

**Child Rights and Wellbeing Impact
Assessment (CRWIA)**

**Civil Partnership
(Scotland) Bill**

October 2019

Child Rights and Wellbeing Impact Assessment (CRWIA) Stage 1 Screening - key questions

1. Name the policy, and describe its overall aims.

The key aim of the Civil Partnership (Scotland) Bill is to make civil partnership available to mixed sex couples in Scotland.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

People aged 16 and 17 will be eligible to enter into a mixed sex civil partnership.

The Bill may impact on children and young people who are the children of parents in a mixed sex civil partnership.

The Bill will also create the offence of forced civil partnership, to provide a deterrent against this activity. Recent figures from the Forced Marriage Unit showing that, in 2018, around one third of forced marriage victims in the UK were under 18 years old.

3. What likely impact - direct or indirect - will the policy/measure have on children and young people?

Eligibility to enter

The Scottish Government expects the number of 16 and 17 year olds who choose to enter mixed sex civil partnerships will be low.

Figures from National Records of Scotland show that the number of 16 and 17 year olds who marry or enter into a civil partnership is low.

In Scotland, in the period 2005 to 2018:

- There were 689 marriages where one party was 16 or 17
- There were 62 marriages where both parties were 16 or 17
- There were 3 civil partnerships where one party was 16 or 17
- There have been no civil partnerships where both parties were 16 or 17

Children of parents in mixed sex civil partnership

Mixed sex civil partnership could also impact children and young people indirectly if they are the children of parents who have entered into a mixed sex civil partnership.

However, the nature of the relationship that parents are in (e.g. a marriage or civil partnership) is not thought to have an impact on children; rather, research indicates that "*Stability is more important than family structure for children's well-being*" ([Mountney, K. \(2011\) Together and apart: supporting families through](#)

[change, p1 and p11](#)) and that family structure “*did not seem clearly associated with social and emotional well-being, after allowing for other influences*” (Sweeting, H. and Wight, D. (2014) [Growing Up in Scotland: Family and school influences on children's social and emotional well-being](#), para. 4.9)

The Bill makes provision so that a man will be presumed to be the father of a child when he was in a civil partnership with the mother of the child at any time between conception and birth. The Bill also provides that a father in a civil partnership with the mother at the time of the child’s conception or subsequently obtains parental responsibilities and rights.

Forced civil partnership offence

The creation of the offence of forced civil partnership could indirectly impact young people. This is because the extension of civil partnership to mixed sex couples may create a loophole in the law.

In 2018, the Forced Marriage Unit (FMU) gave support to 30 victims of forced marriage who were resident in Scotland:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804044/Forced_Marriage_Unit_Statistics_2018_FINAL.pdf

Of the total 1,764 victims the FMU supported, 33% were under 18 years old (where the ages were known).

4. Which groups of children and young people will be affected?

People aged 16 or 17 who wish to enter a mixed sex civil partnership will be affected.

The children of parents who enter a mixed sex civil partnership may also be affected, but this will depend on whether the couple would have married anyway, or if they would have cohabited (in which event the father would not necessarily have formal parental rights and responsibilities).

In relation to the offence of forced civil partnership, young women and girls could be more affected. FMU statistics indicate that, where the sex of a victim of forced marriage is known, the majority (75%) are female.

5. Will this require a CRWIA?

Yes.

CRWIA Declaration

CRWIA required	CRWIA not required
✓	
Authorisation	
Policy lead Sarah Meanley Family Law Unit Civil Law & Legal System Justice Directorate	Date 02.09.2019
Deputy Director or equivalent Gavin Henderson Deputy Director Civil Law and Legal System Justice Directorate	Date 26.09.2019

1. Which UNCRC Articles are relevant to the policy/measure?

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

The Civil Partnership (Scotland) Bill will create the offence of forced civil partnership. The package of secondary legislation that will follow the Bill will include an order that will extend existing civil measures on forced marriage to civil partnership and establish forced civil partnership protection orders.

A forced relationship could involve the illicit transfer or non-return of a child to another jurisdiction.

The extension of existing measures on forced marriage to civil partnership promotes the principles of the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention). Article 37 of this Convention requires signatories to take steps to criminalise forced marriages.

The full text of the Convention is available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>

Article 18.1.

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

This is relevant in the context of the presumption about parentage, which is being extended to men in a civil partnership with the mother of the child at any time between conception and birth. The Bill also provides that a father in a civil partnership with the mother at the time of the child's conception or subsequently obtains parental responsibilities and rights. This relates to children, and to parents who fall into the category of children in the context of the UNCRC because they are under 18 years old.

