Forced marriage to be criminalised despite opposition

Government believes new law will act as deterrent

The government has announced that it will make forced marriage a criminal offence, despite strong opposition from some lawyers and campaigners.

Ministers also intend to make the breach of a forced marriage protection order, obtained under the Forced Marriage (Civil Protection) Act 2007, a criminal offence.

Anne-Marie Hutchinson, partner at Dawson Cornwell, helped draft the Act. She said she opposed criminalisation, and news of the government's decision had already led two young people, for whom she obtained civil orders, to ask her to withdraw them.

"They think that this is somewhat retrospective and their parents will get into trouble," she said.

"They have instructed me to do it, and I will have to. They are adults now and can withdraw from the process."

Hutchinson said that, without the orders, the young people might be forced into marriages.

"I share the concerns of many women's groups that the majority of young women who seek protection under the civil process only do it under the absolute assurance that they are not getting their families into trouble."

Hutchinson said that, if a specific criminal offence was created, young people would not come forward because of the stigma that they would be criminalising their own family.

"If they do, they will find it difficult to sustain that position until the trial. Under the civil process they already come under great pressure to withdraw the allegation. Young people will end up walking away from the protection they need."

However, Hutchinson said she did believe in criminalising the breach of a forced marriage order as a "middle way."

In its response to the Home Office consultation, Southall Black Sisters (SBS), a member of the original Home Office working party on forced marriage, said a new criminal offence was "neither necessary nor desirable."

SBS said the majority of respondents to a Home Office consultation on the issue in 2005 were against the move, with the result that no action was taken.

Although the home affairs select committee backed criminalisation in May 2011, SBS said the recommendation was based on the views of only "one organisation and two individuals."

SBS said it did not agree with the committee that the Act was not an effective remedy and the number of orders, which had increased to 339 by the end of June 2011, suggested it had been "valuable and successful".

The response warned: "Some argue that criminalisation increases the options for protection, but this view ignores the fact that forced marriage involves extremely vulnerable young women and children who have immense fears and concerns about criminalising their parents and close family members, including siblings.

"In our view, their fears are significant enough to prevent them from coming forward."

SBS added that its response was endorsed by a number of other organisations, including End Violence against Women, Rape Crisis and Women's Aid.

In its summary of responses to the latest consultation, the Home Office said it had received 267 responses, of which 175 were from individual members of the public.

In all, 54 per cent favoured the creation of a new criminal offence, and 37 per cent were against with nine per cent undecided.

However, a large majority, 80 per cent, felt that current civil remedies and criminal sanctions were not being used effectively.

"There were arguments both for and against whether a new offence should be created for the act of forcing someone to marry," a Home Office spokesman said.

"Many of those in support felt that it would act as a deterrent and deliver a strong message that we would not tolerate this abhorrent practice and would prosecute perpetrators.

"It was also suggested that this approach would empower victims to come forward and report incidents of forced marriage because the issue of victims actually agreeing to marry under duress should not be underestimated."

The spokesman said opponents believed that criminalisation would drive the issue further underground, as victims became more reluctant to come forward.

"There were concerns regarding the issues of intent and the 'burden of proof' and that it could result in victims being taken overseas for the purpose of marriage at a much earlier age," he added.

A Home Office spokesman said ministers hoped to introduce the new law in the 2013/14 session of parliament, if time allowed.