



Family law consultation

Response from Together (Scottish Alliance for Children's Rights)

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Views expressed separately should also be taken into account.

Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on the potential family law reforms in Scotland, specifically the potential change to the minimum age of marriage and civil partnership, and the extension of the forced marriage offence.

Our response draws upon the UN Convention on the Rights of the Child (UNCRC), alongside guidance from the UN Committee on the Rights of the Child (UN Committee) in the form of General Comments and Concluding Observations issued in 2023. Section 4 of the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act) invites courts and tribunals to consult these instruments when interpreting the meaning of 'UNCRC requirements'¹ while Section 15 requires Scottish Government to consider these sources.²

Our position is clear that Scottish Government should legislate to raise the minimum age of marriage and civil partnership from 16 to 18, without exception. Not only would this help to bring Scots law in line with international standards set by the UN Committee, but it would also lay the foundation for more robust protections for the rights of children and young people in Scotland. It would carry implications for the further safeguarding of their best interests and their rights to life, survival and development; to be heard; to protection from harm, abuse, and neglect; to health; to education; and to protection from sexual and other forms of exploitation and abuse.

¹ Section 4. *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*.
<https://www.legislation.gov.uk/asp/2024/1/part/1/crossheading/interpretation-of-the-uncrc-requirements> [Date accessed: 15 April 2026]

² Section 15. *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*.
<https://www.legislation.gov.uk/asp/2024/1/part/1/crossheading/interpretation-of-the-uncrc-requirements> [Date accessed: 15 April 2026]

We have answered the consultation questions most relevant to our expertise, and insofar as our capacity allows. We encourage Scottish Government to have regard to submissions from our member organisations on these and the remaining questions.

We call on Scottish Government to raise the minimum age of marriage and civil partnership from 16 to 18, and to ensure this reform is supported by the necessary resources, capacity-building and child-friendly support to ensure it delivers on its ambition.

The Minimum Age of Marriage and Civil Partnership

Question 7: Should the Scottish Government legislate to raise the minimum age of marriage and civil partnership to 18?

Yes.

If you wish, you can choose a reason (or reasons) for your answer from the list below and/or add your own reasons:

- raising the minimum age would protect some children and young people from harm they would not otherwise suffer
- raising the minimum age in Scotland would meet our international obligations
- other (please add your reasons below):

Scotland's current legal age of marriage at 16 years old is a child protection issue: 16 and 17-year-olds are not protected by the safeguards afforded to younger children. The UN Committee has long expressed concern that marriage under 18 years of age remains permissible in Scotland. Despite repeated recommendations from the UN Committee in both its 2016³ and 2023⁴ Concluding Observations to raise the age of marriage to 18, Scotland has yet to act on these calls.

Child marriage forces children into adulthood prematurely and can put them at risk of various harms and negative life outcomes, leading to potential breaches of their UNCRC rights. For instance, their best interests and right to be heard could be compromised (Articles 3 and 12). They may also be exposed to violence, injury, and abuse, whether physical, mental, or sexual (Articles 19 and 34) and suffer from the resulting health consequences (Article 24). Additionally, they may be barred from accessing education (Article 28) and other opportunities to improve their socioeconomic outcomes. Raising the minimum age of marriage in Scotland would therefore provide continued protection from such harms for all individuals under 18, and align with our international obligations and the recommendations issued by the UN Committee in its Concluding Observations.

Developments worldwide indicate that Scotland is now anomalous in permitting young people under the age of 18 to marry or enter civil partnerships. This contradicts its commitment to be a world leader in children's rights, especially when such marriages breach numerous UNCRC rights

³ *CRC/C/GBR/CO/5. Para 20.*

⁴ *CRC/C/GBR/CO/6-7. Para 18(b).*

and hinder progress towards achieving the Sustainable Development Goals (SDGs).⁵ In a world that sees 12 million girls each year enter into marriages before they turn 18,⁶ SDG number 5 specifically calls on all countries to work towards gender equality and the eradication of child marriage by 2030. To demonstrate Scotland's dedication to respecting, protecting, and fulfilling children's rights and playing its part in making SDG 5 a reality, Scottish Government must ensure that Scots law is conducive to this outcome and adheres to the standards followed by its global counterparts. A country that seeks to be a global champion for children's rights cannot continue to enable child marriage within its borders.

Within the UK, Scotland is also increasingly falling behind. In England and Wales, 16 and 17-year-olds are protected under the Marriage and Civil Partnership (Minimum Age) Act 2022, which raised the legal age of marriage and civil partnership from 16 to 18.⁷ The Marriage and Civil Partnership Bill, which aims to secure the same outcome in Northern Ireland, was introduced to the Northern Ireland Assembly in March 2026.⁸ The status quo in Scotland thus not only highlights our lack of progress relative to the other parts of the UK, but also runs counter to the UNCRC Act and the shared ambition of Scottish Government and Scottish Parliament which saw it pass. These developments, combined with a year-on-year increase in the number of marriages between 16 to 19-year-olds in Scotland from 2022 to 2024,⁹ make it imperative for Scottish Government to make the necessary legislative changes to honour its commitment to making Scotland the best place in the world for children to grow up.