Article 19.1

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or

exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

As stated above, the Bill will make provisions on forced civil partnership. The Scottish Government's view is that forced civil partnership, like forced marriage, may involve physical violence, or physical and mental coercion.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Provisions on forced civil partnership will protect those who cannot consent to enter into a civil partnership because they lack capacity.

2. What impact will the policy/measure will have on children's rights?

Generally, the Bill will have a positive impact on children's rights.

There is one area where the extension of civil partnership to mixed sex couples could create a loophole in the law: this relates to forced civil partnerships. However, it is possible that activity in this area could be displaced rather than additional – i.e. instead of forcing people into marriage perpetrators might force them into civil partnership instead.

Forced marriage statistics

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804044/Forced_Marriage_Unit_Statistics_2018_FINAL.pdf.

indicate that women are more at risk of being forced into a marriage than a man: around 75% of the victims of forced marriages supported by the Forced Marriage Unit in 2018 were women.

The extension of civil partnership to mixed sex couples could create a loophole in that law. However, the Bill will create a deterrent to forced civil partnership by establishing the offence of forced civil partnership. Secondary legislation to follow will provide a further deterrent by extending the existing civil measure on forced marriage to forced civil partnership. The Scottish Government's view is that the loophole in the law that will result from the extension of civil partnership to mixed sex couples can be closed by the criminal and civil measures being put in place.

3. Will there be different impacts on different groups of children and young people?

The Bill will have an impact on the following groups of children/young people:

- People aged 16 and 17 who wish to enter a mixed sex civil partnership.
- The children of parents in a mixed sex civil partnership.
- Young women and girls may be more affected by the provisions on forced civil partnership: FMU statistics indicate that, where the sex of a victim of forced marriage is known, the majority (75%) are female.
- Young people who cannot consent to a legally recognised relationship will also be affected, as the provisions on forced civil partnership will cover people who cannot consent to enter into a civil partnership due to lack of capacity.

The Scottish Government has not identified any competing interests between children and young people, or children and young people and other groups that result from this Bill.

4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

The Scottish Government has identified that the introduction of mixed sex civil partnership may create a loophole in the law.

However, the Bill will seek to close that loophole by establishing the offence of forced civil partnership. Secondary legislation to follow will consolidate this by extending the existing civil measure on forced marriage to forced civil partnership. The Scottish Government's view is that the loophole can be closed by the criminal and civil measures being put in place.

5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?

The Bill will contribute to the wellbeing of children and young people in Scotland in the following ways.

For the children of people in a mixed sex civil partnership, their parents will benefit from the legal rights and responsibilities that flow from entering into a legally recognised relationship, including parental responsibilities and rights. However, there is evidence that stability is more important than family structure when children grow up

For young people, the creation of the offence of forced civil partnership should create a deterrent and help protect them.

6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

The Bill will further the implementation of the UNCRC in Scotland in the following ways:

- Through the creation of the offence of forced civil partnership (and through secondary legislation that will create civil measures on forced civil partnership), create deterrents against:
 - physical and mental violence and abuse.
 - The illicit transfer or non-return from overseas of a child
 - Moves to prevent a young person who lacks capacity from enjoying a full life with their dignity safeguarded.

7. What evidence have you used to inform your assessment? What does it tell you?

The Scottish Government consulted in 2018 on the future of civil partnership in Scotland (see section 9 below).

Statistics on forced marriage have been published by the Forced Marriage Unit at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804044/Forced Marriage Unit Statistics 2018 FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804044/Forced_Marriage_Unit_Statistics_2018_FINAL.pdf).

NRS has published statistics on the number of civil partnerships and marriages entered into in Scotland each year at <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/marriages-and-civil-partnerships/marriages-and-civil-partnership-time-series-data>.

Information about the implications of family structure for wellbeing is included in (Mountney, K. (2011) <https://www.parentingacrossscotland.org/media/1217/about-families-report-2-together-and-apart.pdf>, p1 and p11 and Sweeting, H. and Wight, D. (2014) https://dera.ioe.ac.uk/20296/1/00452548_Redacted.pdf para. 4.9.

8. Have you consulted with relevant stakeholders?

The Scottish Government consulted in 2018 on the future of civil partnership in Scotland.

The consultation is available at <https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/>

An analysis of the consultation responses is at <https://www.gov.scot/publications/future-civil-partnership-scotland-analysis-consultation-responses/>

The Scottish Government's response to the consultation is at <https://www2.gov.scot/Topics/Justice/law/17867/civil-partnership-in-scotland/future-of-civil-partnership-gov-response>

The Scottish Government has published responses where we were given permission to do so at https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/consultation/published_select_respondent

9. Have you involved children and young people in the development of the policy/measure?

The public consultations were open to all.

