



Home Office

SHAM MARRIAGES AND CIVIL PARTNERSHIPS

**BACKGROUND INFORMATION AND
PROPOSED REFERRAL AND INVESTIGATION SCHEME**

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1. Introduction

The Immigration Bill published on 10 October 2013 contains new measures to prevent migrants gaining an immigration advantage by entering into a sham marriage or civil partnership. The purpose of this document is to explain what the proposed changes are, why they are needed and what they will mean in practice for couples seeking to marry or enter into a civil partnership in England and Wales. The Immigration Bill and further information relating to the development and impact of the proposals is available on the gov.uk website at:

www.gov.uk/government/organisations/home-office/series/immigration-bill

Sham marriages (or marriages of convenience) and sham civil partnerships – where the marriage or civil partnership is contracted for immigration advantage by a couple who are not in a genuine relationship – pose a significant threat to UK immigration control. The Home Office estimates that 4,000 to 10,000 applications a year to stay in the UK, under the Immigration Rules or under the Immigration (European Economic Area) Regulations 2006, are made on the basis of a sham marriage or civil partnership.¹

Since 1999, changes to primary legislation and to the Immigration Rules have been introduced in an attempt to prevent abuse by those prepared to enter into a sham marriage or civil partnership as a means to stay in the UK. Sections 24 and 24A of the Immigration and Asylum Act 1999 place a duty on registration officials across the UK to report suspected sham marriages and civil partnerships to the Home Office. The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and the Civil Partnership Act 2004 require non-European Economic Area (non-EEA) nationals subject to immigration control to give notice of marriage or civil partnership at a designated register office. The Certificate of Approval scheme under the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 required certain couples to obtain the Secretary of State's approval before they could marry or enter into a civil partnership. This scheme was found by the Courts to be incompatible with the European Convention on Human Rights and was abolished in 2011. Since then, the number of section 24/24A reports has continued to increase, with 1,891 such reports received by the Home Office in 2012 (9 per cent more than in 2011 and more than half relating to the marriage of a non-EEA national to an EEA national who was not a British Citizen).²

Registration officials indicate that there is significant under-reporting of suspected sham marriages and civil partnerships. The section 24/24A reporting system is valuable in helping the Home Office identify suspicious cases, but given the nature of their role, registration officials do not conduct an in-depth interview of the couple or have access to wider information on sham marriages and civil partnerships. Where a section 24/24A report is received, as most (but not all) are, before the ceremony, there is very little time for the Home Office to act before the marriage or civil partnership takes place.

In 2011, the Government consulted on proposed reforms to family migration, including measures to tackle sham marriages. The Government is now bringing forward legislative changes in the Immigration Bill published on 10 October 2013 to extend and amend the marriage and civil partnership notice process to better enable the Home Office to identify and investigate suspected sham marriages and civil partnerships, as a basis for enforcement and other immigration action under existing powers in cases established as a sham. The Bill will also extend powers for information to be shared by and with registration officials.

¹ Appendix A, page 44.

² Table 1, page 11.

The key changes are:

- Notices of marriage following civil preliminaries or civil partnership in England and Wales involving a non-EEA national who could benefit from it in immigration terms³ will be referred to the Home Office for a decision as to whether to investigate whether the marriage or civil partnership is a sham. Non-EEA nationals will only be able to marry in the Church of England or the Church in Wales following civil preliminaries, except in limited circumstances.
- All marriages following civil preliminaries and all civil partnerships in England and Wales, including those involving British Citizens or EEA nationals,⁴ will be subject to a 28-day notice period (currently 15 days).
- Notices referred to the Home Office under the scheme will be assessed against intelligence/evidence-based risk profiles and factors. Any section 24/24A report or other relevant information will also be taken into account.
- Where the Home Office has reasonable grounds to suspect that a proposed marriage or civil partnership referred under the scheme is a sham, it may decide to extend the notice period to 70 days in order to investigate this.
- A couple will be unable to get married or enter into a civil partnership if they do not comply with such an investigation.
- Where the Home Office establishes that a proposed marriage or civil partnership is a sham, it may take enforcement action under existing powers (e.g. curtailment of any extant leave, removal) against a non-EEA national involved. It may also refuse any subsequent immigration application based on a sham marriage or civil partnership and prosecute any individual involved in a sham-related criminal offence, e.g. perjury.

The proposed referral and investigation scheme will provide the Home Office with more time, information and evidence before the marriage or civil partnership takes place as a basis for identifying, and taking effective enforcement or other immigration action against, sham cases. The scheme will therefore act as a significant deterrent against sham marriages and civil partnerships. In addition, where cases of suspected forced marriage or human trafficking are identified under the scheme, they will be handled appropriately.

These proposals have been developed in discussion with key partners, including the Ministry of Justice, the Government Equalities Office, HM Passport Office, the Local Registration Service in England and Wales, the Church of England and the Church in Wales. The Home Office will work with these key partners on the detailed arrangements needed to introduce the scheme. The current intention is that, subject to Parliamentary approval of, and Royal Assent to, the Immigration Bill, the referral and investigation scheme will be introduced in England and Wales from April 2015.

The Home Office will work with the Scottish Government and the Northern Ireland Executive on the extension of the referral and investigation scheme to the whole of the UK using the order-

³ Where the non-EEA national does not have settled status or an EU law right of permanent residence in the UK, and is not exempt from immigration control or the holder of a marriage or civil partnership visa.

⁴ For the purposes of the scheme, nationals of Switzerland will be treated in the same way as EEA nationals.

making power for this which the Immigration Bill contains. This work will proceed in parallel with the Parliamentary passage of the Bill.

2. Context

a) What is a sham marriage or civil partnership?

A sham marriage, or marriage of convenience, or a sham civil partnership describes a marriage or civil partnership entered into for immigration advantage by two people who are not a genuine couple. A sham marriage or civil partnership is to be distinguished from a marriage or civil partnership entered into by a genuine couple where it may be convenient for immigration or other reasons for the couple to be married or civil partners.

b) Who enters into a sham marriage or civil partnership?

Information received by the Home Office from reports by registration officials of suspected sham marriages and civil partnerships suggests that individuals entering into these mainly include a non-European Economic Area (non-EEA) national:

- 1) With a visa or limited leave to remain, where it is unlikely that they will meet the requirements to extend their time in the UK; or
- 2) Who has overstayed their visa or limited leave to remain (or entered the UK illegally) and has no basis to stay in the UK; or
- 3) Who has been refused an extension to their current visa or limited leave to remain.

Reports by registration officials of suspected sham marriages and civil partnerships suggest that they are generally entered into by a non-EEA national and an EEA national or British Citizen. However, it is possible for two non-EEA nationals to enter into a sham marriage: for example, where one has Indefinite Leave to Remain (or an EU law right of permanent residence in the UK) or a longer period remaining on their visa or limited leave to remain.

c) How many non-EEA nationals marry or enter into a civil partnership?

The nationality or immigration status of those marrying or entering into a civil partnership in the UK is not routinely recorded. However, it is estimated that around 35,000 marriages and civil partnerships each year may involve a non-EEA national.⁵

d) What is the scale of abuse?

Based on the information available, the Home Office estimates that 4,000 to 10,000 applications a year to stay in the UK, under the Immigration Rules or under the Immigration (EEA) Regulations 2006, are made on the basis of a sham marriage or civil partnership.⁶

e) Why do people enter into a sham marriage or civil partnership?

A sham marriage or civil partnership can appear to be a relatively attractive option for those seeking to remain in the UK. The Immigration Rules and the Immigration (EEA) Regulations 2006 allow a non-EEA national to remain in the UK on the basis of their marriage or civil partnership with a British Citizen, a person settled in the UK or an EEA/Swiss national. As the requirements for non-EEA nationals seeking to remain in the UK to work or study have become

⁵ Appendix A, page 44.

⁶ Appendix A, page 44.

more selective, it has become more attractive for non-EEA nationals to try to use marriage or civil partnership as a means to remain and settle in the UK.

A non-EEA national who has entered into a sham marriage or civil partnership can:

- Apply under the Immigration Rules to stay in the UK as the spouse or civil partner of a British Citizen or a non-EEA national settled in the UK; or
- Reside here as the spouse or civil partner of an EEA/Swiss national under the Immigration (EEA) Regulations 2006. They can apply under the Regulations for a residence card to evidence this right, but are not required to do so; or
- Do nothing, allow any current leave to lapse, risk detection by Immigration Enforcement, and, if detected, then seek to remain in the UK on the basis of their right to respect for family life under Article 8 of the European Convention on Human Rights.

The spouse and civil partner route for non-EEA nationals under the Immigration (EEA) Regulations 2006 is particularly vulnerable to abuse because, under EU free movement law, it is open to visitors to the UK; there can be no maintenance, accommodation or language requirements; and the couple do not need to show, at the time the non-EEA national applies for a residence card, that the marriage or civil partnership is subsisting or that they intend to live together: the Home office has to prove it was a sham at the point the couple entered into the marriage or civil partnership.⁷

f) Links to wider criminality and abuse

Many of those involved in a sham marriage or civil partnership admit to using an individual facilitator or an organised crime group to co-ordinate it. The level of profit for criminals can be very high, with non-EEA nationals reported to pay up to £20,000 to facilitators. Appendix A provides examples of enforcement and prosecution cases involving organised crime groups.⁸

⁷ European Court of Justice (February 1985) in *Aissatou Diatta v Land Berlin* "...the marital relationship cannot be regarded as dissolved so long as it has not been terminated by the competent authority. It is not dissolved merely because the spouses live separately, even where they intend to divorce at a later date."

⁸ Appendix A, page 46.

3. Summary of proposed changes

A summary of the proposed referral and investigation scheme and other changes contained in the Immigration Bill is set out below:

- (a) Notices of marriage following civil preliminaries or civil partnership in England and Wales involving a non-European Economic Area (non-EEA) national who could benefit from it in immigration terms⁹ will be referred to the Home Office for a decision as to whether to investigate whether the marriage or civil partnership is a sham. Non-EEA nationals will only be able to marry in the Church of England or the Church in Wales following civil preliminaries, except in limited circumstances.
- (b) In England and Wales, all marriages (other than by ecclesiastical preliminaries)¹⁰ and all civil partnerships, including those between British Citizens or EEA nationals, will be subject to a notice period of 28 calendar days rather than the current 15 days. Couples will require superintendent registrar's certificates (one for each party) for the marriage, or a Schedule (one for the couple) for the civil partnership, to proceed. Extending the notice period to 28 days for all such couples is intended to ensure there is no unlawful discrimination between couples on the grounds of nationality and to simplify procedures for registration officials when taking notices of marriage and civil partnership, especially where they deal both with those who are subject to immigration control and those who are not.
- (c) Marriages in the Church of England and the Church in Wales, where one party (or both) is a non-EEA national, regardless of their immigration status or whether they are exempt from immigration control,¹¹ will only be able to take place following civil preliminaries, except in limited circumstances. This will mean that all such couples seeking an Anglican marriage will no longer have access to Banns or the Common Licence process, but will instead need to obtain superintendent registrar's certificates by completing civil preliminaries. This will mean that the clergy will only have to ascertain the parties' nationality, but will not have to consider a non-EEA national's immigration status and identify those in scope of the referral and investigation scheme.
- (d) As now, the Registrar General will have powers to reduce the notice period (the Secretary of State for a couple in scope of the scheme) where they are satisfied there are compelling reasons to do so because of exceptional circumstances, e.g. where a member of HM Forces is departing on active service.¹² The Registrar General will continue to have the power to authorise a marriage or civil partnership to proceed without a notice period in death-bed cases, regardless of whether the couple is in scope of the scheme.¹³ A couple marrying in the Anglican Church in England or Wales may apply for the Archbishop of Canterbury's Special Licence, granted under the Ecclesiastical Licences Act 1533, including where one of the couple is seriously ill and they wish to marry in hospital or at home.

