



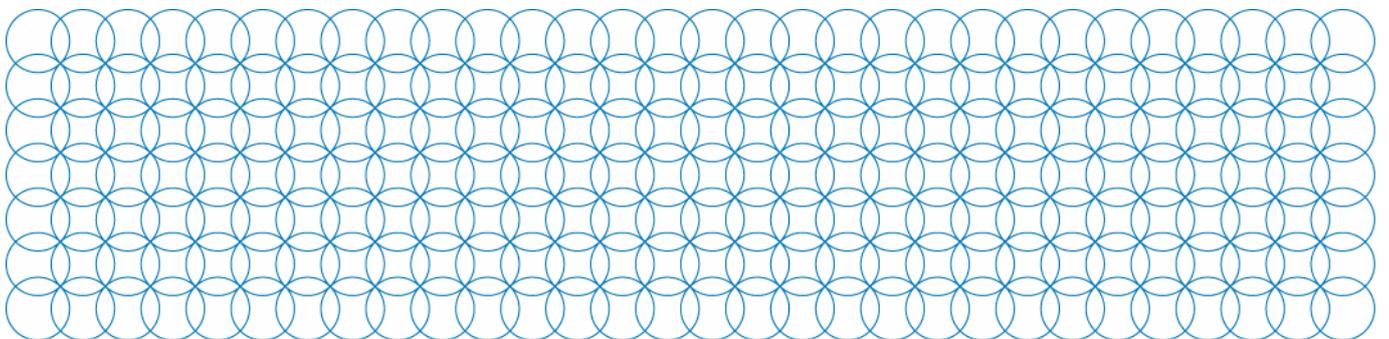
Ministry of
JUSTICE

Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party

Consultation Paper CP 31/07

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Ministry of
JUSTICE

Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party

A consultation produced by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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Foreword



The aim of the Forced Marriage (Civil Protection) Act 2007 (the Act) is to offer protection to those faced with forced marriage, whether they are children, teenagers or adults, regardless of background, gender, race or religion. The Act gives the courts a wide discretion to deal flexibly and sensitively with the circumstances of each individual case, employing civil remedies that will offer protection to victims without criminalising members of their family.

Forced marriage is a marriage without the full and free consent of both parties. It is a form of domestic violence and an abuse of human rights. Forced marriages are not arranged marriages. In an arranged marriage the family will take the lead in arranging the match but the couples have a choice as to whether to proceed. In a forced marriage there is no choice.

The Act is another significant step forward in tackling the harmful practice of forced marriage and protecting the rights of women, in particular, but of all individuals to choose whom and when to marry. The Act supports the work of the Forced Marriage Unit and the many voluntary and charitable organisations that provide support. It will help strengthen the clear signal that forced marriages will not be tolerated.

It is important that the Act is implemented in a way that victims can be empowered to obtain orders from the courts in whatever circumstances they find themselves. Not all victims will be able to make an application personally to the court and where this occurs we need to ensure that another person or organisation may do so on their behalf.

This is a key aspect of ensuring that the Act works in practice and I encourage everyone to provide comments.

Bridget Prentice

Executive summary

The Forced Marriage (Civil Protection) Act 2007 (the Act) received royal assent on 26 July 2007. The aim of the Act is to provide protection to those at risk of forced marriage and to provide recourse for those who have already been forced into marriage. The Act also sends out a strong signal that forced marriage is unacceptable and will not be tolerated.

Under the Act, a person who is being forced into marriage or has been forced into marriage may apply to the court for a Forced Marriage Protection Order. The court can order the behaviour or conduct of those forcing another into marriage to change or stop, or impose requirements upon them. If a person fails to comply with the court order they will be dealt with by the court and may be sent to prison.

As part of the process of bringing the Act into force, we are exploring how the Act should work in practice. One important aspect is how to enable orders to be made in circumstances when victims feel unable or unwilling to make an application themselves.

The Act enables a victim or a relevant third party to make an application for a Forced Marriage Protection Order without the court's permission. Any other person may only apply if they obtain the court's permission first. A relevant third party is a person (or an organisation), specified by the Lord Chancellor who may apply on behalf of another without obtaining the permission of the court.

