EXPLANATORY MEMORANDUM TO

THE MARRIAGE AND CIVIL PARTNERSHIP (MINIMUM AGE) ACT 2022 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023

2023 No. 82

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument, the Marriage and Civil Partnership (Minimum Age) Act 2022 (Consequential Amendments) Regulations 2023, is to make necessary amendments to existing secondary legislation consequential on the Marriage and Civil Partnership (Minimum Age) Act 2022 ("the 2022 Act"). The 2022 Act received Royal Assent in April 2022 and is planned to come into force on 27 February 2023. The Act raises the age of marriage and civil partnership in England and Wales to 18, removing current provisions allowing for 16 and 17 year olds to marry with parental or judicial consent. It also extends existing forced marriage legislation so that it is an offence to arrange the marriage of a child before their eighteenth birthday, even where force, threats or coercion are not used.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 This instrument has the same extent as the instruments amended.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends existing secondary legislation consequential to the changes made by the 2022 Act. The 2022 Act increased the legal age of marriage to 18 in England and Wales. It amended certain provisions in the Marriage Act 1949, the Civil Partnership Act 2004 and the Anti-social Behaviour, Crime and Policing Act 2014.

6.2 This instrument amends the Civil Partnership (Registration Abroad and Certificates) Order 2005; the Civil Partnership (Armed Forces) Order 2005; the Civil Partnership (Registration Provisions) Regulations 2005; the Overseas Marriage (Armed Forces) order 2014; the Consular Marriages and Marriage under Foreign Law (No.2) Order 2014 and the Registration of Marriages Regulations 2015. The amendments remove all references to the marriage and civil partnerships of under 18s, formed under the law of England and Wales.

7. Policy background

What is being done and why?

7.1 These regulations make amendments to secondary legislation as a result of the 2022 Act raising the age of marriage and civil partnership to 18 in England and Wales.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 At present, individuals in England and Wales can enter a marriage or civil partnership at 16 or 17 if they have parental or judicial consent.

Why is it being changed?

7.3 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. 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.

7.4 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.

What will it now do?

7.5 The 2022 Act raises the age of marriage and civil partnership to 18 in England and Wales. This instrument makes the necessary consequential amendments:

7.6 Regulation 3 amends Article 7 of the Civil Partnership (Registration Abroad and Certificates) Order 2005 to remove references to obtaining parental consent for civil partnerships involving under 18s that are registered in England and Wales.

7.7 Regulation 4 amends Article 7 of the Civil Partnership (Armed Forces) Order 2005 to remove references to obtaining parental consent for civil partnerships involving under 18s that are registered in England and Wales.

7.8 Regulation 5 amends the Civil Partnership (Registration Provisions) Regulations 2005. Paragraph 3 amends the forms used to give notice of proposed civil partnerships. The provisions are amended so that forms 2, 2(w), 4 and 4(w) can be used if either or both parties are under 18 when giving notice but will be aged 18 on the day that the civil partnership schedule is due to be issued. The Forms will no longer be able to be used if either of the parties will not be 18 on the day the schedule is issued. The relevant forms are also updated to that effect.

7.9 Regulation 6 amends the Overseas Marriage (Armed Forces) Order 2014 to remove paragraphs (1) and (2) of article 8 which relate to providing consent for the marriage of under 18s registered in England and Wales.

7.10 Regulation 7 amends the Consular Marriages and Marriage under Foreign Law (No.2) Order 2014 to remove paragraphs (1) and (2) of article 5 which relates to the consent of marriages of under 18s registered in England and Wales. It removes paragraph (c) of article 8 which relates to giving an oath that under 18s have obtained the necessary consent for marriage. Article 14 (Application for a certificate of no impediment to the superintendent registrar) is amended to remove paragraph 3(b) (ii) which relates to issues of consent for widows, widowers or surviving civil partners who are under the age of 18. Article 16, paragraph (2)(b)(ii) (application for a consular certificate of no-impediment) is amended to remove references to widows, widowers or surviving civil partners who are under the age of 18, such provision only currently applies to England and Wales and to ensure existing provision is retained for Northern Ireland (the age of marriage remains at 16 with consent in Northern Ireland.)

7.11 Regulation 8 amends the Registration of Marriages Regulations 2015, including regulation 4 amending the forms used to give notice of marriage. The provisions are amended so that forms 2, 2(w), 4 and 4(w) can be used if either or both parties are under 18 when giving notice but will be aged 18 on the day that the civil partnership schedule is due to be issued. The Forms will no longer be able to be used if either of the parties will not be 18 on the day the schedule is issued. The relevant forms are also updated to that effect.

7.12 The General Register Office have sent communications to all registrars to inform them of the change in law, and to ensure that they notify any individuals under the age of 18 giving notice to marry or enter a civil partnership that the legal age of marriage is changing to 18 on 27 February 2023. Similar communications have been sent by the Foreign and Commonwealth Development Office to consulates, the Ministry of Defence to armed forces chaplaincies and the Church of England and in Wales to clergy.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 This legislation is consequential on the 2022 Act, as such, a consultation is not being undertaken on this instrument. The reform contained in the Act on which this is consequential was consulted on with relevant stakeholders and received widespread support during its passage through Parliament. Marriage is a devolved matter however consultation did take place with the Scottish Government and Northern Irish Executive before the changes were made.

11. Guidance

11.1 Guidance is not required on this instrument. Guidance for the public will be available on Gov.uk when the 2022 Act is implemented.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private, public or voluntary sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There is no direct approach to monitoring of this legislation planned. The instrument does not include a statutory review clause as it is not subject to this duty.

15. Contact

15.1 Sabrina Bailey at the Ministry of Justice Telephone: 07977 334 202 or email: Sabrina.bailey1@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neal Barcoe, Deputy Director for Family Justice Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Bellamy KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.