⁹ Where the non-EEA national does not have settled status or an EU law right of permanent residence in the UK and is not exempt from immigration control or the holder of a marriage or civil partnership visa.

¹⁰ These include Banns, the Common Licence and the Archbishop of Canterbury's Special Licence.

¹¹ Appendix C, page 55.

¹² Under section 31(5A) of the Marriage Act 1949 and section 12 of the Civil Partnership Act 2004.

¹³ Under the Marriage (Registrar General's Licence) Act 1970 and section 21 of the Civil Partnership Act 2004.

- (e) Where one party (or both) is a non-EEA national – with or without settled status¹⁴ or an EU law right of permanent residence in the UK, but excluding those exempt from immigration control – both parties will be required to attend together in person to give notice of a marriage following civil preliminaries or a civil partnership, at a designated register office (DRO) in England and Wales. This will allow registration officials at the DRO to look at the evidence of immigration status of non-EEA nationals not exempt from immigration control, to determine whether they are in scope of the referral and investigation scheme. If a couple cannot provide specified evidence that they are outside the scope of the referral scheme, they will be considered in scope and referred to the Home Office if other requirements are met.
- (f) Only those non-EEA nationals able to evidence that they are exempt from immigration control will be able to give notice at a non-DRO: as now, they and their partner will each give notice at their local register office, unless their partner is subject to the DRO requirement. All other non-EEA nationals, regardless of their immigration status, will fall within the DRO requirement.¹⁵
- (g) Notice will not be taken if the person seeking to give it does not provide specified information and evidence, including of their nationality.
- (h) All couples who give notice and include at least one party who is a non-EEA national without settled status, an EU law right of permanent residence in the UK, a marriage or civil partnership visa (for the proposed marriage or civil partnership), or exemption from immigration control, or who is unable to evidence their immigration status, will be referred by the superintendent registrar or authorised person to the Home Office.
- (i) Where a sham is suspected before, when or after notice has been given, the superintendent registrar or authorised person will also be required to submit a report of this suspicion to the Home Office under section 24 or 24A of the Immigration and Asylum Act 1999.¹⁶
- (j) The Home Office will run all referrals against immigration records and intelligence/evidence-based risk profiles and factors, and take account of section 24/24A reports of suspected shams and other relevant information, to identify suspect proposed marriages and civil partnerships. In these cases the Home Office will then consider whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham and whether to investigate the case.
- (k) In cases the Home Office decides not to investigate, it will notify the superintendent registrar (who issues the certificates for marriage) or registration authority (who issues the civil partnership Schedule) and the couple accordingly and the superintendent registrar or registration authority will then be able to issue their certificates/Schedule after the 28-day notice period has expired. The couple will then be able to marry or enter into a civil partnership. Where the couple want an Anglican marriage, they will present the certificates to the minister to evidence that they have complied with the scheme and the marriage can go ahead.

¹⁴ Defined in section 33(2A) of the Immigration Act 1971 as being “ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain”.

¹⁵ Section 19 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and Schedule 23 to the Civil Partnership Act 2004 will be extended to include within the DRO requirement a non-EEA national with an enforceable EU law right to enter, reside in or remain in the UK as a family member of an EEA national.

¹⁶ Sections 24 and 24A of the Immigration and Asylum Act 1999 will be extended to cover the period before notice is given.

- (l) Where, within the 28-day period, the Home Office decides to investigate whether the proposed marriage or civil partnership is a sham because there are reasonable grounds to suspect this, the Home Office will, before the end of the 28-day period, notify the superintendent registrar or registration authority and the couple that the notice period is to be extended from 28 days to 70 days.
- (m) During the 70-day period the Home Office will investigate the proposed marriage or civil partnership and the genuineness of the couple's relationship, e.g. by examining documentary evidence, by interview and/or by home visit.
- (n) Where the Home Office is satisfied, on the balance of probabilities, that the marriage or civil partnership will be or is a sham, it may take an enforcement decision (e.g. curtailment of existing leave to remain, removal) against the non-EEA national under existing immigration powers and subject to any appeal. The decision letter to the non-EEA national will set out the reasons why the Home Office considers the marriage or civil partnership will be or is a sham and the evidence for this. This enforcement decision may be made and/or issued before or after the end of the 70-day period. Where such an enforcement decision is not made, the non-EEA national (or their partner or the superintendent registrar or registration authority) will not be informed by the Home Office of any suspicions or evidence that the proposed marriage or civil partnership will be or is a sham, but such suspicions or evidence may inform the consideration of any immigration application made by the non-EEA national which is based on that marriage or civil partnership.
- (o) As now, the Home Office will also consider investigating and prosecuting any sham-related criminal offence, including action against British Citizens, EEA nationals or non-EEA nationals involved. We will handle appropriately any case involving a vulnerable partner, forced marriage or human trafficking.
- (p) Where the couple have complied with the investigation process, the Home Office will, before the end of the 70-day period, notify the superintendent registrar or registration authority and the couple accordingly. The superintendent registrar or registration authority will then be able to issue their certificates/Schedule after the 70-day notice period has expired and the couple will be able to marry or enter into a civil partnership. Where the couple want an Anglican marriage, they will present the certificates to the minister to evidence that they have complied with the scheme and the marriage can go ahead.
- (q) Where the couple have failed unreasonably to comply with the investigation process, e.g. by failing to attend an interview or provide relevant information or documents, the couple will have failed to complete the marriage or civil partnership notice process. The Home Office will, before the end of the 70-day period, notify the superintendent registrar or registration authority and the couple of that fact and the reasons for it and the couple will not be issued certificates/a Schedule. This will mean that the couple will not be able to marry or enter into a civil partnership and will have to give notice again if they still wish to do so.
- (r) In a case in scope of the referral and investigation scheme, the superintendent registrar or registration authority will have no power to issue certificates/a Schedule to the couple until the 28-day or 70-day notice period has elapsed.

- (s) Where sham is established or strongly suspected, any subsequent immigration application based on the couple's relationship – even if the Home Office has allowed the certificates/a Schedule to be issued and the marriage or civil partnership has proceeded – is likely to be refused. However, the Home Office will make a fresh assessment of the genuineness of the couple's relationship when the immigration application is made.

In developing these proposals, we have drawn up a Policy Equality Statement (PES),¹⁷ to assess their potential impact, in line with section 149 of the Equality Act 2010. Subject to Parliamentary approval of and Royal Assent to the Immigration Bill, we will revise the PES as necessary to reflect the scheme which will be introduced under the legislation.

¹⁷ Appendix D, page 57.

4. Background

a) Previous attempts to tackle sham marriages and civil partnerships

In developing the proposals to tackle sham marriages and civil partnerships contained in the Immigration Bill and set out in this document, we have reviewed previous work in this area which is discussed below.

i. Reports by registration officials of suspected sham marriages and civil partnerships

Section 24 of the Immigration and Asylum Act 1999 placed a duty on registration officers to submit a report to the Home Office where they have reasonable grounds to suspect that a marriage is a sham being entered into for immigration purposes. This provision came into force on 1 January 2001. A similar duty on authorised persons in respect of suspected sham civil partnerships was introduced from 5 December 2005 under section 24A of the 1999 Act, inserted by Schedule 27 to the Civil Partnership Act 2004. Section 24 of the 1999 Act does not apply to marriages taking place in the Anglican Church.

Table 1 shows the number of section 24/24A reports received by the Home Office since 2001. Marriage and civil partnership statistics for the UK are provided in Appendix A.¹⁸

Table 1: Section 24/24A reports received by the Home Office

Year	Number of section 24/24A reports of suspicious marriages and civil partnerships* (*included from 2005)
2001	752
2002	1,205
2003	2,648
2004	3,578
2005	452
2006	282
2007	384
2008	344
2009	561
2010	934
2011	1,741
2012	1,891
2013 (to 30 June)	986

The reduction in the number of reports in 2005 is associated with the introduction of the Certificate of Approval scheme in that year (see below).

Section 24/24A reports are assessed by the Home Office and investigated as appropriate. The action taken in suspected sham cases can include:

- A home visit, where Immigration Enforcement officers attend the couple's address to establish evidence of the genuineness of their relationship.
- The arrest and removal from the UK of a non-EEA national offender involved in a sham marriage or civil partnership.
- Prosecution of those involved in a criminal offence associated with a sham marriage or civil partnership, e.g. perjury or facilitating illegal immigration.

¹⁸ Appendix A, page 51.

We propose to maintain the section 24/24A reporting duty on registration officers and authorised persons, which is an important source of information. However, there are currently limitations, described in Section 4, which we propose to address.

ii. Changes to the marriage notice procedure

Part IX of the Immigration and Asylum Act 1999 amended the Marriage Act 1949 to change the procedure for giving notice of marriage in England and Wales. From 1 January 2001, the preliminaries for marriage following civil preliminaries were changed to require each person to give notice and complete a notice period of 15 days. (The notice period was previously 21 days for marriage by the superintendent registrar's certificate without licence procedure, and only one person was required to give notice). The provision to give notice by licence, which only required a one-day notice period, was abolished. The changes required notice to be given by each person to the superintendent registrar for the registration district in which they resided and individuals were asked to give their nationality.

iii. Designated register offices

Section 19 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 requires non-EEA nationals wishing to marry in England and Wales following civil preliminaries to give notice of marriage at a designated register office (DRO). The requirement applies to non-EEA nationals with limited or indefinite leave to remain under the Immigration Act 1971, but not those with an enforceable EU law right to enter, reside in or remain in the UK as a family member of an EEA national, or those exempt from immigration control. The equivalent provisions for civil partnerships are set out in Schedule 23 to the Civil Partnership Act 2004.

By limiting the places where certain non-EEA nationals could give notice, it was felt that the registration officials regularly dealing with such cases would become more expert at identifying suspected sham cases to report under sections 24 and 24A of the 1999 Act. It was also anticipated that it would enable effective working relationships to be developed with local Immigration Enforcement teams. Although couples can subsequently marry or enter into a civil partnership elsewhere, where a non-EEA national is in scope of the DRO requirement both parties must show that they have resided in a registration district (not necessarily that of the DRO) for at least 7 days before giving notice. This was intended to counter the phenomenon of EEA nationals flying in for the day to contract a sham marriage or civil partnership with a non-EEA national.

As part of the new referral and investigation scheme, we propose to extend the DRO requirement to all non-EEA nationals who are not exempt from immigration control.¹⁹

There are 75 DROs in England and Wales (out of 174 registration districts/authorities). A list is at Appendix B. Equivalent DRO provisions apply in Scotland and Northern Ireland, where all register offices have been designated as a DRO.

iv. Certificate of Approval Scheme

In February 2005, the Certificate of Approval (CoA) scheme was introduced under the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. It was intended to combat sham marriages following civil preliminaries, involving non-EEA nationals marrying a British Citizen, an EEA national or a person settled in the UK. Under the scheme, all non-EEA nationals subject to immigration control (except those with entry clearance for the purpose of marriage or with settled status) were required to apply to the Home Office for permission to marry, before giving notice of marriage at a designated register office. The scheme also applied to civil partnerships

¹⁹ Appendix C, page 55.

from December 2005. The CoA scheme did not apply to Anglican marriages following ecclesiastical preliminaries.

Table 2 provides data on CoA applications and refusals. Applications received in one year may have been issued or refused in the next year.

Table 2: Certificate of Approval applications and refusals, 2005-2010²⁰

Year	Applications received	Issued	Refused
2005	13,865	9,725	2,092
2006	17,955	14,569	1,024
2007	17,316	14,518	409
2008	18,720	16,114	734
2009	24,042	19,835	1,517
2010 (to 23 September)	23,052	13,749	876

The original CoA scheme was initially successful in countering sham marriages because those most likely to benefit in immigration terms from such a marriage – all those without valid leave, those granted less than 6 months’ leave and those with less than 3 months’ leave remaining at the date of the CoA application – were automatically refused permission to marry. This was reflected in a reduction in the number of section 24 reports submitted immediately following the CoA scheme’s introduction, as can be seen in Table 1.