This consultation is focused on the role of the relevant third party. It asks for responses on what need there is for relevant third parties, what type of people or organisations should act and what safeguards are needed. It also invites practical suggestions on how the making of an application can be adapted to meet the needs of those who use the Act.

Introduction

This paper sets out for consultation the role of the relevant third party under the Forced Marriage (Civil Protection) Act 2007. The consultation is aimed at all organisations and people who provide support to those affected by forced marriage in England and Wales.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 25 have been followed.

An Impact Assessment limited to the role of the relevant third party has been completed and indicates that public sector and voluntary sector organisations maybe affected. The proposals are likely to lead to additional costs for charities or the voluntary sector or for the public sector depending on who becomes a relevant third party.

An Impact Assessment is attached at page 18. The Impact Assessment is incomplete as the results of the consultation will inform and refine it. Comments on the Impact Assessment and the specific questions it contains are particularly welcome.

A partial regulatory impact assessment was completed for the Bill. A final impact assessment will be completed and published once the Act comes into force.

Copies of the consultation paper are being sent to (among others):

All Wales Saheli Association
All-Party Parliamentary Friends of Islam Group
Amnesty International
Ashiana Network
Asian Family Counselling Service
Association of Chief Police Officers (ACPO)
Association of District Judges
Association of Lawyers for Children
Bar Council
CAFCASS
CAFCASS Cymru
Cardiff Women's Safety Unit
Co-ordinated Action Against Domestic Abuse (CAADA)

Corporate Alliance Against Domestic Violence (CAADV)
Commission for Racial Equality
Council of Circuit Judges
Crown Prosecution Service Domestic Violence Co-ordinators
DCLG Muslim Engagement Unit
Domestic Violence Advisory Group (DVAG)
Domestic Violence Virtual Unit
Equal Opportunities Commission
Family Criminal Interface Committee
Family Justice Council
Family Law Bar Association
Family Procedure Rule Committee
Government Offices of the Regions
Greater London Domestic Violence Project (GLDVP)
High Court Masters' Group
Hindu Council UK
Hindu Forum of Britain
Home Office
Hopscotch Asian Women's Centre
IMKAAN
Iranian and Kurdian Women's Rights Association
Judges' Council
Judicial Communications Office
Justices' Clerks Society
Karma Nirvana
Law Society
Legal Services Commission
Liberty
Local Government Association
Lord Justice Thorpe
Magistrates' Association
Members of the House of Commons
Members of the House of Lords
Men's Advice Line and Enquiries (MALE)

Muslim Parliament of Great Britain
National Bench Chair Forum
National Centre for Domestic Violence (NCDV)
Network Of Sikh Organisation
Newham Asian Women's Project
NSPCC
Positive East
President of the Family Division
Refuge
Respect
Rights of Women
Senior Presiding Judge
Southall Black Sisters
Standing Together Against Domestic Violence
The Odysseus Trust
Victim Support
Welsh Assembly
Welsh Women's Aid
Wearside Women in Need
Women's Aid
Women's National Commission

However, this list is not meant to be exhaustive or exclusive. Responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Definition

Within this consultation the person who is to be protected by a Forced Marriage Protection Order is referred to as the 'victim.'

The proposals

Introduction

The Forced Marriage (Civil Protection) Act 2007 (the Act) is due to come into force in Autumn 2008. The main aim of the Act is to provide measures to the courts to prevent forced marriages occurring and to stop someone from forcing another person into marriage. The Act also recognises that a forced marriage may have already taken place, and the court will be able to make orders to protect the victim and help remove them from the situation. Under the Act, the courts will have a wide discretion to enable them to respond effectively to the individual circumstances of the case.

When the court makes a Forced Marriage Protection Order (the order), it can attach a power of arrest where there is risk of significant harm to the victim or someone else in connection with the intended marriage. This allows a police officer to arrest anyone who they suspect to be in breach or contempt of the terms of the order. The court may issue a warrant of arrest where a power of arrest is not attached. Where a person is in breach or contempt of an order the court will deal with them under its powers of contempt of court, which includes sending them to prison.

There are four ways in which a court may make a Forced Marriage Protection Order. Firstly, a person who is the victim of forced marriage may apply to the court for an order. Secondly, another person may apply on behalf of the victim if they obtain the permission of the court. Thirdly, the court may make an order without an application if it is already dealing with existing family cases. Finally, the Act also makes provision for a relevant third party who may apply on behalf of the victim without the need to first obtain the permission of the court. The Lord Chancellor will decide who becomes a relevant third party for the purposes of the Act.

