

- The paper outlines the possibility of grouping and renaming existing criminal activities to formulate a new offence against forced marriage. Under this proposal, a person could be prosecuted for committing one of a group of existing criminal offences for the purposes of forcing someone to marry. *Most threats to commit criminal offences in England and Wales e.g. financial threats, threats of exclusion from the family would not be included in this group. This option might therefore duplicate existing criminal laws without increasing their scope.*
- The paper outlines the possibility of creating a new criminal offence encompassing all the unacceptable behaviour (both criminal and non-criminal) intended to force someone into marriage. *This would effectively result in the incursion of the criminal law into the area of emotional and psychological duress below the threshold of current criminality.*
- The Forced Marriage Unit addresses issues surrounding the perpetrators of forced marriage. Who would be guilty of the offence? How would guilt be proven? Would only the primary instigator be prosecuted or should all contributing parties be held responsible? Should these decisions be left to the discretion of the prosecuting authorities?
- The consultation paper reflects on the role of the victim in identifying a case of forced marriage and in bringing it to successful prosecution. Proving the intent of the victim and dealing with the victim's reluctance to go ahead with prosecution are identified as the principle barriers to action. *How would the consent of the victim be proven? Would victims be willing to testify against their families?*
- The principle argument for introducing an offence is that it would have a strong deterrent effect and empower young people with more tools to negotiate with their parents. *Failure to introduce an offence might suggest to victims that the government is not committed to combating forced marriage.*
- The principle argument against introducing an offence is that it would not necessarily result in successful prosecutions. *The failure to prosecute perpetrators of forced marriage in Norway as well as perpetrators of Female Genital Mutilation in the UK has made groups working on forced marriage prevention sceptical.*
- The consultation document recognises that the introduction of a new offence would have a disproportionate impact on Black and Ethnic Minority communities, leading individuals or enforcement agencies to misinterpret or misapply the new law. *Could the risk of misinterpreting or misapplying the law be mitigated by thorough investigation of claims and appropriate training and monitoring?*
- The paper recognises that the issue of forced marriage could be dealt with through non-legislative means, such as providing front line workers with training and resources to tackle the issues. *It does not consider some of the cultural origins of*

the practice of forced marriage, as identified by groups engaged in the consultation process. What more could the government and its partners do to communicate the unacceptability of forcing someone to marry? Is it the Government's role to educate communities on matters relating to cultural practices of that community?

- The expense of implementing a new offence is considered in the consultation document.¹ Will there be sufficient resources to cover public sector costs as well other costs to protect the victim? *Is protection of victims more important than prosecution of perpetrators?*

HOW TO RESPOND

The Forced Marriage Unit document encourages women's and victim's groups, criminal justice system agencies, faith organisations and community groups to use the consultation document as a basis for local consultation. Views on the subject of enforcement issues and on possible penalties for offence are greatly welcome and will be received until **Monday 5th December**.

If you want to have a say you can:

- Respond directly to the Home Office's Forced Marriage Unit **and/or**
- Feed in to other organisations that are producing a response.

The following is a list of all organisations that the WRC knows are preparing a response. Some are happy for you to contribute or sign up to their responses, whilst others are preparing their own response. All can be contacted for further information.

Newham Asian Women's Project: This group organised a conference to discuss the consultation paper with a view to draft a consultative response. They can be contacted on 020 8472 0528 or emailed at info@nawp.org.

Southall Black Sisters: Forced marriage constitutes a significant part of this organisation's work. They were members of the Home Office's Working Group on forced marriage and engage in making recommendations to the Police, Social services, Schools and Health Authorities on the issue. For more information on their response contact Hanana Siddiqui on 020 8571 9595 or email southallblacksisters@btconnect.com.

Rights of Women: This group is preparing a response. They can be contacted on 020 7490 2562 or emailed at info@row.org.uk.

Refuge: This group will be actively engaged in the consultation process. Please contact the organisation on 020 7395 7700 or email info@refuge.org.uk.

¹ For estimates of costs see 'Annex B: Partial Regulatory Impact Assessment and Public Services Threshold Test' in *Forced Marriage: A Wrong not a Right*.

Responses directly to the Home Office's Forced Marriage Unit should include your name, organisation (if applicable), address and email and should be directed to:

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Freepost PH12
G 55 Old Admiralty Building
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anna.bishop@homeoffice.gsi.gov.uk

by Monday 5th December 2005

Complaints or comments about the consultation process can be directed to:

Pio Smith
Consultation Coordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
London SW1P 4DF
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To download the consultation document visit:

<http://www.fco.gov.uk/Files/kfile/forcedmarriageconsultation%20doc.pdf>

The Women's Resource Centre (WRC) is a membership based, second-tier, umbrella body providing infrastructure support, information and capacity building to voluntary and community organisations working to improve the status women.

For information regarding this briefing, please contact the WRC Policy Team at:

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