The Office for National Statistics linked the CoA scheme to:

“the largest percentage decline in the number of marriages since 1972 [which] was recorded between 2004 and 2005 when the number of marriages fell by 9.3 per cent. The Certificate of Approval Scheme included in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 was introduced on 1 February 2005 to prevent the use of marriage to circumvent UK immigration control (‘sham marriages’). The scheme made it increasingly difficult for a sham marriage to take place and could therefore have reduced the number of such marriages.”²¹

However, a series of court judgments meant that the CoA scheme had to be modified, rendering it less useful in tackling sham marriages and civil partnerships. The European Court of Human Rights in 2010 found that the scheme was incompatible with, in particular, Article 12 of the European Convention on Human Rights. The CoA scheme was abolished in May 2011.

v. Changes to the Immigration Rules for settlement in the UK as a spouse

In April 2003, changes to the Immigration Rules increased from 12 months to 2 years the period of limited leave required before a person could apply for settlement on the basis of marriage to a British Citizen or person settled in the UK. These changes also introduced a ‘no switching’ provision to prevent those admitted to the UK for 6 months or less from applying for leave to remain on the basis of marriage.

In July 2012, changes to the Immigration Rules increased from 2 years to 5 years the period of limited leave required before a person can apply for settlement as a spouse, civil partner or unmarried partner of a British Citizen or person settled in the UK, as a better test of the genuineness of the relationship before settlement can be sought on the basis of it.

²⁰ The information in this table has been derived from local management information and is not subject to National Statistics protocols.

²¹ Marriages in England and Wales, 2011 (provisional), 26 June 2013, Office for National Statistics.

vi. Enforcement operations to tackle sham marriages

Immigration Enforcement operations aimed at tackling sham marriages have resulted in multiple arrests and prosecutions, as well as uncovering links to other serious crime. Here are some examples:

Case study 1

Operation Fry was a joint operation between the UK and the Netherlands. It targeted sham marriages between Dutch nationals (originating from the Dutch Antilles) and predominantly Nigerian nationals. Some of the sham marriages identified in Operation Fry were linked to wider criminality and abuse of the benefits systems in the UK and the Netherlands.

Following initial arrests in Manchester in October 2009 of Dutch and Nigerian nationals involved in sham marriages, the Home Office identified many similar cases in the North West and other regions. A joint Dutch/UK team was set up to tackle the issue.

There have been 122 arrests in the UK and the Netherlands resulting in 76 convictions, with terms of imprisonment totalling more than 100 years. Nine Dutch nationals have been extradited to, and successfully prosecuted in, the UK. In the Netherlands, 32 Dutch nationals have been arrested and are awaiting court appearances. The operation also uncovered links to other serious criminal offences, such as money laundering, firearms, Class A drugs, human trafficking and sexual assault.

Case study 2

This case involved a British Citizen, Mr W, who was the brother of a vulnerable adult involved in an attempted sham marriage in 2009. Mr W brokered the marriage of his vulnerable sister to a Chinese national, who was a student in the UK and also worked with Mr W. Mr W's sister was in the care of a mental health social worker as she had been assessed not to have the cognitive skills to understand the long-term consequences of her actions.

The Chinese national's visa was due to expire around the time the marriage was scheduled. A fee of £5,000 was to be paid to Mr W, half on the completion of the wedding and half following a subsequent grant of leave to remain in the UK as a spouse to the Chinese national. The investigation also established that, in 2008, Mr W had profited from entering into a sham marriage himself.

Mr W was charged on two counts of perjury for his own sham marriage and with a facilitation offence for assisting his sham spouse to obtain leave to remain. He was also charged with attempted facilitation in relation to his sister's attempted sham marriage. He received a sentence of 4 years' imprisonment.

Case study 3

Mr S, an Indian national, attempted to enter into a sham marriage with a Hungarian woman, Miss P, to enable him to remain in the UK as a spouse of an EEA national. The marriage was scheduled to take place in May 2011 at a register office. Mr S was in the UK as a student. However, the college that he was supposed to be attending had been suspended from the register of sponsors a month after his arrival in the UK and was permanently removed from the register in September 2010. Mr S did not contact the Home Office to regularise his immigration status, following the removal of the college from the register.

Mr S was subsequently charged with conspiracy to facilitate a breach of immigration law, to which he pleaded guilty. He received a custodial sentence of 16 months' imprisonment. At the trial, Miss P confirmed that she had agreed to enter into the sham marriage to facilitate Mr S's ability to remain in the UK and that she had employed deception in Mr S's application to the Home Office for a Certificate of Approval (at that time a requirement) to marry. She received a sentence of 16 months' imprisonment.

Subsequent investigations discovered that a second Hungarian woman, Miss H, had been involved in arranging the sham marriage and was also linked to wider criminal activity, including prostitution. Miss H was arrested for being complicit in organising the sham marriage between Mr S and Miss P and for conspiracy to facilitate a breach of immigration law.

Miss H had herself entered into a sham marriage with an Indian national, who was subsequently prosecuted for obtaining leave to remain by deception. He received a custodial sentence of 16 months and was deported.

Case study 4

This operation began when the Home Office grew suspicious about a large rise in the number of marriages in an area on the South Coast from 2006. These marriages attracted attention because they were all conducted at one particular Anglican church, most were between African nationals and Eastern European nationals, and many of the participants, and subsequent immigration applications by them, were represented by a particular charity and firm of solicitors.

In 2010, following extensive enquiries by the Home Office, working with the Police, the operation resulted in a number of prosecutions and convictions, including of the minister for that church.

b) Public consultation

A 12-week public consultation on Family Migration, including measures to tackle sham marriage, was conducted from 13 July to 6 October 2011. 5,046 responses were received. We have carefully considered the responses to the consultation in developing the proposals to tackle sham marriages and civil partnerships contained in the Immigration Bill and set out in this document. The following are some of the questions posed in the consultation and the responses received.²²

Should some couples including a non-EEA national marrying in England and Wales be required to attend an interview with the Home Office during the time between giving notice of their intention to marry and being granted authority to do so?

62 per cent of all respondents agreed that some couples should be required to attend such an interview. 66 per cent of individuals and 43 per cent of organisations agreed (with 53 per cent of organisations disagreeing). Amongst the narrative responses, there was also some support for this proposal, for example:

“We agree with the desirability of interviews, if visas are granted simply on the basis of paper applications then we do not believe that the genuineness of such marriages can in most cases be effectively assessed.” (Think tank)

Many registration officials supported the proposal, but some expressed concerns about the implications for local authorities, for example:

“[Interviews] would certainly assist in helping to identify potential sham marriages...[S]uch interviews could be carried out by local authority staff acting under the direction of the Home Office. However, it would be necessary to compensate local authorities for providing such a service in order not to create additional burdens on local government. It would also have to be made clear that couples were being targeted under the Immigration Rules rather than by individual local authorities to avoid allegations of discrimination.” (Local authority)

²² The full response to consultation document is available at www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf

As suggested in the quotation above, some respondents saw the proposal to require interviews as appearing to discriminate against certain communities and nationalities.

Should ‘sham’ be a lawful impediment to marriage in England and Wales?

71 per cent of all respondents agreed that ‘sham’ should be a lawful impediment to marriage. 75 per cent of individuals and 48 per cent of organisations agreed (with 43 per cent of organisations disagreeing).

The narrative responses, including those from registration officials, were divided on this proposal. Some supported it, but with the caveat that ‘sham’ would be difficult to define and that there needed to be clarity on roles and responsibilities. Other narrative responses (including from some registration officials) said that the difficulty of defining ‘sham’ meant that they could not support the proposal.

Should the authorities have the power in England and Wales to delay a marriage from taking place where ‘sham’ is suspected? This proposal also included broader data-sharing capabilities.

75 per cent of all respondents agreed that the authorities should have the power to delay a marriage where ‘sham’ is suspected. 78 per cent of individuals agreed. 51 per cent of organisations agreed with the proposal and 42 per cent disagreed.

There was support for this proposal, but some commented that there would need to be agreement on who was responsible for the delay, with consideration given to the risk of legal challenge and reputational damage for the local authority if the marriage was not a sham. Some added that investigations should be carried out by the Home Office. Such views were typified in this response:

“Yes [to the proposal] but agreement needs to be reached on who is responsible for the delay paying particular attention to the following points raised:

- Clear guidelines required as well as training.
- Minimising the potential for local authorities to be challenged and sued by ensuring that the Home Office is the lead organisation.
- Serious concerns if marriage had been stopped and then found not to be a sham. This could pose a risk to the local authority in terms of reputation and financial compensation. Challenges would have to be directed to the Home Office.
- Possibility to delay marriage but the investigation should be completed by the Home Office.”
(Local authority body)

Some of the narrative responses expressed opposition to this proposal on the grounds that it interfered with couples being allowed to marry. Some referred to the principle in case law that having leave to remain should not be a factor in being allowed to marry. The following response reflected this kind of view:

“Whilst the Home Office is fully entitled to grant or withhold immigration status based on marriage according to criteria which are lawful in domestic and international law, it is difficult to justify an interference with the right to marry itself. The Certificate of Approval scheme was an inappropriate tool to address the very real problem of sham marriages and was recognised as such by the courts.” (Women’s organisation)

5. Why the changes are needed

a) Rise in section 24/24A reports and limitations on information that can be reported

The number of section 24/24A reports has continued to increase in recent years. 1,891 such reports were received by the Home Office in 2012, 9 per cent more than in 2011 and more than half relating to the marriage of a non-EEA national to an EEA national who was not a British Citizen.

Table 3 provides examples of the current limitations of section 24/24A reports and reflects our proposals to address them through the Immigration Bill.

Table 3: Issues relating to section 24/24A reports

No.	Current limitation to section 24/24A process	Issue	Proposal
1	Duty to report a suspected sham only applies once notice has been taken.	Registration officials cannot report cases where a sham is suspected, but the notice has been refused, e.g. because the couple submitted false documents.	Registration officials will be able to report suspected sham cases to the Home Office from the point a couple contacts them to give notice.
2	Registration officials are unable to share information relating to suspected sham couples with each other.	There is a risk that sham attempts may go undetected.	Registration officials will be able to share all information held relating to notices and registrations where sham is suspected.
3	Registration officials have no power to report cases to the Home Office, unless a sham is suspected.	Registration officials cannot report to the Home Office all immigration offenders they encounter, e.g. an illegal entrant or overstayer.	Registration officials will have the power to report suspected immigration offenders to the Home Office, regardless of whether sham is suspected.

b) Difficulties in dealing with spouse/civil partner applications under EU law

The marriage and civil partnership route for non-EEA nationals to remain or reside in the UK under the Immigration (EEA) Regulations 2006 is particularly vulnerable to abuse. This is because, under EU free movement law, the route is open to visitors to the UK; there can be no maintenance, accommodation or language requirements; and the couple do not need to show, at the time the non-EEA national applies for a Residence Card, that the marriage or civil partnership is subsisting: the Home Office has to prove that it was a sham at the point the couple married or entered into the civil partnership.

It is not mandatory for non-EEA family members to apply for a Residence Card to prove their entitlement to residence. However, if an EEA national is exercising Treaty rights in the UK, then a non-EEA national family member may apply to be issued with a Residence Card as confirmation of their right of residence (including the right to work) under EU law. The grounds on which a Residence Card application in a marriage or civil partnership case can be refused (aside from where the application is supported by forged documents or there are relevant public protection issues, etc) are where:

- The EEA spouse or civil partner is not present in the UK.
- The EEA spouse or civil partner is present in the UK, but not exercising Treaty rights.
- The couple are not lawfully married or in a civil partnership.