Scope of consultation

This consultation is focused on the relevant third party. It also invites practical suggestions on how we can ensure that our court processes are simple and easy to use. The Government has previously consulted on the wider issues of the definition of forced marriage and the potential to criminalise the behaviour that leads to forced marriage. Following consultation, the Government decided not to criminalise that behaviour. The Act provides a civil remedy to forced marriage.

The Family Procedure Rule Committee will decide on the appropriate consultation on the rules of court needed to support the Act. If you would wish to receive this consultation, please let us know.

As stated in Parliament during the passage of the Act, the legal aid criteria that apply to victims of domestic violence will also apply to victims of forced

marriage who make an application for a Forced Marriage Protection Order. There will be a separate consultation on the changes required to the Legal Aid Funding Code.

A separate consultation on court fees will be published by the Ministry of Justice in 2008. The court fee for an application for a Forced Marriage Protection Order will fall into the category of domestic violence fees. These are currently set at £60. Applicants will not have to pay the court fee if they receive one of the prescribed means-tested benefits, or their gross annual income does not exceed a specified limit. If an applicant considers that paying a court fee would involve undue hardship to them, then they may apply for a part remission. Court staff will assess the applicant's disposable income and calculate what contribution the applicant should pay towards the fee.

Making an application on behalf of a victim

Anyone who is to be protected by a Forced Marriage Protection Order (referred to within this consultation paper as the victim) may make an application to the court. However, the Act recognises that not every victim is in a position to make an application personally. Victims might be too intimidated or threatened to take any action. They may have been taken out of the country or imprisoned within their home.

The Act provides two ways in which someone may begin an application on behalf of the victim. Firstly, it allows another person to apply if they first obtain the permission of the court. When someone in this category applies, the court must consider whether to grant permission for him or her to proceed. Examples of people who might want to apply under this category include boyfriends, girlfriends, teachers or friends.

When deciding whether to grant permission the court will look at all the circumstances including the applicant's connection with the victim and the applicant's knowledge of the circumstances. The court will also consider the wishes and feelings of the victim in so far as they can be provided, and in light of the victim's age and understanding.

If the court decides to grant permission for a person to apply on behalf of the victim then that person becomes the applicant. A fee is payable for applying to the court for permission to make an application. If the court refuses permission to apply, then that person cannot make the application on behalf of the victim, unless circumstances change.

The Act also provides for a relevant third party to make an application on behalf of a victim. A relevant third party does not need to ask the court for permission to apply and may apply on behalf of a victim without being closely connected to them.

An application made on a victim's behalf allows the victim to be one step removed from the court proceedings. Victims may feel unwilling or unable to take action against the perpetrators who may be members of their family. However, forced marriage is a form of domestic violence where victims may

be forced into marriage through the use of physical as well as psychological means such as coercion by threats. Domestic violence victims are enabled where possible to retain some element of control over their circumstances.

In this section we would ask you to think about the need for a relevant third party and when it is appropriate for them to act. You may wish to consider the suggested benefits of a relevant third party outlined in the attached Impact Assessment. Drawing upon your experiences working with victims of forced marriage, please consider the impact upon the victim when another person makes an application on behalf of another. Is it always a positive experience for the victim or are there reasons why a relevant third party should only be seen as an option of last resort?

Question 1 – In what circumstances is it appropriate for a third party to make an application on behalf of another? Are there circumstances where it is not appropriate?

Children under 16 are also victims of forced marriage. Please tell us if you think that this makes a difference to when a relevant third party should make an application.

Question 2 – Are there any other circumstances when is it appropriate for a third party to make an application on behalf of a child under 16? Are there circumstances where it is not?

Who should act as a relevant third party?

The Act provides that the Lord Chancellor will define who becomes a relevant third party for the purposes of the Act. It does not specify what type of persons or organisation should be a relevant third party or where they should be located.

An organisation or person who is a relevant third party takes on the responsibility of making applications on behalf of others. They will need to be able to complete court forms, gather and provide evidence to the court, attend court for any hearings and apply for warrants of arrest.

