

MARRIAGE AND CIVIL PARTNERSHIP (MINIMUM AGE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Marriage and Civil Partnership (Minimum Age) Bill as brought from the House of Commons on 16 June 2021 (Bill 18).

- These Explanatory Notes have been prepared by the Ministry of Justice and Home Office, on behalf of Mrs Pauline Latham, the Member in Charge of the Bill, in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the Bill is to address the practice of child marriage in England and Wales. The Bill will raise the minimum age of marriage and civil partnership to 18 in England and Wales. This will bring an end to provisions allowing for 16-17-year olds to marry or enter a civil partnership with parental or judicial consent.
- 2 The anticipated effect of this change on the common law will also mean that any marriages which take place overseas, or in Scotland or Northern Ireland, involving under 18s where one of the parties is domiciled in England and Wales, will not be legally recognised in England and Wales. This change to recognition will also apply to civil partnerships. This will not affect the validity of any marriages or civil partnerships entered before the Bill comes into force.
- 3 The Bill will also make it illegal for a person to arrange the marriage of a person under the age of 18 in England and Wales in those circumstances where that is not already illegal.

Policy background

- 4 Under the existing law in England and Wales, people can enter a marriage or civil partnership at the age of 18, or at 16-17 with parental or judicial consent. Statistics show that the numbers of people marrying in England and Wales at 16 or 17 are small and continue to decline. Of nearly 235,000 marriages in 2018, only 134 involved one or both persons who were aged 16 or 17.
- 5 It is already an offence for a person to force another person of any age into a marriage, when they use violence, threats or any other form of coercion, and for a person to arrange the marriage of a person who lacks capacity to consent to the marriage under the Mental Capacity Act 2005, whether or not they use violence, threats or any other form of coercion. Both of these provisions encompass any religious or civil ceremony of marriage, whether or not it is legally binding. However, it is not currently an offence for a person to arrange the marriage of a person under the age of 18, who has capacity to consent under the Mental Capacity Act 2005, where there has been no use of violence, threats or any other form of coercion.
- 6 Both the legal marriage of people aged 16 or 17, and the ‘marriage’ in a ceremony which is not legally binding of a person under the age of 18, represent child marriage, and there is strong concern that our law should not allow children to enter marriage under any circumstances. Research has shown that child marriage is often associated with leaving education early, limited career and vocational opportunities, serious physical and mental health problems, developmental difficulties for the children born to young mothers, and an increased risk of domestic abuse. Statistics show that girls are more likely to be impacted. In England and Wales in 2018, 28 boys married legally under the age of 18 compared with 119 girls.
- 7 The UN sustainable development goals require all countries to “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations by 2030”. The UN Committee on the Rights of the Child also recommends that there should be no legal way for anyone to marry before they turn 18, even if there is parental consent. In 2016, the Committee recommended to the UK that it raise the minimum age to 18.
- 8 The anticipated effect on the common law of the proposed change to the minimum age of marriage would mean that marriages of under 18s which take place abroad, would not be legally recognised in England and Wales if either party is domiciled in England and Wales. The Bill would act as a further obstacle to those seeking to take children abroad to marry. It will also offer clarity to

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professionals such as teachers and social workers who are uncertain whether they should report children travelling abroad to marry.

- 9 The changes in the law would mean there will be one less obstacle to children completing their education. Children will also have more time to grow and mature before entering marriage or civil partnership; which is a potentially life-long commitment with significant legal and financial consequences.

Legal background

- 10 The Marriage Act 1949 (“MA 1949”, Marriage (Registrar General’s Licence) Act 1970 and the Matrimonial Causes Act 1973 are the principal statutes on marriage in England and Wales. The Civil Partnership Act 2004 (“CPA 2004”) relates to the law on civil partnerships.
- 11 Section 2 of the MA 1949 stipulates that any marriage solemnized between persons either of whom is under the age of 16 shall be void. Section 3 of the MA 1949 sets out the consent requirements for a marriage of a child.
- 12 Section 3 of the CPA 2004 stipulates that two people are not eligible to register as civil partners if either of them is under 16. Section 4 states that those under 18 must have the consent of an appropriate person.
- 13 The Anti-social Behaviour, Crime and Policing Act 2014 (“ASBCPA 2014”) is the principal statute on forced marriage in England and Wales (and Scotland).
- 14 Section 121 of the ASBCPA 2014 renders it an offence (forced marriage) for a person to use violence, threats or another form of coercion for the purpose of causing another person to enter into a marriage, so long as they believe, or ought reasonably to believe that the conduct may cause the other person to enter into the marriage without free and full consent. That section also renders it an offence to carry out any conduct for the purpose of causing someone who lacks the capacity to consent to marriage (within the meaning of the Mental Capacity Act 2005) to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion).
- 15 Section 121 specifies that in each case ‘marriage’ means any religious or civil ceremony of marriage, whether or not it is legally binding. It specifies that an offence is committed if at the time of the conduct: at least one of the victim and the defendant is in England or Wales; if neither of them is in England or Wales at the time of the conduct but one of them is habitually resident in England or Wales; or that neither of them is in the UK at the time of the conduct but at least one of them is a UK national. It specifies that the maximum sentence is 12 months imprisonment (six months until the relevant legislation enabling sentences of up to 12 months is brought into effect), a fine or both in the magistrates’ court, or seven years imprisonment in the Crown Court.