- The marriage or civil partnership is one of convenience (i.e. a sham). However, under EU case law, the Home Office must prove that the marriage or civil partnership was not genuine at the point it was entered into, regardless of whether it is subsisting at the point of application. The new scheme will help us to establish this.

c) Lack of a deterrent to sham marriages or civil partnerships

Despite effective enforcement action in some individual cases – and efforts to publicise this and the prosecutions and convictions associated with sham-related offences, e.g. perjury and facilitating illegal immigration or conspiring to do so – there is no clearly defined deterrent to entering into a sham marriage or civil partnership. This is because there is no basis on which to put in place a systematic process for identifying and investigating suspected sham cases and delivering an effective immigration response.

It is also not easy to keep track of repeated attempts by a person (or the same couple) to marry or enter into a civil partnership at different locations, even where registration officials and the Home Office suspect a sham. Although there are some measures in place to identify repeat notice applications, we have concerns that British Citizens and EEA nationals involved in sham marriage and civil partnership, and related criminality, can make repeated notice applications across the UK with different non-EEA partners and that non-EEA nationals use different identities in their attempts to enter into a sham.

d) Constraints on information-sharing

Registration officials are statutory officers with no common law powers and require legislation to undertake any information-sharing. Sections 24 and 24A of the 1999 Act enable registration officials to report specific information to the Home Office concerning suspected sham marriages and civil partnerships, but not other information which may relate to a sham (e.g. about couples seeking but failing to give notice) or information about suspected immigration offenders.

As regards disclosure of information for the purposes of the prevention and detection of crime, registration officials do not have the power to make bulk disclosures, e.g. of marriages and civil partnerships involving persons of a particular nationality, or to enable marriage and civil partnership notices to be cross-referenced against immigration applications made on the basis of marriage or civil partnership, to identify potential abuse.

We are also concerned that registration officials lack adequate statutory powers to share information with Local Authority colleagues, e.g. to prevent abuse of social housing or of Housing Benefit.

6. Potential benefits

The provisions in the Immigration Bill for a referral and investigation scheme will improve our ability to tackle sham marriages and civil partnerships and related abuse.

a) Deterrence

There will be a systematic process in place for countering sham marriages and civil partnerships in England and Wales. The new measures will mean that all proposed marriages and civil partnerships where a non-EEA national might gain an immigration advantage from the marriage or civil partnership will be referred to the Home Office. Where there are reasonable grounds to suspect a sham, the Home Office will be able to extend the notice period and investigate the genuineness of the couple's relationship. Where a sham is established, there will be clearer consequences for those involved. A non-EEA national may face enforcement action (e.g. curtailment of any extant leave, removal) and can expect any subsequent immigration application based on a sham marriage or civil partnership to be refused. Prosecution action may be taken against those involved in a sham-related offence, including any British Citizen or EEA national involved.

b) Improved risk assessment

The marriage and civil partnership information referred to the Home Office under the scheme will provide a much better picture of what is happening to improve risk assessment and enable a more effective immigration response. For the first time, the Home Office will have information, before they occur, about all those proposed marriages and civil partnerships taking place in England and Wales from which a non-EEA national might gain an immigration advantage. This will enable the Home Office to shape its response and target its resources more effectively.

c) Improved operational response

Currently, in terms of identifying and investigating potential sham couples – and collecting the evidence required as a basis for enforcement action or for the decision on a subsequent immigration application – the Home Office is heavily reliant on information from registration officials and others, which can vary in content and also timing. Some reports are made at the point notice is given, whilst others are made after the marriage or civil partnership has taken place, depending on when the person making the report developed reasonable grounds to suspect a sham.

The proposed referral and investigation scheme will mean that the Home Office is alerted to couples whose proposed marriage or civil partnership could lead to an immigration advantage, at a consistent and early stage, with a standardised level of information and evidence, to enable the Home Office to make a preliminary assessment, identify suspected sham cases for investigation and target its resources more effectively.

d) Tackling wider criminality and abuse

Appendix A highlights the current limitations registration officials face in sharing information with each other and with the Home Office, Local Authorities and others.²³ We therefore propose through the Immigration Bill to increase the scope for sharing information collected in the normal

²³ Appendix A, page 49.

course of registration officials' duties which is relevant to identifying and countering sham marriages and civil partnerships or wider criminality and abuse. This will include information received as part of the registration process for marriages, civil partnerships, births and deaths.

For example:

- Registration officials will be able to share all information gathered through the registration processes for marriages and civil partnerships (including the pre-notice and notice stages and at the ceremony), births and deaths:
 - with each other.
 - with the Home Office where relevant to the new referral and investigation scheme.
 - with the Home Office where immigration offences (e.g. overstaying) are suspected.
 - with others, e.g. the Police, HM Revenue and Customs, other registration officials and Local Authorities, where criminality is suspected.
- The Home Office, the Police and others will be able to share information with registration officials, where it would assist in tackling criminality or abuse.

7. Current marriage and civil partnership preliminaries

The following section provides information on the current preliminary procedures for marriage and civil partnership.

a) Civil preliminaries to marriage (including a non-Anglican religious ceremony) and civil partnership in England and Wales

- It is a legal requirement to give notice in advance of the marriage or civil partnership. Both parties must go to their local register office to give notice in person.
- If the proposed marriage or civil partnership is to take place in a different registration area, the couple are advised also to contact the local register office for that area before they give notice, to ensure that officials will be available to conduct the ceremony on the day they have chosen. Likewise, if they are seeking a non-Anglican religious ceremony, they may need, before they give notice, to liaise with the relevant authorised person who will be conducting the ceremony.
- Both parties must have lived in the area in which they wish to give notice for at least 7 full days immediately prior to giving notice. They must provide details of their name and surname, date of birth, occupation, place of residence, nationality, whether they have previously been married or formed a civil partnership, and the intended venue for the marriage or civil partnership. Evidence may be required of their name and surname, date of birth, nationality and, if they have previously been married or formed a civil partnership, of the ending of that marriage or civil partnership.
- The notice is publicly displayed for 15 days, after which time, as long as there is no legal impediment to prevent it, the certificate/Schedule for the marriage or civil partnership can be granted and is valid for one year. If there is a change in the venue where the marriage or civil partnership is to take place, a new notice must be given.

Requirements for persons subject to immigration control²⁴

- If either of the couple is subject to immigration control, they are required to give notice of marriage or civil partnership together in person at any designated register office (DRO). They must each show that they have fulfilled the 7-day residence requirement in their own registration district, which need not be that of the DRO.

b) Preliminaries to marriage in the Church of England and the Church in Wales

For those seeking to marry in the Church of England or the Church in Wales, the current preliminaries available are:

- Reading of banns
Banns are an announcement in church of a couple's intention to marry and a chance for anyone to put forward a reason why the marriage may not lawfully take place. Banns have to be read in the parish where each of the couple lives, as well as in the parish in

²⁴ As defined in section 19 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. This is currently a non-EEA national who requires leave to enter or remain in the UK under the Immigration Act 1971, whether or not leave has been given. It does not include a non-EEA national with an enforceable EU law right to enter, reside in or remain in the UK as a family member of an EEA national.

which the marriage is due to take place. Banns must be read out in church on three Sundays, and the minimum period for the process to be completed is 28 days. The marriage must take place within 3 months of the completion of the process.

- Common Licence

Where one of the people marrying is a non-EEA national, the Church’s guidance states that the clergy should not offer to publish banns and should instead direct the couple to apply for a Common Licence.²⁵ This is granted in the name of the Bishop of the Diocese in which the proposed marriage is to take place and he has discretion whether or not to grant it. To apply for a Common Licence, which is also available where a marriage has to take place more quickly than the banns process will allow, one of the couple must have had their usual residence within the parish or district of the church in which the marriage is due to take place during the 15 days immediately preceding the application, or have usually worshipped at the church, or have a statutory ‘qualifying connection’ with the parish. A Common Licence can only be granted for the marriage to take place within the diocese and is valid for 3 months.

- The Archbishop of Canterbury’s Special Licence

The Archbishop of Canterbury has powers to grant a special licence to marry, including in the following circumstances:

- Where a couple have a genuine connection with a church or chapel but are unable to satisfy the legal requirements to marry there;
- Where a couple wish to marry in their school or college chapel or in a chapel of the Houses of Parliament; or
- Where one of the couple is seriously ill and they wish to marry in hospital or at home.

- Superintendent registrar’s certificate

A minister – of the church or chapel in which the couple wish to marry – has discretion to accept a superintendent registrar’s certificate as an alternative to having banns read. This includes circumstances where it may not be appropriate for family or other reasons for banns to be read.

Table 4 provides the number and type of preliminaries followed by couples marrying in the Church of England and the Church in Wales.²⁶

Table 4: Marriage by preliminary route in the Church of England and the Church in Wales

	Church of England and Church in Wales				
Year	Superintendent Registrar's Certificate	Banns	Common Licence	Special Licence	Total
2007	773	49,729	4,201	2,398	57,101
2008	783	48,908	4,887	2,479	57,057
2009	506	50,010	4,471	1,249	56,236
2010	471	51,692	4,352	1,092	57,607
2011*	429	49,289	3,061	851	53,704**

* Figures for 2011 are provisional and subject to change.

** Includes an additional 74 cases recorded as “other/not stated”. Provisional total figure differs slightly from statistics published in Office for National Statistics, Marriages in England and Wales (Provisional), 2011, Table 1: Marriage Summary of Characteristics 2011, which was 53,700.

²⁵ <http://www.churchofengland.org/media/1228433/house%20of%20bishops%20guidance.pdf>

²⁶ Marriages in England and Wales (Provisional), 2011, Table 1: Marriage Summary of Characteristics 2011, Office for National Statistics

c) Preliminaries to marriage and civil partnership in Scotland and in Northern Ireland

Marriage and civil partnership are devolved matters; immigration is a reserved or excepted matter for the UK Government and Parliament. The Immigration Bill provides the Home Office with an order-making power to extend the proposed referral and investigation scheme to Scotland and to Northern Ireland. The scheme has an immigration purpose in preventing our immigration laws and rules being circumvented by means of sham marriages and civil partnerships. We intend to use this order-making power following discussion with the Scottish Government and the Northern Ireland Executive.

- In Scotland, marriage law is mainly provided for by the Marriage (Scotland) Act 1977. Civil partnerships are provided for by the Civil Partnership Act 2004.
- In Northern Ireland, marriage law is contained in the Marriage (Northern Ireland) Order 2003. Civil partnerships are provided for by the Civil Partnership Act 2004.
- In Scotland and in Northern Ireland, there is scope to give notice of marriage or civil partnership by post rather than in person. This helps to facilitate legitimate marriage tourism which we support and want to protect. Around a quarter of all marriages taking place in Scotland are between couples who do not reside permanently in Scotland.²⁷
- The marriage and civil partnership registration authorities across the UK continue to work together closely, and in partnership with the immigration directorates of the Home Office and the Police, to tackle sham marriages and civil partnerships.
- The Scottish Government shares our concern about sham marriages and is already taking action in legislation before the Scottish Parliament to tackle this form of abuse. The Marriage and Civil Partnership (Scotland) Bill, introduced in the Scottish Parliament on 26 June 2013, includes provision to require specified nationality evidence of the intended parties to a marriage or civil partnership, including as a means of combating sham marriages, and to increase the notice period from 14 days to 28 days, reflecting the length of time it can take to check that a person is eligible to marry or enter into a civil partnership in Scotland.
- The Home Office has already held some preliminary discussions with the Scottish Government and the Northern Ireland Executive about how the new referral and investigation scheme would work in Scotland and Northern Ireland. Those discussions will continue in parallel with the Parliamentary passage of the Immigration Bill.