A combination of support staff and legal expertise will be required. A relevant third party will need to ensure that they have access to appropriate legal expertise in order to conduct the application, particularly where the other party contests the matter. The relevant third party must also ensure that the correct procedure is followed so that papers are served and sufficient evidence is collected to prove the case. We are not asking for you to consider here how the relevant third party will provide evidence on behalf of another. If this is necessary it will be considered as part of the separate consultation on the rules of court for the making of an application.

There are many people and organisations that support victims of forced marriage. There are voluntary and charitable organisations dedicated to offering support and assistance to forced marriage victims. They often work closely with local communities and offer front-line practical support.

Government organisations also have a role to play in protecting people from forced marriage. The Forced Marriage Unit has a national strategy in place to tackle forced marriage. The Home Office take the lead on reducing honour-based violence that includes forced marriage. The police are responsible for investigating crimes committed as part of a forced marriage. CAFCASS in England and CAFCASS Cymru in Wales are appointed by the court to look after the interests of children in certain family cases, and have a duty to safeguard the interests of such children (those aged under 16).

Local Authorities have responsibilities for vulnerable adults in their areas as well as safeguarding and promoting the welfare of any child. For example, they can apply to court for an order to take that child into their care where that child is likely to suffer significant harm. Attempts to force a child into marriage could lead to a risk of significant harm. Once the Act is in force, the court will be able to make an order in such cases, without any application having been made to it.

In this section we would like your views on the type of person or organisation you consider should act as a relevant third party. What skills, qualities or characteristics are important for an organisation or individual to have to take on the responsibility for making a court application on behalf of another?

The relevant third party should be an organisation or person who can gain and maintain the confidence of the victim. Perhaps you believe that Government organisations have the standing and resources to act on behalf of others. However, you may feel that local voluntary or charitable organisations would be better able to understand the needs of victims and to work closely with them. Alternatively, you may see a need for a combination of Government and charitable organisations, given that the former have a national spread. Do you see a need for different organisations to act for adults and children (those aged under 16)?

Question 3 – Which type of person or organisation do you think should act as a relevant third party? Please give reasons to support your answer.

Question 4 – Which type of person or organisation do you think should act as a relevant third party for children aged under 16? Please give reasons to support your answer.

Anyone acting as a relevant third party will need the resources to carry out their role. In considering your answer to questions 3 and 4, please identify what resources or funding the third party would need. You may wish to look again at the information contained within the Impact Assessment.

The Act is designed to have a deterrent effect. We are assuming that there will be a relatively low volume of cases initially and so we intend that a small number of courts will hear applications under the Act, during the first phase of implementation. It also enables us to build up experience and expertise in a small number of courts in areas where we anticipate most cases arising. We intend to review the number and location of courts as part of the ongoing monitoring of the Act. The Impact Assessment gives more detail on the volume of anticipated cases.

Question 5 – Based upon your answers to questions 3 & 4, what type of funding or resources would a relevant third party need?

Safeguards for victims of forced marriage

There are no criteria set down in the Act for the Lord Chancellor to consider when making an order specifying who should become a relevant third party. A relevant third party undertakes the responsibility of making an application and obtaining an order from the court on behalf of a victim. Given this level of responsibility we want to ensure that only those who act in the best interests of the victim undertake the role of a relevant third party.

There is no requirement for a relevant third party to seek the permission of the victim before they make an application. There are circumstances where this is entirely appropriate, for example where the victim has been taken out of the country or imprisoned against their will. Whatever the circumstances of a case, the court is always required to take into account the ascertainable feelings and wishes of the victim when considering whether to make an order. However, this wide power of a relevant third party does mean that only competent organisations or people should be act as third parties in order to ensure that the victim is protected and to avoid possible misuse.

In this section we would like your views on the need for protecting the victim's best interests. Please consider what safeguards should be in place. For example, should the victim's consent always be obtained? You may wish to consider the risks suggested in the Impact Assessment.

Question 6 – What safeguards should there be for a victim to ensure that the relevant third party acts in their best interests?

Question 7 – Are there any other safeguards required for a relevant third party acting on behalf of children aged under 16?

Making the court accessible

It is important that anyone who wishes to make an application is not discouraged from doing so because of the forms to be completed or the fear of attending court. It is also important that the court acts fairly towards both those making an application and those answering or responding to them. Courts already do many things to simplify its work. For example, forms are written in plain English and are made available on the HMCS website.