In their consultation response LGBT Youth expressed their support the extension of civil partnership to mixed sex couples. https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=lgbt+youth&uuld=501277857. The response referred to scoping studies it conducted on civil partnership in 2015 and 2018. In 2015, 100% of respondents agreed that civil partnership should be extended to mixed sex couples. In 2018, 95% of those surveyed agreed with extension. In the 2018 survey, some of those who responded expressed concerns about being outed should it become known that they are in a civil partnership.

CRWIA – Stage 3

CRWIA title: Civil Partnership (Scotland) Bill Date of publication: October 2019	
Executive summary	<p>The Civil Partnership (Scotland) Bill will make civil partnership available to mixed sex couples. Mixed sex civil partnership will be modelled on same sex civil partnership, although in some areas biological factors mean that the mixed sex marriage model will be followed.</p>
Background	<p>In June 2018, the UK Supreme Court issued a judgment on civil partnership in England and Wales: https://www.supremecourt.uk/cases/uksc-2017-0060.html</p> <p>Following this judgment, the Scottish Government carried out a consultation on the future of civil partnership in Scotland. After this consultation, the Scottish Government decided that the best way forward would be to make civil partnership available to all couples in Scotland.</p>
Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base	<p>The Civil Partnership (Scotland) Bill could have implications for the following groups of children and young people:</p> <ul style="list-style-type: none"> • People aged 16 or 17 who wish to enter a mixed sex civil partnership. • Existing children whose parents decide to enter into a mixed sex civil partnership and children born to parents who are in a mixed sex civil partnership. • Young people, including young people who lack capacity, who are at risk of being forced into a civil partnership.
Children and young people's views and experiences	<p>In their response to the Scottish Government's consultation on the future of civil partnership in Scotland (https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/), LGBT Youth expressed their support the extension of civil partnership to mixed sex couples. The response is available at https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=lgbt+youth&uuld=501277857.</p> <p>The LGBT Youth consultation response referred to scoping studies it conducted on civil partnership in 2015 and 2018. In 2015, 100% of respondents agreed that civil partnership should be extended to mixed sex couples. In 2018, 95% of those surveyed agreed with extension. In the 2018 survey, some of</p>

	<p>those who responded expressed concerns about being outed should it become known that they are in a civil partnership.</p> <p>16 and 17 year old uptake of same sex civil partnership is low. From 2005 to 2018, there were 3 civil partnerships where one party was 16 or 17. There were no civil partnerships during that period where both parties were 16 or 17.</p> <p>Statistics from the joint Home Office-Foreign and Commonwealth Office indicate that just over one third of forced marriages involve young people under the age of 18: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804044/Forced_Marriage_Unit_Statistics_2018_FINAL.pdf (see pages 3 and 9).</p>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p>Relevant UNCRC Articles</p> <p><u>Article 11.1</u></p> <p><i>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</i></p> <p><u>Article 19.1</u></p> <p><i>States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.</i></p> <p><u>Article 23.1</u></p> <p><i>1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.</i></p> <p>The Scottish Government’s view is that the Civil Partnership (Scotland) Bill will generally have a positive impact on children’s rights and wellbeing. It will do so by:</p> <ul style="list-style-type: none"> • Providing safeguards against violence by creating the offence of forced civil partnership <p>The Scottish Government notes that the extension of civil partnership to mixed sex couples may create a loophole in the law. However, the inclusion of a criminal measure in the Bill, with a civil measure to follow in secondary legislation, will close</p>

	<p>this loophole and safeguard children’s rights and wellbeing. This will help the Scottish Government safeguard and support the wellbeing of children and young people and contribute to the incorporation of the UNCRC into the law of Scotland.</p>			
Monitoring and review	<p>The Scottish Government will monitor the number of prosecutions and convictions for the offence of forced marriage or civil partnership in section 122 of the Anti-social Behaviour, Crime and Policing Act 2014.</p> <p>Our intention is also to work with third sector organisations that provide support to victims of forced relationships, as victims may not always interact with Government services. This will help determine what, if anything, the Scottish Government can do to prevent forced civil partnerships from occurring, and to support victims more effectively.</p>			
Bill – Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
Section 11	The creation of the offence of forced civil partnership	Young people and children at risk of a forced relationship, including young women and girls and children who lack capacity.	Article 11.1 Article 19.1 Article 23	These provisions relate to the following wellbeing indicators: Safe Healthy Respected
CRWIA Declaration				
Authorisation				
Policy lead Sarah Meanley Family Law Civil Law and Legal System Justice Directorate			Date 23.09.2019	

Gavin Henderson

Deputy Director

Civil Law and Legal System

Justice Directorate

Date

26.09.2019



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