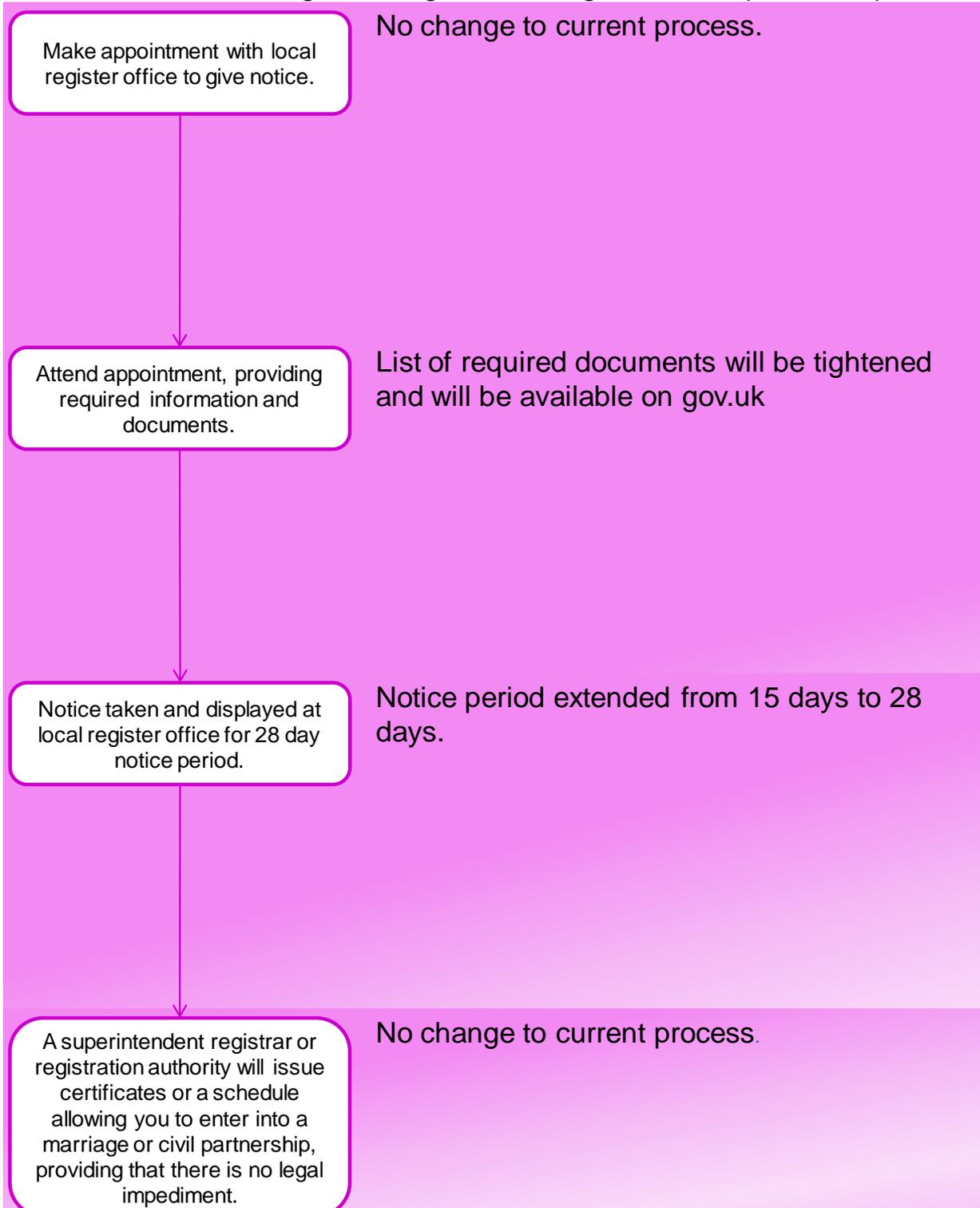
²⁷ <http://www.gro-scotland.gov.uk/statistics/theme/vital-events/general/ref-tables/2011/section-7-marriages-and-civil-partnerships.html>

8. Proposed marriage and civil partnership preliminaries

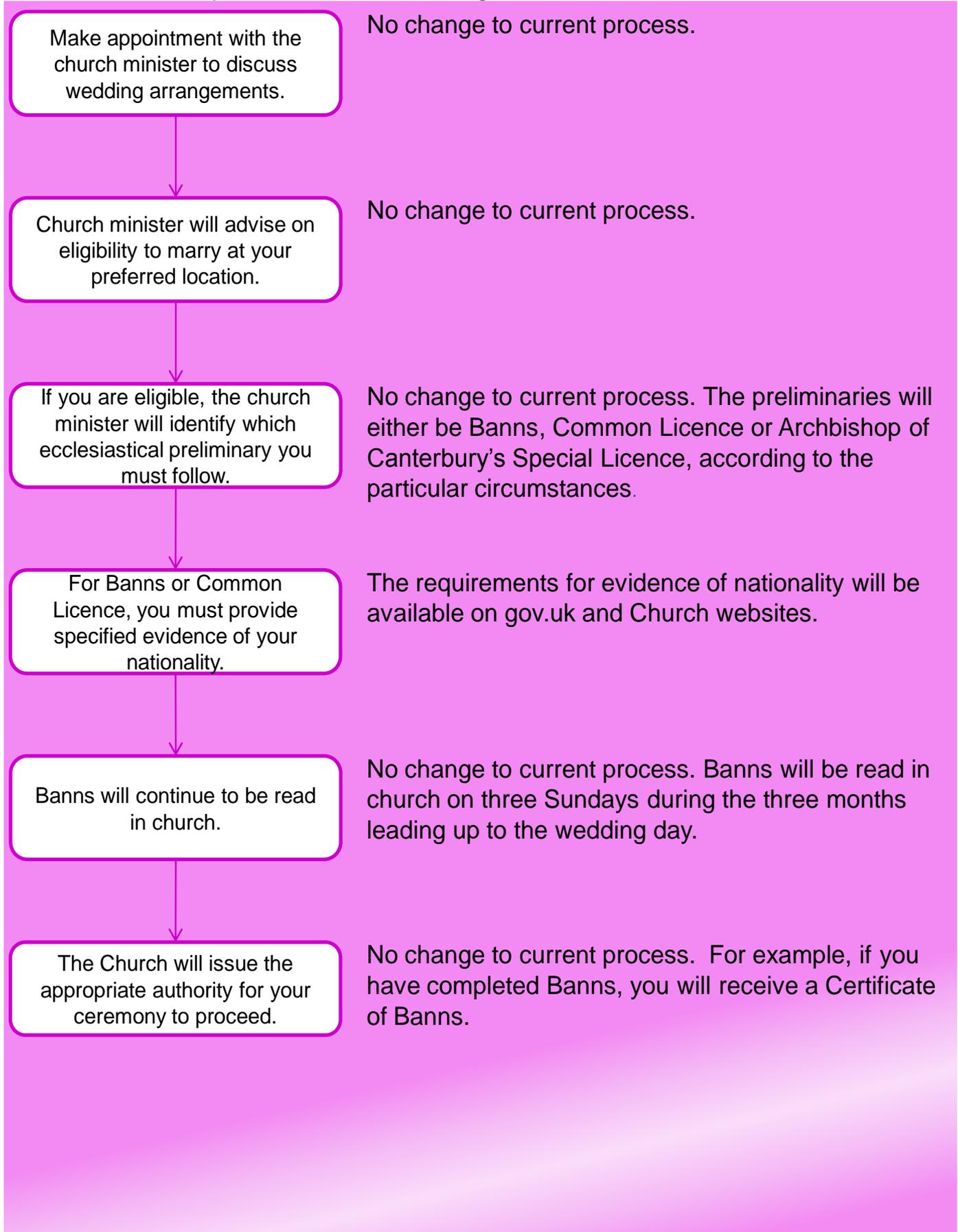
The following section provides information on what the notice procedure for all marriages following civil preliminaries and all civil partnerships would look like in England and Wales, under the changes contained in the Immigration Bill.

a) Overview of notice process and changes to current procedure

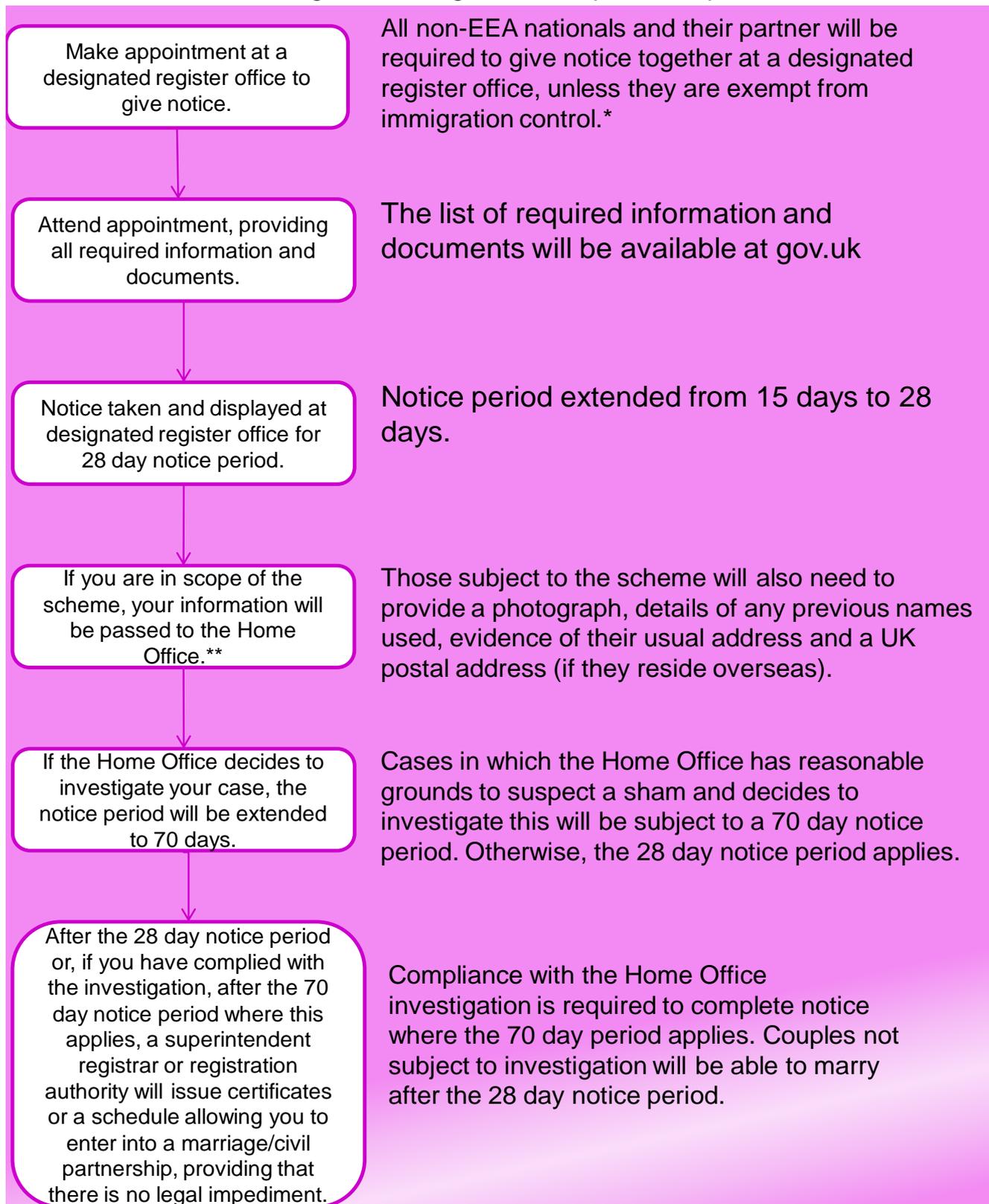
1. Both my partner and I are British Citizens/EEA nationals and we want a civil or a non-Anglican religious marriage, or a civil partnership



2. Both my partner and I are British Citizens/EEA nationals and we want to marry in the Church of England or the Church in Wales



3. I and/or my partner are non-EEA nationals and we want a civil or a non-Anglican religious marriage, or a civil partnership



*See Appendix C, page 55 for details of who is exempt from immigration control.

** See Section 9, page 31 for details of who will be in scope of the referral scheme.

4. I and/or my partner are non-EEA nationals and we want to marry in the Church of England or the Church in Wales

Make appointment with the church minister to discuss wedding arrangements.