In court there are a range of options available to ensure that those who attend can provide their evidence. For applications made under the Act, interpreters can be provided. Also the court can protect potentially vulnerable witnesses (for example by screening the witness, allowing evidence to be given by live link or in private, the removing of wigs and gowns, the giving of video recorded evidence, the video recording of any cross-examination and re-examination of the witnesses and providing regular breaks.)

Based upon your experiences of dealing with cases of forced marriage, we would like to know if there are other ways in which we can ensure that those who want to make an application under the Act are not discouraged from doing so. For example, you may see a need for information in different languages?

Question 8 – How can we adapt our court administration to meet the needs of those who use the Act?

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1 – In what circumstances is it appropriate for a third party to make an application on behalf of another? Are there circumstances where it is not appropriate?

Question 2 – Are there any other circumstances when is it appropriate for a third party to make an application on behalf of a child under 16? Are there circumstances where it is not?

Question 3 – Which type of person or organisation do you think should act as a relevant third party? Please give reasons to support your answer.

Question 4 – Which type of person or organisation do you think should act as a relevant third party for children aged under 16? Please give reasons to support your answer.

Question 5 – Based upon your answers to questions 3 & 4, what type of funding or resources would a relevant third party need?

Question 6 – What safeguards should there be for a victim to ensure that the relevant third party acts in their best interests?

Question 7 – Are there any other safeguards required for a relevant third party acting on behalf of children aged under 16?

Question 8 – How can we adapt our court administration to meet the needs of those who use the Act?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself.

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 14 March 2008 to:

Louis Akinlode
Ministry of Justice
Family Relationships Branch 2
Post Point 4.17
4th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

Tel: 020 7210 8320

Fax: 020 7210 8681

Email: Forced.Marriages@hmcourts-service.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from Forced.Marriages@hmcourts-service.gsi.gov.uk or calling 020 7210 8320

Publication of response

A paper summarising the responses to this consultation will be published in 3 months time from the close of the consultation. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you

could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Summary: Intervention & Options

Department /Agency: Ministry of Justice / HMCS	Title: Impact Assessment of using Third Party Applicants under the Forced Marriage Act	
Stage: Options	Version: 1	Date: 12/12/2007
Related Publications: The Act was originally introduced to Parliament by Lord Lester of Herne Hill as a Private Peer's Bill and subsequently received Government support. There are therefore no other related Government documents. A copy of the Act is available on the web site below.		

Available to view or download at:

<http://www.opsi.gov.uk/acts/acts2007/20070020.htm>

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

Provision of a relevant third party to make applications on behalf of a victim under the Forced Marriage (Civil Protection) Act 2007

The Government is considering whether it needs to intervene.

What are the policy objectives and the intended effects?

To consider whether victims who are unable to make an application to the court for a Forced Marriage Protection Order need an additional access route to the court through a relevant third party

What policy options have been considered? Please justify any preferred option.

1. Make no provision for relevant third party applicants
2. Make provision for third party applicants
3. If option 2 is pursued, identify if public sector, voluntary sector or both types of organisations should act as third party applicants

We are seeking to establish which option should be pursued

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The intention is to monitor and review the policy as part of the monitoring and review of the implementation of Act

Ministerial Sign-off For consultation stage Impact Assessments:

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: 12 December 2007

Summary: Analysis & Evidence

Policy Option: Appointment of third party	Description: Appointment of third party from the voluntary sector
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COSTS	ANNUAL COSTS	Yrs	Description and scale of <i>key monetised costs</i> by 'main affected groups' Assumes support worker needed for 6 weeks per case and legal expert for 4 days. Cost per case assumed as £2,800 Legal aid and court costs are included in attached evidence base
	One-off (Transition)		
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 14,000		Total Cost (PV) £
Other <i>key non-monetised costs</i> by 'main affected groups' Non identified			

BENEFITS	ANNUAL BENEFITS	Yrs	Description and scale of <i>key monetised benefits</i> by 'main affected groups' We would welcome the comments and evidence from stakeholders on key costs you think would be relevant and need to be considered.
	One-off		
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other <i>key non-monetised benefits</i> by 'main affected groups' Enables those who are not in a position to apply personally to seek the protection of the court			