Question 8: Do you agree or disagree that the Scottish Government should legislate to extend the forced marriage offence?

Agree.

Extending the forced marriage offence could better protect victims, particularly those entering into unions performed in traditional, religious, and/or otherwise non-binding settings that may not be protected by a change to the legal age of marriage. Scottish Government should be cognisant of the UN Committee's position in General Comment 18 that child marriage is, by nature, a form of forced marriage.¹⁰ We note that, at present, forced marriage legislation does not protect victims of child marriage solely on the basis of their age. This is at odds with the definition of a child as a person under 18¹¹ and the understanding that individuals who are 16

⁵ United Nations (no date). Sustainable Development Goal 5: Achieve gender equality and empower all women and girls. <https://sdgs.un.org/goals/goal5> [Date accessed: 15 April 2026]

⁶ Save the Children UK (December 2025). Child Marriage. <https://www.savethechildren.org.uk/what-we-do/global-issues-hub/child-marriage#:~:text=Updated%20December%202025,married%20before%20they%20turn%2018.> [Date accessed: 15 April 2026]

⁷ Section 1. Marriage and Civil Partnership (Minimum Age) Act 2022. <https://www.legislation.gov.uk/ukpga/2022/28> [Date accessed: 15 April 2026]

⁸ Clause 5. Marriage and Civil Partnership Bill 2026. <https://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/mandate-2022-2027/marriage-and-civil-partnership-bill/marriage-and-civil-partnership-bill---as-introduced---fpv.pdf> [Date accessed: 15 April 2026]

⁹ National Records of Scotland (26 August 2025). <https://www.nrscotland.gov.uk/publications/vital-events-reference-tables-2024/> See 'Marriages and Civil Partnerships' data, Table 7.01b. [Date accessed: 15 April 2026]

¹⁰ CRC/C/GC/18/Rev.1. Para 20.

¹¹ UN General Assembly, *Convention on the Rights of the Child*, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815>. See Article 1.

and 17 years of age must be protected as children;¹² the general international consensus that because it is a breach of a “protection right”,¹³ children under 18 lack the legal capacity to consent to marriage;¹⁴ and the definition of a forced marriage as one where one or both parties do not or cannot fully and freely consent to the union.¹⁵ It follows that any union involving parties under the age of 18 is by definition a forced marriage, even if the process did not involve violence, threats, or any other form of coercion. That Scots law diverges from this conclusion raises questions about the compatibility of our current forced marriage legislation with international children’s rights standards.

We also note that the offence currently does not apply to non-coercive conduct intended to cause an individual under 16 to marry, unless ‘mental disorder’ compromises their capacity to consent. However, child marriage *in any form* is a human rights abuse, and therefore a type of harm that children must be protected against; it is important for Scottish Government to recognise that individuals under 18 inherently *cannot* consent to a breach of their *unconditional* UNCRC Article 19 right to protection from violence and abuse. This narrow definition of ‘forced marriage’ in Scots law should thus be subject to scrutiny, as it risks creating a false distinction between child marriage and forced marriage where such a difference does not exist in the context of young people under 18.

Any legislation to extend the forced marriage offence should also be accompanied by awareness-raising efforts for the general public, including for children and young people, informed by engagement with groups that may be more likely to be affected. This may include, for example, parents/carers in communities where arranged marriages are a cultural norm, who might otherwise unknowingly commit a forced marriage offence under the new laws. We acknowledge the concern expressed in the consultation paper that extending the forced marriage offence may deter children and young people from seeking support, especially where a parent and/or other family member may not necessarily exhibit threatening or abusive behaviour.¹⁶ This highlights the need for engagement with groups that may be more likely to be affected by any legislative changes, to take account of their views on what supplementary action may be needed to raise awareness, ensure prevention, and put in place child-friendly support systems, amongst other considerations.

When legislating to extend the forced marriage offence, Scottish Government may wish to consider the Marriage and Civil Partnership (Minimum Age) Act 2022. Extending the equivalent forced marriage offence in England and Wales, Section 2(2) of the Act criminalises all conduct

¹² CRC/C/GBR/CO/6-7. Para 18.

¹³ Protection rights are about protecting children from acts of exploitation or abuse, in the main by adults or institutions, that threaten their dignity, their survival or their development; for example protection from abuse and neglect (Article 19).

¹⁴ Arthur, M., Earle, A., Raub, A., Vincent, I., Atabay, E., Latz, I., Kranz, G., Nandi, A., and Heymann, J. (2017). ‘Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities.’ *Journal of Women, Politics & Policy*, 39(1), 51-74.