Territorial extent and application

- 16 Clause 6 sets out the territorial extent of the Bill that is the legal jurisdiction in which the Bill is intended to form part of the law. The extent of a Bill can be different from its application. Application is about where a Bill will have a practical effect.
- 17 Subject to subsection (2) and (3), the extent and application of the Bill is England and Wales only. Subsection 2 provides that the amendment made by Clause 4(3) and Clauses 5-8 also extend to

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Scotland and Northern Ireland. Clause 4(3) amends section 217(2) of the CPA 2004 and the recognition of an overseas relationships where one of the parties was domiciled in England and Wales when the overseas relationship was registered. This amendment is to align the amendments at clause 1 and 3 of the Bill in relation to a reserved matter (marriage and civil partnership in England and Wales). Subsection 2 also provides that clause 5 relating to the power to make consequential amendments, clause 6 itself, clause 7 on commencement, clause 8 on saving provision and clause 9 containing the short title, all form part of the law of the United Kingdom.

- 18 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, Senedd Cymru, or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 19 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1 – Marriage: increase of minimum age to 18

- 20 This clause amends the MA 1949.
- 21 Subsection (2) amends the MA 1949 to substitute “18” for “16” to provide that a marriage solemnized where one party is under the age of 18 is void.
- 22 Subsection (3) omits section 3 of the MA 1949 (the current provision which sets out consent requirements for those marrying under 18 years).

Clause 2 – Offence of conduct relating to marriage of persons under 18

- 23 This clause amends section 121 of the ASBCPA 2014.
- 24 Subsection (2) inserts new subsection (2A) into section 121. This provides that a person commits an offence under the law of England and Wales if he or she carries out any conduct for the purpose of causing a child to enter into a marriage before the child’s eighteenth birthday (whether or not the conduct amounts to violence, threats or any other form coercion). Following existing subsection (4) of section 121, a marriage is defined as any religious or civil ceremony of marriage, whether or not it is legally binding.
- 25 Subsection (3) amends subsection (3) of section 121. Subsection (3) of section 121 provides that a person commits an offence under the law of England and Wales if he or she practices any form of deception with the intention of causing another person to leave the United Kingdom, and intends that person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) of section 121, or which would be an offence under that subsection if the person were in England or Wales. The conduct referred to in subsection (1) of section 121 is the use of violence, threats or any other form of coercion for the purpose of causing another person to enter a marriage, where the person pursuing the conduct believes, or ought reasonably to believe, that that conduct may cause the other person to enter into a marriage without free and full consent. The effect of subsection (3) of Clause 2 is to provide that the conduct which the person committing the offence intends the other person to be subjected to outside the United Kingdom also includes the conduct covered by the new offence inserted by subsection (2), namely the carrying out of any conduct for the purpose of causing a child to enter into

a marriage before the child's eighteenth birthday (whether or not that conduct amounts to violence, threats or any other form of coercion).

- 26 Subsection (4) specifies that, for the purpose of the new offence inserted by subsection (2), a child is a person who is aged under 18 years.
- 27 Subsection (5) amends subsection (6) of section 121. Subsection (6) of section 121 provides that if someone uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, as is required for a person to be convicted of the offence in subsection (1) of section 121, the violence, threats or other form of coercion need not have been directed at the person whom it was intended to cause to enter the marriage, but could instead have been directed at another person. Subsection (5) would make similar provision for the new offence inserted by subsection (2), meaning that, if a person carries out conduct for the purpose of causing a child to enter into a marriage before the child's eighteenth birthday, that conduct need not have been directed at that child, but could have been directed at another person.
- 28 Subsection (6) amends subsection (7) of section 121. Subsection (7) of section 121 provides that an offence under subsection (1) or subsection (3) of section 121 (the content of both of which is described in paragraph 25) is committed only if, at the time of the conduct or deception, at least one of the person carrying out the conduct and the victim are in England or Wales; or neither of them is in England or Wales but at least one of them is habitually resident in England and Wales; or neither of them is in the United Kingdom but at least one of them is a UK national (as defined by subsection (8) of section 121). Subsection (6) extends those conditions to the new offence inserted by subsection (2).
- 29 Subsection (7) inserts new subsection (7A) into section 121. The effect of new subsection (7A) would be to make an exception to subsection (7) of section 121 (amended, as above) to provide that a person who carries out the conduct covered by the new offence inserted by subsection (2) does not commit an offence when they carry out conduct for the purpose of causing a child who is aged 16 or 17 to enter into a marriage in Northern Ireland or Scotland.