Key Assumptions/Sensitivities/Risks Assumes that 2 cases are brought to the court because of the appointment of a third party applicant. Assumes that 3 cases are brought to the court by the third party applicant instead of the victim who would have otherwise made their own application

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	TBC
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ N/A
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase £	Decrease £	Net	£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

1. Title of proposal

Provision of a relevant third party under the Forced Marriage (Civil Protection) Act 2007

2. Objective

To establish the impact and consequences of making provision for relevant third parties

The results of the consultation will inform the policy and refine the impact assessment. The following impact assessment is incomplete and we welcome comments on any part of it. In particular, we would welcome comments on the possible benefits, costs and risks that arise if relevant third parties were made available.

3. Background

The victim or some one behalf of the victim (with the court's permission) may make an application for a Forced Marriage Protection Order. The Act also enables the Lord Chancellor to make an order for a person or organisation to become a relevant third party. A relevant third party may apply on behalf of another as of right without the need to obtain the court's permission.

4. Rationale for government intervention

There are four ways in which a Forced Marriage Protection Order can be made. These are:

- The victim making an application for an order
- Someone else obtaining the court's permission to apply for an order on behalf of the victim
- A relevant third party applying for an order
- The court making an order without an application if the issue arises in other types of family cases

The Government is seeking views on what need there is for a relevant third party and if there is a need, which type of organisations / individuals should act and what safeguards should be in place.

5. Consultation

There has been no previous consultation on the introduction of a relevant third party. However, a similar provision for third parties is available under section 60 Family Law Act 1996. The Domestic Violence Advisory Group considered the introduction of a third party under section 60 in 2003. The option was not pursued as it was decided that it would not solve the problems faced by victims of domestic violence while taking action through the courts. Instead, at that time, changes were made to enforcement provisions to meet the concerns of victims.

6. Options

i) No provision for third party's

Under this option there are three ways in which a Forced Marriage Protection Order could be made, namely

- The victim's own application
- An application made on behalf of the victim
- The court making an order in existing family proceedings

We welcome comments on whether the needs of victims are met if this option is pursued. In particular, any views you may have on the advantages or disadvantages of this option.

ii) Provision for third party's

Under this option the Government would make provision for a relevant third party. This could either be public sector, voluntary sector or a combination of both types of organisations or individuals. This would provide another avenue for victims of forced marriage to use if they felt unable to make their own application, or where there was no one to make the application on their behalf.

We welcome comments on option 2, and in particular what would be the potential advantages and disadvantages for victims of forced marriage.

8. Benefits

The potential benefits of providing a relevant third party are:

- it provides an additional route for victims to obtain the protection of an order without making their own application
- it enables an application to be made on behalf of someone who is prevented from making his or her own application
- it enables a victim to be one step removed from seeking an order against their family
- it enables an application where there is no other person who could act on the victim's behalf
- *Are there any benefits we have not identified and should take into consideration?*

9. Costs

As with any policy change, there will be short-term costs likely to be experienced such as training on the new procedures and guidance. Organisations, who become a relevant third party, may face increased training needs, increased time spent on advocacy and casework and increased pressure on the resources they hold to deliver those services.

The volume of cases will be the main factor in costs for this policy. The range of 5 to 50 cases a year represents a best guess at the proportion of these that might result in proceedings under the Forced Marriage (Civil Protection) Act 2007. Caseworkers in the Forced Marriage Unit indicated that of the 300 cases they deal with every year, two thirds would not include circumstances that would be covered by the Bill, while about 100 would. They considered that as few as 5 of these a year might necessitate an application to the courts. It is likely that cases might begin at the lower end of this range and gradually increase in numbers as the legislation becomes more familiar to those helping victims of forced marriage. The numbers of people choosing to use the new provisions may, however, remain very low, at least for the first few years following implementation. The senior members of the judiciary dealing with cases of forced marriage in the High Court have estimated that in the last 12 months about 30 applications involving forced marriage came to the High Court.

It is difficult to assess whether the availability of a relevant third party will mean more applications are made or if victims will choose to use a relevant third party rather than make their own application. For the purposes of this consultation we have assumed that 2 new cases are brought to the court because of the appointment of a relevant third party (ie the cases would not have been brought without a third party applicant). It also assumes that 3 cases are brought to the court by the relevant third party instead of the victim who would have otherwise made their own application.