The study investigated the legal minimum age of marriage globally, distinguishing between the legal age for girls and boys under 18. Findings revealed that 18 years old is the general legal minimum age of marriage in an overwhelming majority of countries around the world (out of 191 countries, 168 and 181 have a minimum age of marriage of 18 for girls and boys, respectively).

¹⁵ GOV.UK (7 March 2023). *Guidance: Forced Marriage*. <https://www.gov.uk/guidance/forced-marriage> [Date accessed: 15 April 2026]

¹⁶ See paragraph 2.55 in the consultation paper.

with the intention of causing *any individual under the age of 18* to marry, regardless of whether coercion is involved and whether it is carried out in England and Wales.¹⁷ This was welcomed as a “legislative stride” by stakeholders.¹⁸ A similarly comprehensive approach, where the forced marriage offence automatically protects children by virtue of their age regardless of the perpetrator’s intentions and where the conduct was carried out, would be welcome in Scotland.

Question 9: Do you have any comments on our draft impact assessments about the minimum age of marriage and civil partnership?

Our response pertains to the draft Children’s Rights and Wellbeing Impact Assessment (CRWIA).

The draft CRWIA was promising in numerous respects. Firstly, we note that the process was commenced around two months after the policy development start date. This short turnaround increases the likelihood that the CRWIA can influence the policy development process, rather than it being used as a retrospective justification for policy decisions that have already been made. Moreover, the authors’ commitment to conducting a full CRWIA and updating the current draft based on the consultation responses and any further evidence aligns with the intended function of the CRWIA as an iterative and ongoing exercise.

Additionally, the evidence base used to inform the draft CRWIA was relatively robust. Authors cited statistics and evidence from the UK Forced Marriage Unit (FMU) and National Records Scotland (NRS), other research reports and articles, and drew from both the UNCRC as well as guidance from international treaty bodies. While there was no mention of engagement with specific groups that could be disproportionately affected by the proposals, the authors described a range of evidence-seeking initiatives, such as an internal framing exercise with relevant government officials, meetings with civil society stakeholders, and an online workshop with Members of the Scottish Youth Parliament (MSYPs). The decision to include an Annex summarising the views expressed by MSYPs also enhanced transparency, allowing readers to better understand the perspectives of children and young people.

Authors also pinpointed and explained the direct impacts that the proposals may have on children’s rights, with reference to the relevant UNCRC articles. There was also some evidence that indirect and differential impacts were considered; for instance, authors identified that the Gypsy/Traveller communities and those in same-sex relationships could potentially be disproportionately impacted by a change to the legal age of marriage. These examples show an increasing awareness of children’s rights issues and their legal basis, as well as progress in recognising the numerous ways that a policy can impact the lives of children from different backgrounds.

Regarding next steps, it would be beneficial for Scottish Government to coordinate more opportunities for engagement with children and young people. We note that Scottish Government seeks to learn more about the views from young people through the consultation, but we nonetheless recommend further direct engagement to ensure that children and young

¹⁷ Section 2(2). *Marriage and Civil Partnership (Minimum Age) Act 2022*.

<https://www.legislation.gov.uk/ukpga/2022/28/section/2> [Date accessed: 15 April 2026]

¹⁸ Karma Nirvana (27 February 2024). *Child Marriage Law in England and Wales: One Year On*. <https://s40641.pcdn.co/wp-content/uploads/Assessing-the-Impact-of-Legislation-v4.pdf> [Date accessed: 15 April 2026]. See page 8.

people have a platform to directly express their views to decision-makers. We also recommend targeted engagement with communities who may be disproportionately affected by the legislation to understand and mitigate the impacts that a change to the legal age of marriage may bring to their lives.

We look forward to seeing the proposals that will be put forward in the full CRWIA as regards how the impacts of the legislation will be monitored and reviewed, and what accountability and redress mechanisms will be put in place to ensure that children can seek remedy when potential breaches of their rights arise.

Question 10: Do you have any other comments on the minimum age of marriage and civil partnership?