No change to current process

The church minister will advise on eligibility to marry at your preferred location.

No change to current process

If you are eligible, you will be required to complete civil preliminaries before you can get married.

You will not be able to marry by Banns or Common Licence

You must both present your superintendent registrar's certificates to the church minister, as evidence you have completed civil preliminaries.

Your marriage will not proceed without superintendent registrar's certificates for each party

Your marriage may proceed subject to the agreement of the relevant church minister.

No change to current process

b) Changes to Anglican ecclesiastical preliminaries available to non-EEA nationals

We propose to remove access to Banns or the Common Licence process for couples where one or both of the parties is a non-EEA national, and require them instead to complete civil preliminaries before being able to marry in the Anglican Church. This will help to ensure that all couples within the scope of the referral scheme are correctly identified (by registration officials) and referred to the Home Office. After the civil preliminaries to the marriage have been completed, such couples will be able to marry in the Anglican Church in the same way as couples not within the scope of the scheme.

British Citizens and EEA nationals will have to provide specified evidence of their nationality in order to marry by Banns or the Common Licence process.

c) Changes to information and documents required when giving notice of marriage following civil preliminaries or civil partnership

We propose to require additional information and documents from those giving notice in England and Wales of marriage following civil preliminaries or civil partnership. The documents which will be accepted, including as evidence of nationality and (for non-EEA nationals) immigration status, will be specified in regulations. This is a change from the current position, where a wide variety of documents can be used as evidence of identity and nationality when giving notice. It will help to reduce sham marriages and civil partnerships involving false identity or nationality. Our current thinking as to which documents will be acceptable is at Appendix E.

The requirements for information and evidence which we propose are:

1. All nationalities – including British Citizens, EEA nationals and Swiss nationals and non-EEA nationals will need to state, and provide specified evidence of, their:
 - Full name.
 - Date of birth.
 - Place of residence.
 - Nationality.
 - Ending of any previous marriage or civil partnership (where applicable).

All of these (except the last, which can be provided later but before the issue of the certificates/Schedule) will have to be provided before the person will be able to give notice.

A person unable to provide specified evidence of their nationality will need to contact the Home Office, including HM Passport Office (if they are a British Citizen), or the relevant Embassy or High Commission, to obtain this evidence before they can give notice. A person who is unwilling to contact their Embassy or High Commission, e.g. owing to protection issues, should contact the Home Office for advice.

2. All non-EEA nationals will also be required to provide:
 - Details of any previous names, and previous or current aliases, used by them or their partner.

3. Non-EEA nationals with settled status,²⁸ an EU law right of permanent residence or a valid visa for the purposes of the proposed marriage or civil partnership, or a person exempt from immigration control

Non-EEA nationals who have settled status, an EU law right of permanent residence in the UK, or a valid marriage or civil partnership visa, will not be subject to the referral and investigation scheme (unless their partner is subject to this requirement), but will be required to give notice together with their partner at a designated register office. Individuals who are exempt from immigration control,²⁹ will not be subject to the referral and investigation scheme, and will not be required to give notice at a designated register office (unless their partner is subject to either requirement).

In addition to the requirements listed at 1 and 2 above, all such non-EEA nationals will need to state and give details of their immigration status in order to give notice. Those with a valid marriage or civil partnership visa will also need to provide specified photographs of both parties in order to give notice.

In addition to the requirements listed at 1 and 2 above, all such non-EEA nationals will need to present specified evidence of their immigration status, to show that they are out of scope of the referral and investigation scheme. If they do not, notice can be taken (if the additional information and evidence required at 4 below is provided), but they will be referred to the Home Office under the scheme.

Our current thinking is that non-EEA nationals who say they have:

- Settled status in the UK will need to provide a valid passport and either:
 - A valid vignette endorsed “Indefinite Leave to Enter/Remain” (contained within the passport; a “stamp” in the passport will not be sufficient and will lead to referral to the Home Office under the scheme); or
 - A separate Biometric Residence Permit endorsed “Indefinite Leave to Enter/Remain”.
- An EU law right of permanent residence in the UK will need to provide a valid passport and an EEA Permanent Residence Card.
- A valid visa for the purpose of the proposed marriage or civil partnership will need to provide:
 - A valid passport containing that valid visa or other authorisation for the proposed marriage or civil partnership.
- Exemption from immigration control will need to provide a valid passport and:
 - A Right of Abode/Certificate of Entitlement endorsement contained within the passport; or
 - A valid vignette endorsed with their exempt status; or
 - Other specified evidence of that status (as will be set out in regulations).

²⁸A person settled in the UK is defined in section 33(2A) of the Immigration Act 1971 as being “ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain”. This will mean that they have Indefinite Leave to Enter or Remain in the UK (ILE or ILR) under the Immigration Rules.

²⁹ Appendix C, page 55.

4. Other non-EEA nationals

Other non-EEA nationals – who have any other form of visa, limited leave to enter or remain in the UK or an EU law right of temporary residence in the UK, or who have no immigration status in the UK – will be required to give notice together with their partner at a designated register office and will be subject to the referral and investigation scheme.

In addition to the requirements listed at 1 and 2 above, all such non-EEA nationals will be required to state that they do not have one of the forms of immigration status listed at 3 above in order to give notice. They may provide information and evidence about any immigration status they do have and, if they do, the details of this will be recorded by the registration official. If they do not, they will still be able to give notice, provided that other requirements are met.

In addition, they will be required to provide the following in order to give notice:

- Specified photographs of both parties.
- Their usual address and specified evidence of this. If this usual address is outside the UK, they will also have to provide a UK postal address.
- Their partner's usual address and specified evidence of this. If this usual address is outside the UK, they will also have to provide a UK postal address.

9. Referral and investigation scheme

The following section provides information on those couples who will be in scope of the referral and investigation scheme contained in the Immigration Bill.

a) **Couples in scope of the scheme**

All proposed marriages following civil preliminaries and all civil partnerships in England and Wales involving at least one party who is a non-EEA national without settled status or an EU law right of permanent residence in the UK, a marriage or civil partnership visa (for the proposed marriage or civil partnership) or exemption from immigration control, will be referred to the Home Office under the scheme.

This means that the scheme will apply to those couples where one or both parties could gain an immigration advantage from the marriage or civil partnership. It will therefore not apply to couples where both parties can provide specified evidence that they are British Citizens, EEA nationals, or non-EEA nationals with settled or permanent resident status in the UK or exemption from immigration control.

Holders of marriage or civil partnership visas will also not be subject to the referral scheme, as their application for such a visa will have been assessed by the Home Office prior to issue.

Those exempt from immigration control, e.g. with a Right of Abode in the UK, will be defined in regulations, together with the specified evidence of their exempt status which they must provide when giving notice. They will not be in scope of the scheme or required to give notice at a designated register office, unless their partner is subject to either requirement. More information on our current thinking as to who will be exempt from immigration control for the purposes of the scheme is at Appendix C.

The table below summarises who will be in and out of scope of the referral and investigation scheme.

Table 5: Summary of those in scope of the referral and investigation scheme

Status of each partner		Partner 2					
		British Citizen	EEA/Swiss national	Non-EEA exempt from immigration control*	Non-EEA with settled status/permanent residence	Non-EEA with valid visa for marriage/civil partnership	Other non-EEA
Partner 1	British Citizen	OUT	OUT	OUT	OUT	OUT	IN
	EEA/Swiss national	OUT	OUT	OUT	OUT	OUT	IN
	Non-EEA exempt from immigration control*	OUT	OUT	OUT	OUT	OUT	IN
	Non-EEA with settled status/permanent residence	OUT	OUT	OUT	OUT	OUT	IN
	Non-EEA with valid visa for marriage/civil partnership	OUT	OUT	OUT	OUT	OUT	IN
	Other non-EEA	IN	IN	IN	IN	IN	IN

* See Appendix C.

b) Where to give notice

For marriage following civil preliminaries or civil partnership, all non-EEA nationals, except those exempt from immigration control and able to provide specified evidence of this status, will have to give notice in person, together with their partner, at any designated register office (DRO) in England and Wales.

This will include those non-EEA nationals intending to marry in the Church of England or the Church in Wales, who should first speak to the minister at the church where they intend to get married to check whether they are eligible to get married there.

Non-EEA nationals exempt from immigration control and able to provide specified evidence of this status will be required, as now, to give notice at their local register office, in the same way as British Citizens and EEA nationals, unless their partner is subject to the DRO requirement.

c) Giving notice

All persons giving notice of marriage following civil preliminaries or civil partnership, whatever their nationality or immigration status, will have to state, and provide specified evidence of, their name, date of birth, place of residence, nationality and, if they have previously been married or

in a civil partnership, evidence of the ending of that marriage or civil partnership. They will also have to state their occupation and the intended venue for the marriage or civil partnership.

Where one (or both) of the couple is a non-EEA national out of scope of the referral and investigation scheme, they will be required to provide specified evidence of their immigration status when giving notice, as described in Section 8, otherwise they will be considered in scope.

Where one (or both) of the couple is a non-EEA national in scope of the referral and investigation scheme, both parties will be required to provide some additional information and specified evidence in order to give notice, as described in Section 8.

d) Referral

Where one (or both) of the couple is a non-EEA national in scope of the scheme, registration officials will be required to refer the proposed marriage or civil partnership to the Home Office. They will have no discretion as to whether to refer a proposed marriage or civil partnership where the couple are in scope of the scheme.

In making a referral to the Home Office under the scheme, registration officials will be required to provide specified information and evidence (or a copy of it) which the couple have provided. They will also be required, as now, to report to the Home Office any reasonable grounds for suspicion that the proposed marriage or civil partnership is a sham.

Registration officials will be required to inform a couple in scope of the scheme that their proposed marriage or civil partnership has to be referred to the Home Office, what the consequences of this may be, and how the couple must notify the Home Office of any change in address. However, they will have no control over whether the Home Office decides to extend the notice period from 28 days to 70 days in order to investigate whether a proposed marriage or civil partnership referred under the scheme is a sham.

10. Decision whether to investigate

This section provides information on our current thinking as to how the Home Office may initially assess proposed marriages and civil partnerships referred to it under the scheme. This process will enable identification of cases where the Secretary of State has reasonable grounds to suspect that the proposed marriage or civil partnership is a sham and inform the Secretary of State's decision whether to investigate the case. Information on the approach taken to identifying cases for investigation will be published, as far as operationally feasible.

Overview

Where a proposed marriage or civil partnership is referred under the scheme, the Home Office will:

- Check relevant details against immigration and other records to establish or confirm relevant information about identity and immigration status; and
- Assess the referral against intelligence/evidence-based risk profiles and factors to identify whether the case is a high risk of being a sham. This will also take into account any section 24/24A report from the registration official of any reasonable grounds to suspect a sham.

This process will help to identify cases where there are reasonable grounds to suspect a sham and inform a decision whether to extend the notice period from 28 days to 70 days to enable the proposed marriage or civil partnership to be investigated.

This process may be partly automated, in order to help deal with the volume of cases which may be referred. (Around 35,000 marriages and civil partnerships a year are estimated to involve a non-EEA national,³⁰ though some of these will be out of scope of the referral and investigation scheme). However, it will not be a wholly automated process. We recognise, for example, that section 24/24A reports will need to be individually assessed to check that they contain credible and relevant information. It may also be necessary for individual case records to be examined, to ensure their relevance to a decision whether to investigate a proposed marriage or civil partnership under the scheme.

Where any automated process – which, as described above, may also include an individual assessment of some of the information relating to the referral – identifies a case where there may be reasonable grounds to suspect a sham, the case will then be manually reviewed. This assurance check will also consider any exceptional factors in the case. Only once this manual review has been completed and it is confirmed that there are reasonable grounds for the Secretary of State to suspect that the proposed marriage or civil partnership is sham, will a decision be taken to extend the notice period to 70 days and investigate the genuineness of the couple's relationship.