It has been assumed that the relevant third party will bear the cost of making and pursuing the application. Therefore, one impact of a third party application is that there will be no application for legal aid by the applicant. However, there could still be an application for legal aid from the respondents.

We welcome comments on the assumptions made above.

7. Risks

The relevant third party will be able to make an application on anyone without the need for the court's permission and without a close connection to them. The risks that might arise are:

- Applications could be made that are not in the best interests of the victim
- Applications could be commenced without the permission of the victim
- *Are there any other risks we have not identified? Do any human rights issues arise?*

We welcome any comments on how we can safeguard or mitigate against these risks

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	No
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Small Firms Impact Test

There will be no impact on small firms.

Competition assessment

No impact on competition is foreseen

Enforcement, sanctions and monitoring

The proposal creates new provisions, which are available to men and women at their discretion. Any Forced Marriage Protection Order will be enforced through the courts' powers of contempt. A monitoring and review process will be established for cases once the Act is implemented. Informal monitoring may also be undertaken by the Forced Marriage Unit and by other NGOs working in the forced marriage field.

Equality Impact Assessment

An initial Equality Impact Assessment was undertaken as part of the Partial Regulatory Impact Assessment during the passage of the Act through Parliament. Information gathered as part of this consultation will feed into a further Equality Impact Assessment to be published and made available on the Ministry of Justice web site.

The introduction of a relevant third party applicant is likely to impact on: -

- individuals, in practice particularly those from South Asian cultural and ethnic groups in so far as it would offer an alternative to making an application personally
- those areas of the public sector most likely to be involved in helping the potential victims of forced marriage who are appointed as a third party applicant. Those that might be considered to undertake this role include the Forced Marriage Unit (jointly sponsored by the Home Office and the Foreign and Commonwealth Office), the adult and children services of local authorities, or police
- organisations within the voluntary and charitable sector who become a relevant third party (Non-Governmental Organisations and support groups working in the forced marriage field)

Different groups of people will use the Act at different rates and will have different needs, experiences and issues in relation to the legislation. These will relate to: -

- age (most victims are between 15-24)
- gender (85% of victims are women)
- racial group (90% of victims are of Pakistani or Bangladeshi heritage)
- religion (90% of victims are Muslim)

A potential adverse affect of the policy to introduce a relevant third party might be: -

- that it would disproportionately impact on Black and minority ethnic communities and might be interpreted as cultural criticism of those communities

The policy to introduce relevant third party is, however, sensitive in other ways to the particular needs of different groups of people:

- *we would welcome comments on how we can ensure that the needs of different groups of people are met when considering who to appoint as relevant third party*

Although there may be a greater uptake of the relevant third party amongst different racial, social, religious and gender groups, the policy does not discriminate either positively or negatively against any particular group of people – the provisions are available for all to use. There is equally nothing in the legislation, which compels a person to use it – it is there to be used at an individual's discretion when he or she feels that it would help improve their personal situation.

Legal Aid and Administration of Justice Test

As set out at 9 above, for the purposes of this consultation we have assumed that 2 new cases are brought to the court because of the appointment of a relevant third party (ie the cases would not have been brought without a relevant third party). It also assumes that 3 cases are brought to the court by the relevant third party instead of the victim who would have otherwise made their own application

The annual cost to HMCS of administering the cases, including court and staff time, is estimated to be between £600 per application. Therefore assuming that only 2 new cases have been brought the cost to the court is £1200. Enforcement costs and variation costs have been assumed to be negligible in comparisons to these costs.

The current cost to legal aid based on five cases per annum is calculated at £18,757. Given the scenario that the relevant third party bring 3 cases, (which would otherwise have been brought by the victim), and there are two new cases, the cost to the legal aid fund is calculated at £13,380. This assumes that respondents would seek legal advice and assistance in all cases and would be granted legal aid in half of all cases.

We welcome your comments on these assumptions

The consultation criteria

The six consultation criteria are as follows:

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

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Laurence Fiddler, Ministry of Justice Consultation Co-ordinator, on 020 7210 2622, or email him at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Laurence Fiddler
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 16.

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Forced.Marriages@hmcourts-service.gsi.gov.uk