Scope

While marriage and civil partnership are devolved to the Scottish Parliament, some key issues continue to be governed by Acts of the UK Parliament. The current age of marriage is set out in Section 1 of the Marriage (Scotland) Act 1977,¹⁹ while the forced marriage offence in the Scottish context is defined in Section 122 of the Anti-social Behaviour, Crime, and Policing Act 2014.²⁰ Because both provisions sit within Acts of the UK Parliament, they currently fall outwith the “compatibility duty” enshrined in Section 6 of the UNCRC Act.²¹

Scottish Government should pay careful attention in the drafting process to ensure that any legislative changes to raise the legal age of marriage and extend the forced marriage offence are drafted within scope of the UNCRC Act. Otherwise, they will remain outwith the Section 6 duty, a technicality that carries important practical implications. Children and young people and/or their representatives will be barred from using the UNCRC Act to seek remedy where potential rights breaches emerge, leaving them with no option but to resort to more complex and less accessible legal routes, such as judicial review or claims under the European Convention on Human Rights (ECHR). This would undermine the aim of the UNCRC Act, which sought to make children’s rights legally enforceable in Scots law and provide children with a clear and direct route to remedy when their rights are breached. It would also contradict Scottish Government’s pledge to avoid amending UK Acts and to instead create stand-alone provisions in new Acts of the Scottish Parliament where possible, so that the UNCRC Act would be applicable to a wider range of legislation.²² Thus, to safeguard children and young people’s access to justice and

¹⁹ Section 1. Marriage (Scotland) Act 1977. <https://www.legislation.gov.uk/ukpga/1977/15/section/1> [Date accessed: 15 April 2026]

²⁰ Section 122. Anti-social Behaviour, Crime, and Policing Act 2014. <https://www.legislation.gov.uk/ukpga/2014/12/section/122> [Date accessed: 15 April 2026]

²¹ Section 6(2). United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. <https://www.legislation.gov.uk/asp/2024/1/section/19> [Date accessed: 15 April 2026]

Under this section, the “compatibility duty” applies only to functions conferred by Acts of the Scottish Parliament (or certain instruments made under them). It does not apply to pre-devolution UK Acts or provisions contained within them, even where those provisions were inserted or amended by an Act of the Scottish Parliament. Consequently, where functions remain in pre-devolution statutes such as the Marriage (Scotland) Act 1977, public authorities are not bound by section 6 when exercising them, and children cannot use sections 7 or 8 of the UNCRC Act to seek a remedy.

²² Cabinet Secretary for Social Justice (28 November 2023). Response to the Equalities, Human Rights and Civil Justice Committee on the reconsideration of the UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2023/reconsideration-of-the-uncrc-incorporation-scotland-bill-cabsecsj-28-november-2023.pdf> [Date accessed: 15 April 2026]

ensure that Scottish Government can be held accountable against its previous commitments and international obligations, we recommend that legislation amending the minimum age of marriage and the forced marriage offence be drafted in a way that brings it within scope of the UNCRC Act.

Implementation, monitoring, and evaluation

Moreover, the experience of England and Wales serves as a reminder that legal change is only the first step in a longer process. Though the passage of the Marriage and Civil Partnership (Minimum Age) Act 2022 marked a milestone for children's rights in England and Wales, meaningful progress in tackling forced marriage has been hindered by inconsistent implementation and patchy monitoring efforts.

In their report on the effectiveness of the 2022 Act one year post-implementation, Leeds-based charity Karma Nirvana emphasised that the legislation can only fulfil its aim when supported by robust measures of implementation.²³ Their findings revealed inadequacies in responses to cases of child marriage in England and Wales, as a significant proportion of statutory safeguarding professionals were either unaware of the new child marriage law altogether or lacked a concrete understanding of the change, despite its entry into force a year earlier.²⁴ In light of this, it would therefore be beneficial for Scottish Government to consider a comprehensive, joined-up framework to support the implementation of new legislation in this area. For example, this could include provisions for further training, awareness-raising, and capacity-building for professionals, to ensure that they are well-equipped to identify and handle cases. Further procedural frameworks and/or statutory guidance that provide up-to-date information on new policy and/or legal developments may also be valuable in improving professionals' confidence when handling situations involving child marriage.

Additionally, to address and prevent data gaps that may impede a complete understanding of child marriage in Scotland, Scottish Government should adopt measures to strengthen monitoring and evaluation. Such efforts could include improved reporting mechanisms; increased information-sharing and coordination between relevant government agencies; more rigorous and consistent data collection and recording practices, and routine reviews. This will enable longitudinal monitoring of the prevalence of child marriage in Scotland, in turn facilitating evaluations of the long-term effectiveness of any legislative developments in the field of child marriage.

We therefore recommend that Scottish Government lays the foundation for meaningful and sustainable progress by ensuring that legislative changes to the minimum age of marriage and forced marriage offence are accompanied by more robust measures of implementation and monitoring and evaluation practices.

²³ Karma Nirvana (27 February 2024). *Child Marriage Law in England and Wales: One Year On*. <https://s40641.pcdn.co/wp-content/uploads/Assessing-the-Impact-of-Legislation-v4.pdf> [Date accessed: 15 April 2026]

²⁴ Karma Nirvana (27 February 2024). *Child Marriage Law in England and Wales: One Year On*. Page 5 of 13. <https://s40641.pcdn.co/wp-content/uploads/Assessing-the-Impact-of-Legislation-v4.pdf> [Date accessed: 15 April 2026]

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