Record checks

Home Office records of immigration applications and other information may be relevant to identifying suspected sham cases. For example, we will check whether a visa held by a non-EEA national remains valid. We may check whether a non-EEA national referred under the scheme has any legal basis to be in the UK. We may also look at whether the individual's

³⁰ Appendix A, page 44.

immigration history means they are, on the basis of our objective analysis of sham cases, a potentially higher risk of entering into a sham marriage or civil partnership.

Assessment against intelligence/evidence-based risk profiles and factors

The referral will also be assessed against intelligence/evidence-based risk profiles and factors to identify whether it is at high risk of being a sham marriage or civil partnership, e.g. that one or both parties:

- Is of a nationality at high risk of involvement in a sham, on the basis of objective information and intelligence about sham cases.
- Holds a visa in a category linked by objective information and intelligence to sham cases.
- Has no immigration status or holds leave which is due to expire shortly.
- Has had an application to remain in the UK refused.
- Has previously sponsored another spouse or partner to enter or remain in the UK.
- Is or has been the subject of a credible section 24/24A report, which explains for example how the couple could not communicate in a common language and did not know basic information about each other.

The profiles and factors will be based on intelligence and evidence, will be kept under review and can be expected to evolve over time in line with the latest intelligence/evidence-based risk assessment. They will be drawn initially from recent section 24/24A reports, recent sham-based enforcement and prosecution cases and recent applications refused on the basis that the relationship is not genuine.

Equality Act 2010

Consideration will be given, in light of the detail of the processes to be put in place, as to whether a Ministerial authorisation under Schedule 3, Part 4, paragraph 17(4)(a) of the Equality Act 2010 is necessary to ensure that any nationality-based risk profiling used as part of the process for identifying suspected sham cases for investigation under the scheme is properly authorised. That consideration will learn from the operation of the procedures for border control and enforcement in place under the Equality (Transit Visa, Entry Clearance, Leave to Enter, Examination of Passengers and Removal Directions) Authorisation 2011, made under that provision of the 2010 Act.

The 2011 authorisation permits greater scrutiny of particular nationalities in the entry clearance process, at the border or when prioritising individuals subject to removal directions. The authorisation applies where there is sufficient statistical evidence and/or specific intelligence or information to justify a difference in treatment on the basis of a person's nationality.³¹

For example, the authorisation for nationality-based discrimination in the scrutiny of applications for transit visas and entry clearance is applied where the following conditions are met:

“(a) there is statistical evidence showing that in at least one of the preceding three months, the total number of UK visa refusals, adverse decisions or breaches of the

³¹www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter1/section11/annexee81?view=Binary

immigration laws and/or the Immigration Rules by persons of that nationality exceeds 150 in total and 50 for every 1,000 admitted persons of that nationality; or

(b) there is specific intelligence or information which has been received and processed in accordance with the [relevant] Code of Practice for the recording and dissemination of intelligence material and which suggests that a significant number of persons of that nationality have breached or will attempt to breach the immigration laws and/or the Immigration Rules; or

(c) there is statistical evidence showing an emerging trend of UK visa refusals, adverse decisions or breaches of the immigration laws and/or the Immigration Rules by persons of that nationality that exceeds the criteria expressed in paragraph (a) within a timeframe shorter than a single month.”

Where the Home Office decides not to investigate

Where the Home Office decides not to investigate a proposed marriage or civil partnership referred to it under the scheme:

- The Home Office will notify both parties by post at the UK address(es) provided when giving notice (subject to any change the couple have since notified to the Home Office). The notification will include confirmation that the couple will be subject to a 28 day notice period.
- The Home Office will also notify the relevant superintendent registrar or registration authority/authorities for the proposed marriage or civil partnership. This will mean that, if other requirements are met, they will then be able to issue their certificates/Schedule after the 28-day notice period has been completed.

If the couple are intending to marry in the Church of England or the Church in Wales, they will need to present the superintendent registrar’s certificates to the minister to evidence that they have completed the notice process under civil preliminaries and can get married.

Where the Home Office decides not to investigate a proposed marriage or civil partnership referred to it under the scheme, it may use any information or evidence relating to the referral in considering any subsequent immigration application based on the marriage or civil partnership.

11. Investigation

This section provides information on our current thinking as to the processes and actions that will follow a decision to investigate a proposed marriage or civil partnership referred under the scheme.

Decision to investigate

Where the Home Office considers that there are reasonable grounds to suspect that a proposed marriage or civil partnership referred under the scheme is a sham and decides to investigate the genuineness of the couple's relationship:

- The Home Office will notify both parties by post at the UK address(es) provided in giving notice (subject to any change the couple have since notified to the Home Office). The notification will include confirmation that the couple will be subject to a 70 day notice period and the date on which this period will end.
- The Home Office will also notify the superintendent registrar that referred the proposed marriage and the relevant registration authority/authorities for the civil partnership. This will mean that they will not be able to issue their certificates/Schedule until they have been further notified by the Home Office that the couple have complied with the investigation and until the 70-day notice period has expired.
- Subject to regulations made under the scheme, the notification will set out requirements with which the couple must comply in relation to the investigation, e.g. to provide further documentary evidence relating to their relationship and/or to contact the Home Office to arrange an interview or home visit.
- The notification will include a contact point at the Home Office for any queries the couple may have. They will be reminded that they must notify the Home Office of any change in their address during the 70-day notice period and of how they must do this.
- The notification will set out the consequences of failing to comply with the investigation, e.g. not attending an interview or not providing required information or evidence.

Complying with the investigation

A couple subject to an investigation under the scheme will be required to comply with it in order to complete the notice process.

If the couple comply with the investigation, they, and the relevant superintendent registrar or registration authority/authorities, will be so notified by the Home Office before the end of the 70-day notice period. Once that period has been completed, the superintendent registrar or registration authority will be able to issue the couple with the certificates/Schedule and they will then be able to marry or enter into a civil partnership.

If one or both of the couple fail unreasonably to comply with the investigation, e.g. by failing to attend an interview or provide relevant information or documents, they will have failed to complete the marriage or civil partnership notice process. They and the relevant superintendent registrar or registration authority/authorities will be so notified by the Home Office before the end of the 70-day notice period, together with the reasons for this decision. Once that period

has been completed, the superintendent registrar or registration authority will not be able to issue the couple with the certificates/Schedule and they will not then be able to marry or enter into a civil partnership. They will have to give notice again if they still wish to marry or enter into a civil partnership.

Non-compliance

Our current thinking is that non-compliance will be limited to circumstances – to be set out in regulations made under the scheme – in which, following a written request from the Home Office (or a written, electronic or telephone reminder of such a request), one or both of the couple:

- Fail to submit relevant information and/or evidence, specified in the request, to the Home Office by a date specified in the request.
- Fail to contact the Home Office by a date specified in the request to arrange an interview or home visit, to take place by a date specified in the request.
- Fail to attend an arranged or rearranged interview, or to facilitate and attend an arranged or rearranged home visit, without reasonable prior notice. And/or
- Fail to notify the Home Office of a change of address during the 70-day notice period.

Our current thinking is that non-compliance will not be established where:

- There are compelling or compassionate reasons why it would be unduly harsh for the couple not to be issued with the certificates/a Schedule to enable them to marry or enter into a civil partnership. We will publish clear guidance on this.
- There are reasons beyond the couple's control which prevented them from complying, e.g. a postal or transport strike. Or
- There has been administrative failure by the Home Office or another government department.

Other considerations we have in mind in relation to non-compliance are that:

- Non-compliance can involve one party or both.
- An interview or home visit may only be rearranged once, unless any of the reasons in the last paragraph apply, to prevent a couple frustrating the process by rescheduling appointments unnecessarily.

A couple must not be able to frustrate the process by withholding compliance until near the end of the 70-day notice period. We will consider whether it is necessary to stipulate in regulations made under the scheme a standard cut-off date by which a couple will need to have complied fully with the investigation process. The couple would be advised of this cut-of date in the information provided to them about the scheme. This would allow enough time for a decision about compliance to be made and for notification to be received by the superintendent registrar or registration authority/authorities, and the couple, by Day 70 at the latest, as to whether the certificates/a Schedule can be issued.

Action following an investigation

Provided that the couple have complied with the investigation, they will be able to proceed with the marriage or civil partnership regardless of any conclusions reached by the Home Office about the genuineness of their relationship. Before the end of the 70-day notice period, the Home Office will notify the couple and the relevant superintendent registrar or registration authority that, on the expiry of the 70-day notice period, the superintendent registrar or registration authority can issue their certificates/Schedule, if other requirements are met. This will mean that the couple can then proceed with their marriage or civil partnership.

If, following an investigation, the Home Office is satisfied on the balance of probabilities that the proposed marriage or civil partnership is a sham, it may take the following action:

- Enforcement action against any non-EEA national involved (curtailment of any extant leave; removal of any overstayer or illegal entrant). The enforcement decision, which may be made and served during or after the 70-day notice period, will set out the reasons and evidence why the Home Office is satisfied that the marriage or civil partnership is a sham. The enforcement decision will be subject to any appeal.
- Refusal of any subsequent immigration application based on a sham marriage or civil partnership, although a fresh assessment of the genuineness of the couple's relationship will be made at that stage. Subject to that, the refusal decision will set out the reasons and evidence why the Home Office is satisfied that the marriage or civil partnership is a sham. The refusal decision will be subject to any appeal.
- Prosecution action (in consultation with the Crown Prosecution Service) against individuals complicit in the sham for any criminal offence, such as perjury or facilitating illegal immigration, including any British Citizen, EEA national or non-EEA national involved as a facilitator or other third party.

12. Example scenarios

This section provides example scenarios of couples giving notice of marriage or civil partnership in England and Wales under the changes contained in the Immigration Bill:

A and B

A is a British Citizen who lives in Cornwall. B is a British Citizen who lives in London. They would like their civil partnership ceremony at a stately home which is an approved venue for such ceremonies.

They will each need to go to their local register office to give notice. They will each have to provide specified evidence of their name, date of birth, place of residence and nationality in order to give notice. They will also have to provide proof of the ending of any previous civil partnership or marriage where applicable.

Once they have both given notice, they will be subject to a 28 day notice period. Once this has been completed, A and B will be issued with a Schedule, provided that there is no legal impediment to this. They will then be able to enter into a civil partnership.

C and D

C and D are both British Citizens who live in Essex. They would like to get married in their local register office.

They will need to go to their local register office to give notice. They will each have to provide specified evidence of their name, date of birth, place of residence and nationality in order to give notice. C has been married before and will have to provide specified evidence of his divorce before the marriage can take place.

Once they have given notice, they will be subject to a 28 day notice period. Once this has been completed, C and D will be issued with superintendent registrar's certificates, provided that there is no legal impediment to this. They will then be able to get married.

E and F

E is a British Citizen and F is a French national. E lives in Surrey and F is a student in London. They would like to get married at the mosque where they both worship, which is registered for the solemnisation of marriages according to the rites of the Muslim religion.

They will each need to go to their local register office to give notice. They will each have to provide specified evidence of their name, date of birth, place of residence and nationality in order to give notice. They will also have to provide proof of the ending of any previous marriage or civil partnership where applicable.

Once they have both given notice, they will be subject to a 28 day notice period. Once this has been completed, E and F will be issued with superintendent registrar's certificates, provided that there is no legal impediment to this. They will then be able to get married.

G and H

G is a British Citizen and H is a Japanese national with settled status (Indefinite Leave to Remain) in the UK. They live in Cardiff. They would like an Anglican marriage in the church, outside the parish in which they live, in which H was baptised.

Having confirmed with the minister for that church that they are eligible to get married there, G and H will have to give notice at a designated register office. They will each have to provide specified evidence of their name, date of birth, place of residence and nationality in order to give notice, and H will have to provide specified evidence of her immigration status to show that she is exempt from the referral scheme. They will also have to provide proof of the ending of any previous marriage or civil partnership where applicable, and H will have to provide any aliases or previous names used.