Clause 3 – Civil partnership: increase of minimum age to 18

- 30 This clause amends the CPA 2004.
- 31 Subsection (2) amends section 3 of the CPA 2004 to substitute the age of "18" for "16" in the eligibility requirements.
- 32 Subsection (3) omits section 4 (the current provision which requires parental consent where a proposed civil partner is under 18).

Clause 4 – Civil partnerships etc. registered outside England and Wales

- 33 This clause amends the CPA 2004.
- 34 Subsection 2 amends section 54 (validity of civil partnerships registered outside England and Wales). It inserts subsections that provide that where two people register as civil partners in Scotland or Northern Ireland, the partnership will be void if at time of registration, either of the two people were domiciled in England and Wales and either under 18.
- 35 Subsection 2 (c) also amends section 54 so that if two people convert their marriage into a civil partnership under Northern Irish regulations, it will be void if either of them was domiciled in England and Wales and either under 18 when the marriage was solemnised.
- 36 Subsection 3 amends section 217 (person domiciled in a part of the United Kingdom) which provides for an overseas relationship being registered by a person domiciled in England and Wales and increases the age under which two people are not to be treated as formed a civil partnership from 16 to 18. This is the only provision that extends to Scotland and Northern Ireland and therefore forms part of the law of Scotland and Northern Ireland.

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Clause 5 – Power to make consequential amendments

- 37 This clause allows the Secretary of State to make regulations by statutory instrument which make provision consequential on the provisions on the Bill, including transitional or saving provision. Regulations may amend, repeal or revoke provisions made by or under primary legislation.

Clause 6 – Extent

- 38 Clause 6 sets out the extent of the Bill (see commentary in paras 16 to 19 above and Annex A for more information).

Clause 7 – Commencement

- 39 Subsections (1) and (2) provide that the provisions of the Bill will come into force on such day as the Secretary of State may by regulations appoint and that different days may be appointed for different purposes.
- 40 Subsection (3) provides that the Secretary of State may make transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill.
- 41 Subsection (4) provides that regulations under this section are to be made by statutory instrument.

Clause 8 – Saving Provision

- 42 This clause provides that any amendments made by the Bill do not affect the validity of any marriages or civil partnerships entered (or the treatment as a civil partnership of an overseas relationships registered under the relevant law) before the Bill comes into force.

Clause 9 – Short title

- 43 Clause 8 sets out the short title of the Bill.

Schedule – Minor and Consequential Amendments

Paragraph 1 – Marriage Act 1949

- 44 Paragraph 1 makes amendments to the MA 1949, that are consequential on the amendments made by clause 1 of the Bill.
- 45 Subparagraphs (2), (3), (4), omit and/or amend sections of the MA 1949 which are no longer necessary or appropriate because they relate to the marriage of a child which will not be possible by virtue of clause 1.
- 46 Subparagraph (5) removes section 30 MA 1949 (forbidding of issue of marriage schedule) as it will no longer be possible by virtue of clause 1.
- 47 Subparagraph (6) and (7), omit sections of the MA 1949 which are no longer necessary or appropriate because they relate to the marriage of a child which will not be possible by virtue of clause 1.
- 48 Subparagraph (8) amends section 75 (offences relating to solemnization of marriages) by omitting the offence consequential upon omitting the forbidding of issue of marriage schedule under section 30 MA 1949.

Paragraph 2 – Marriage (Registrar General’s Licence) Act 1970

- 49 Paragraph 2 makes amendments to the Marriage (Registrar General’s Licence) Act 1970, that are consequential on the amendments made by clause 1 of the Bill.
- 50 Subparagraph (2) removes the subsection in section 3 (Evidence of capacity, consent etc to be produced) relating to consent required for 16-17-year olds.

- 51 Subparagraph (3) removes section 6 (marriage of persons under eighteen) as this will no longer be possible by virtue of clause 1.
- 52 Subparagraph (4) omits section 7(b) consequential on section 30 MA 1949 being omitted.

Paragraph 3 – Matrimonial Causes Act 1973

- 53 Paragraph 3 makes amendments to the Matrimonial Causes Act 1973, that are consequential on the amendments made by clause 1 of the Bill.
- 54 Section 11 (nullity) is amended so that the ground on which a marriage is void is amended to apply where either party is under the age of eighteen.

