

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Forced marriage

Section 122: Offence of forced marriage: Scotland

329. [Section 122](#) creates an equivalent new offence of forced marriage under the law in Scotland. The provisions of this section broadly mirror those in section 121 above.
330. *Subsection (1)* makes it a criminal offence for a person, under the law in Scotland, to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without their free and full consent. Where the victim lacks the capacity to consent (by reason of a mental disorder within the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003) the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion (*subsection (2)*).
331. *Subsection (3)* additionally captures as a criminal offence any form of deception practised with the intention of causing another person to leave the UK to travel to another country and with the intention that the other person is subjected to conduct that is an offence under subsection (1) or would be an offence if the victim were in Scotland.
332. *Subsection (4)* provides that “marriage” means any religious or civil ceremony of marriage, whether or not it would be legally binding according to the law of Scotland.
333. *Subsection (6)* provides that an offence is committed whether the violence, threats or other forms of coercion are directed at the victim of a forced marriage or another person.
334. *Subsection (7)* and *(8)* make provision to take extra-territorial jurisdiction over both the coercion and deception elements of the new offence. Any of the prohibited acts in subsections (1) and (2) carried out outside the UK by a UK national or to a UK national, or person habitually resident in Scotland, will be an offence under domestic law and triable in the courts of Scotland. The effect of *subsection (7)(b)* is that it will also be an offence under domestic law if the prohibited acts in subsection (1) or (2) are conducted by or against a person habitually resident in Scotland, but takes place in Northern Ireland. The same principle applies if the prohibited act takes place in England or Wales.
335. *Subsection (9)* sets out that the maximum penalties for the new offences in subsections (1) and (2). On summary conviction the maximum penalty is imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (currently £10,000) or both. On conviction on indictment, the maximum penalty is imprisonment for a term not exceeding seven years or to an unlimited fine, or both.