

CHANGES TO FORCED MARRIAGE LEGISLATION IN THE MARRIAGE AND CIVIL PARTNERSHIP (MINIMUM AGE) ACT 2022: POLICY SUMMARY

Existing legislation

1. Currently, section 121 of the Anti-social Behaviour, Crime and Policing Act 2014 makes it an offence to:
 - [121(1)] Coerce someone into marrying (specifically, to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, so long as the defendant believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent); and
 - [121(2)] Do any action – not restricted to violence, threats or another form of coercion - whose purpose is to cause a person who lacks capacity (under the Mental Capacity Act 2005) to consent to marriage to enter into one; and
 - [121(3)] Deceive someone into leaving the UK to be forced into marriage (specifically, to practise any form of deception with the intention of causing another person to leave the UK, with the intention that they be subjected to conduct outside the UK which is captured by the above forced marriage offence).

New legislation

2. The 2022 Act will extend the ambit of the criminal law relating to forced marriage by creating a new offence (section 121(3A)) which makes it illegal to carry out any conduct whose purpose is to cause a child (aged under 18) to enter into a marriage before their eighteenth birthday, whether or not that conduct involves violence, threats or any other form of coercion or deception. In essence, it will now always be illegal to cause a child to marry, whatever the method used, and whether or not the child lacks capacity to consent to marriage. This includes, amongst other things, the type of conduct captured by the section 121(3) offence.

Policy rationale

3. The policy intention behind this was to close a loophole in the law which allowed parents to cause a child to marry so long as they did not use a form of coercion to do so. A child might immediately agree or acquiesce to a marriage, or even if they did not wish to marry they might fail to resist as a result of fear – in each case, from the point of view of the person initiating the marriage, coercion would not be needed, yet their conduct would still entail causing a child to enter into a marriage, with all the negative safeguarding, occupational, educational and emotional consequences which that entails. Whether coercion is used might depend on whether the child resists, which in turn might depend on the character of the child – such a contingent circumstance should not be the determinant of whether the criminal law is engaged. This is a real as well

as a theoretical gap: government and charities are aware of cases such as this which did not fall within the ambit of the existing forced marriage offences.

4. In addition, even if coercion is used, in practice a successful prosecution is likely to depend on evidence given by the child as to its use. The well-established reluctance of child victims of forced marriage and related crimes to criminalise their families therefore presents a significant barrier to prosecutions and places pressure on the child. Removing the need to prove coercion removes that dependence on the child, and so should make prosecutions under existing legislation easier.
5. Like the existing forced marriage offence, this new offence applies to any religious or civil ceremony of marriage (whether or not it is legally binding) – i.e. traditional informal marriages would be included (but not simple cohabitation). The introduction of this new offence sits alongside a further change in the Act which raises the minimum age of marriage and civil partnerships in England and Wales to 18 in all circumstances, even if there is parental consent. Together, the two changes aim to tackle child marriage in both its official/legal (through the increase in the age of legal marriage) and unofficial/non-binding (through the new forced marriage offence) forms.
6. Ministers' interpretation of, and policy intention for, this new offence (as set out in Parliament), is that 'caus[ing]' a child to enter into a marriage should involve actions taken to initiate and induce a child to enter into a marriage, but for which the marriage would not happen, and that it would not entail contributions to a process already underway (e.g. hiring out a hall) – although matters would be considered on a case by case basis. But this is not set out in the Act, hence this is ultimately a matter for judicial interpretation.

Detailed provisions

7. Like the existing forced marriage offences:
 - The maximum sentence is seven years; and
 - it does not matter whether the conduct was directed at the victim of the offence or someone else.
8. However, the territoriality provisions differ to those for the existing forced marriage offences. The existing offences apply when, at the time of the conduct or deception:
 - (a) the defendant and/or the victim were in England or Wales; or
 - (b) neither of them was in England or Wales but at least one of them was habitually resident in England and Wales; or
 - (c) neither of them was in the UK but at least one of them was a UK national.

9. New offence section 121(3A) will, rather, apply, when:

- (a) the conduct was for the purpose of causing the child to enter into a marriage in England or Wales; or
- (b) at the time of the conduct, the person or child was habitually resident in England and Wales, or
- (c) at the time of the conduct, the child was a United Kingdom national who—
 - (i) had been habitually resident in England and Wales, and
 - (ii) was not habitually resident or domiciled in Scotland or Northern Ireland.

Extent

10. The new offence extends to England and Wales. Scotland and Northern Ireland have offences of forced marriage which mirror existing forced marriage legislation in England and Wales, but neither has signalled an intention at this point to make changes aligning with those here.

Commencement

11. Ministers have announced that the new offence is planned to come into force on 27 February 2023.