Paragraph 4 – Civil Partnership Act 2004

- 55 Paragraph 4 makes amendments to the CPA 2004, that are consequential on the amendments made by clause 3 of the Bill.
- 56 Subparagraph (2) amends section 5 (types of pre-registration procedure) to remove provisions applicable for those who are under 18.
- 57 Subparagraph (3) amends section 31 (offences relating to civil partnership schedule) to remove the offence relating to civil partnerships of persons under 18 consequential on clause 3.
- 58 Subparagraph (4) amends section 32 (offence relating to General Registrar’s licence) consequential on section 49(c) CPA 2004 being omitted.
- 59 Subparagraph (5) amends section 33 (offences relating to the recording of civil partnerships) consequential on section 49(c) CPA 2004 being omitted.
- 60 Subparagraph (6) amends section 49 (grounds on which civil partnership is void) to remove the provision relating to a child and forbidden person, as this will no longer be relevant.
- 61 Subparagraph (7) amends section 52 (proof of certain matters not necessary to validity of civil partnership) to omit provisions relating to the requirement of consent for those under 18.
- 62 Subparagraph (8) amends section 80 (false statements etc with reference to civil partnerships) to remove provision relating to the forbidding of a civil partnership between a child and another person.
- 63 Subparagraph (9) removes Schedule 2 which relates to civil partnerships of persons under 18 in England and Wales, consequential on clause 3.

Commencement

- 64 Clause 7 provides for the Bill to be brought into force by means of regulations made by the Secretary of State.
- 65 Consequential amendments to secondary legislation will be brought in to coincide with the commencement of the Bill.

Financial implications of the Bill

- 66 The Bill raises the age of marriage and civil partnership to 18 in England and Wales, and expands the offence of forced marriage to encompass the arrangement of the marriage (legally binding or otherwise)

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of a person under the age of 18 who does not lack capacity to consent to the marriage under the Mental Capacity Act 2005, where violence, threats or another form of coercion are not used . Costs will be incurred in making one-off implementation changes to the General Register Office's online system, forms relating to registration of marriage and civil partnership, and training for staff.

- 67 Costs will also be incurred on associated communications activity to raise awareness amongst the target audience regarding changes to the law.
- 68 Costs will be incurred on an ongoing basis to the police, HM Courts and Tribunals Service, the legal aid system and HM Prison Service, as a result of the expansion of the offence of forced marriage, and on a one-off basis to HM Prison Service as a share of prison building costs.

Parliamentary approval for financial costs or for charges imposed

- 69 The Bill does not require a Money Resolution as it does not require substantial new and distinct expenditure from the public purse.
- 70 The Bill does not need a Ways and Means Resolution because it does not authorise new taxation or similar charges on the people.

Compatibility with the European Convention on Human Rights

- 71 This is a Private Member's Bill and the Government is not required to give a statement of compatibility with the European Convention on Human Rights (ECHR) in accordance with section 19(1)(a) of the Human Rights Act 1998.
- 72 The Ministry of Justice and Home Office have, nevertheless, considered the question of compatibility and have concluded that the Bill is compatible with the European Convention on Human Rights.

Related documents

- 73 The following documents are relevant to the Bill and can be read at the stated locations:
- Impact Assessment
 - Delegated Powers Memorandum
 - Equalities Statement

Annex - Territorial extent and application in the United Kingdom

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Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	No	No	No	No
Clause 2	Yes	Yes	No	No	No	No	No
Clause 3	Yes	Yes	No	No	No	No	No
Clause 4	Yes	Yes	No	In part	No	In part	No
Clause 5	Yes	Yes	No	No	No	No	No
Clause 6	Yes	Yes	No	No	No	No	No
Clause 7	Yes	Yes	No	No	No	No	No
Clause 8	Yes	Yes	No	No	No	No	No
Clause 9	Yes	Yes	No	No	No	No	No
Schedule 1	Yes	Yes	No	No	No	No	No
Schedule 2	Yes	Yes	No	No	No	No	No

Subject matter and legislative competence of devolved legislatures

74 The Bill extends to England and Wales, except for the amendment made by Clause 4(3) and Clauses 5-8, which also extend to Scotland and Northern Ireland. The amendment to clause 4(3) only impacts couples where one of the parties is under 18 and one of the parties is domiciled in England or Wales. This is made in relation to a reserved matter (marriage and civil partnership in England and Wales). Clauses 5-8 relating to the power to make consequential amendments, the extent provision itself, the commencement provision, the saving provision and the short title provision all have UK-wide extent.

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