Once they have both given notice, they will be subject to a 28 day notice period. Once this has been completed, G and H will be issued with superintendent registrar's certificates, provided that there is no legal impediment to this. They will present the certificates to the minister for the church where they wish to marry as evidence that they have completed civil preliminaries which apply in their case.

I and J

I and J are British Citizens and live in Derbyshire. They would like an Anglican marriage in their local parish church.

They should contact the minister and will need to show the minister their British passports as evidence of their nationality. If other relevant requirements are met, they will be able to follow the Banns process. Provided there is no legal impediment to their marriage, this will be able to take place once the Certificate of Banns has been issued.

K and L

K and L are US nationals. K has lived in London for six years and has settled status in the UK (Indefinite Leave to Remain). L lives in California. They would like to get married in an Anglican ceremony in a church in K's grandmother's home village in Staffordshire. Once they are married, K plans to leave the UK and return to the US with L.

K will need to contact the minister for the parish church in question, to check whether the couple are eligible to marry there. If they are, L will need to apply in the US for a UK visa as a visitor for marriage and meet the requirements for this to be issued, before travelling to the UK.

Once L has arrived in the UK, they will need to attend a designated register office together and provide specified evidence of their name, date of birth, place of residence (L will need to wait until she has resided in a UK registration district for 7 days before they give notice), nationality and immigration status, plus photographs of themselves, in order to give notice. They will also have to provide proof of the ending of any previous marriage or civil partnership where applicable, and details of any aliases or previous names used.

As neither is in scope of the scheme, K and L will be subject to a 28 day notice period. Once this has been completed, they will be issued with superintendent registrar's certificates, provided that there is no legal impediment to this. They will present the certificates to the minister for the church where they wish to marry as evidence that they have completed civil preliminaries which apply in their case.

M and N

M and N are both Australian nationals who have been living in Manchester for nearly two years. M holds a student visa and N a work permit, both of which will remain valid for more than a year. They would like to get married at a hotel which is an approved venue for civil marriage.

In order to give notice M and N will need to attend a designated register office together and provide specified evidence of their name, date of birth, place of residence and nationality, plus photographs of themselves and other information and evidence about their usual address (if different from their place of residence) and information about any aliases or previous names used. They will also have to provide proof of the ending of any previous marriage or civil partnership where applicable. They volunteer details of their immigration status, which the superintendent registrar records.

M and N are in scope of the scheme and so the superintendent registrar refers the proposed marriage to the Home Office. They will be subject to a 28 day notice period, which will be extended to 70 days should the Home Office consider that there are reasonable grounds to suspect their proposed marriage is a sham and decide to investigate the case.

After assessing the referral, the Home Office decides not to investigate the case. It informs M and N, and the superintendent registrar, accordingly.

Once the 28 day notice period has been completed, M and N will be issued with superintendent registrar's certificates, provided that there is no legal impediment to this. They will then be able to get married.

O and P

O is a British Citizen and P is a Mexican national. O lives in Brighton and P lives in Liverpool. P has been studying in the UK for almost three years and holds a student visa which expires in three months. They would like to get married in O's local parish church.

They will need to contact the minister for the church in question, to confirm that they are eligible to marry there. Then, as P is a non-EEA national, they will not have access to Banns or the Common Licence process, but will instead have to complete civil preliminaries.

In order to give notice O and P will need to attend a designated register office together and provide specified evidence of their name, date of birth, place of residence and nationality, plus photographs of themselves and other information and evidence about P's usual address (if different from his place of residence) and information about any aliases he has or previous names he has used. In order for them to give notice, P has to state that he does not have the immigration status which would exempt them from the scheme. They will also have to provide proof of the ending of any previous marriage or civil partnership if applicable.

O and P are in scope of the scheme and so the superintendent registrar refers the proposed marriage to the Home Office. They will be subject to a 28 day notice period, which will be extended to 70 days should the Home Office consider that there are reasonable grounds to suspect their proposed marriage is a sham and decide to investigate the case.

Sham marriage and civil partnership – evidence and analysis

This Appendix provides background information and evidence relating to the estimated scale of sham marriages and civil partnerships in the UK. It also shows the impact of current measures to tackle sham, as well as the obstacles faced by the Home Office.

1. Estimate of the scale of sham marriages and civil partnerships

In order to estimate the scale of sham marriages and civil partnerships, we have made assumptions based on statistics relating to marriage and civil partnership registration, the volume of section 24/24A reports, and feedback from immigration caseworkers dealing with applications made on the basis of marriage or civil partnership. This has resulted in an estimate that 4,000 to 10,000 applications per year³² to the Home Office are made on the basis of a sham marriage or civil partnership. This broad estimate should be approached with caution, but it does provide an indication of the potential scale of abuse. Section 1b) below sets out the basis for the estimate.

a) Marriages and civil partnerships with a potential for immigration advantage

Marriage data in Scotland, unlike in England and Wales, include data on country of birth. In 2011, 29,135 marriages took place in Scotland. Of these, approximately 3,600 involved an individual not born in the UK or another EU country.³³

Country of birth does not always reflect nationality: it is those with non-EEA nationality who may seek to gain an immigration advantage from marriage (or civil partnership). The number of marriages involving an individual born outside the EU was adjusted to reflect this, using the relative EU and non-EU proportions for both country of birth and nationality from the 2011 annual population survey (APS) data for Scotland.³⁴ The APS finds that around 4 per cent of the population of Scotland were born outside the EU, but around 2 per cent are nationals of a country outside the EU. This produced a revised estimate of approximately 2,000 marriages in Scotland with a potential for immigration advantage (around 8 per cent of all marriages in Scotland in 2011). We acknowledge that this figure would also include non-EEA nationals with settled or permanent resident status in the UK, for whom a possible immigration advantage would not result if they entered into a marriage with a British Citizen, an EEA national or a non-EEA national with similar immigration status. However, the available data do not enable us to extract this category of persons from the estimate.

This proportion has been used to estimate the scale of such marriages and civil partnerships in the UK as a whole. It would not be appropriate to simply apply the 8 per cent estimate to all UK marriages and civil partnerships, because of the different proportion of non-EEA nationals in England, Wales and Northern Ireland compared with Scotland. The 8 per cent estimate for Scotland was therefore scaled up in line with APS data for the rest of the UK. This equated to

³² Home Office (2013) Tackling Sham Marriage Impact Assessment HO0090, footnote 2, page 3.

³³ See Vital Events Reference Tables 2011, Table 7.8: Marriages, by country of birth of husband and country of birth of wife, Scotland, 2011, at <http://www.gro-scotland.gov.uk/statistics/theme/vital-events/general/ref-tables/2011/section-7-marriages-and-civil-partnerships.html>.

³⁴ See Table 1.1: Estimated population resident in the United Kingdom, by country of birth and Table 2.1: Estimated population resident in the United Kingdom, by nationality at <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/august-2012/population-by-country-of-birth-and-nationality.xls>. This data source was used rather than the 2011 Census data, owing to the lack of available data for Scotland.

an approximate 12 per cent scale estimate for England, Wales and Northern Ireland, as well as for the UK as a whole.

This percentage (12 per cent) was then applied to the provisional overall number of marriages in the UK in 2011 (around 285,400),³⁵ giving an estimated 34,000 marriages a year which may involve a non-EEA national for whom marriage could be advantageous in immigration terms. Applying the same estimate of 12 per cent to the total number of civil partnerships in the UK in 2011 (6,795) gives a figure of 815. Combining the figures provides an overall estimate of around 35,000 marriages and civil partnerships per year involving a non-EEA national for whom the marriage or civil partnership may be advantageous in immigration terms.

b) Estimate of the number of immigration applications based on a sham marriage or civil partnership

Registration officials report a suspected sham marriage or civil partnership to the Home Office using a section 24/24A report. In 2011, approximately 1,500 section 24/24A reports (which do not include Anglican marriages) were received in England and Wales. Dividing the number of section 24/24A reports by the estimated number of marriages and civil partnerships where one party may stand to gain an immigration advantage (calculated as around 12 per cent of the 174,600 civil marriages and civil partnerships in England and Wales in 2011)³⁶ resulted in an estimate of the percentage of marriages and civil partnerships which generated a section 24/24A report (and were therefore suspected of being a sham) as approximately 8 per cent.

In 2011, the Home Office received around 50,000 applications to stay in the UK on the basis of marriage or civil partnership (including leave to remain applications and EEA residence card applications). Applying a sham approximation of 8 per cent gives an estimate of approximately 4,000 applications based on a sham marriage or civil partnership. It is of note that in 2004, immediately prior to the introduction of the Certificate of Approval scheme, the Home Office received 3,578 section 24 reports.³⁷

As section 24/24A reporting is felt to under-estimate the scale of sham marriages and civil partnerships, an alternative approach to estimating the scale of applications based on a sham marriage or civil partnership was to gauge the views of senior caseworkers dealing with applications based on marriage or civil partnership. They were asked to estimate the proportion of such applications to stay in the UK as a spouse or civil partner under the EEA Regulations which were based on a sham, which they considered was up to around 20 per cent. This estimate was then applied to the combined estimated number of applications made on the basis of marriage or civil partnership under the Immigration Rules and the EEA Regulations (around 50,000), and resulted in a higher estimate of 10,000.

Together, we believe these two methods provide a reasonable range between a low and high estimate for the number of sham-based applications to remain in the UK each year.

2. Analysis of section 24/24A reports

³⁵ See Office for National Statistics, Marriages in England and Wales (Provisional), 2011 at http://www.ons.gov.uk/ons/dcp171778_315549.pdf; Marriages, Divorces and Civil Partnerships in Northern Ireland 2011 at http://www.nisra.gov.uk/archive/demography/publications/marriages_divorces/MDCP2011.pdf; and Marriages Time Series Data (Table, Marriages, Scotland, 1855 to 2011) at <http://www.gro-scotland.gov.uk/statistics/theme/vital-events/marriages-and-civil-partnerships/time-series.html>

³⁶ See Office for National Statistics, Marriages in England and Wales (Provisional), 2011 at http://www.ons.gov.uk/ons/dcp171778_315549.pdf.

³⁷ Anglican marriages are not subject to section 24 reports, and civil partnerships were not subject to the section 24A requirement until 2005.

The following section provides some analysis of the section 24/24A reports received by the Home Office from registration officials.

Referrals by nationality:

EEA nationals: In 2012, in section 24/24A reports involving an EEA national, 723 or 41 per cent involved a British Citizen; 1,060 or 59 per cent involved another EEA national. The main nationalities involved are listed in Table 1 below.

Table 1: EEA nationals referred to the Home Office in section 24/24A reports, 2012*

Nationals of:	Section 24/24A reports in 2012*	Approximate %
UK	723	41
Hungary	143	8
Lithuania	142	8
Poland	133	7
Portugal	126	7
Latvia	90	5
Slovakia	78	4
Romania	73	4
Czech Republic	69	4
France	59	3
Other	147	8
Total	1,783	100**

* Data do not include section 24/24A reports involving two non-EEA nationals.

** Figures may not total 100% owing to rounding.

Non-EEA nationals: Table 2 provides details of the number and nationality of non-EEA nationals referred to the Home Office in section 24/24A reports which do not include two non-EEA nationals. These data indicate that the highest proportion of referrals in 2012 was of Pakistani nationals, accounting for around 35 per cent. The next two most frequently referred nationalities, Nigerian and Indian, accounted for 21 per cent and 10 per cent respectively.

Table 2: Non-EEA nationals referred to the Home Office in section 24/24A reports, 2012*

Nationals of:	Section 24/24A reports in 2012*	Approximate %
Pakistan	627	35
Nigeria	366	21
India	180	10
Bangladesh	108	6
Algeria	42	2
Cameroon	33	2
Sri Lanka	30	2
Morocco	27	2
Philippines	27	2
Egypt	22	1
Other	321	18
Total	1,783	100**

* Data do not include section 24/24A reports involving two non-EEA nationals.

** Figures may not total 100% owing to rounding.

Analysis of the information contained in section 24/24A reports received in 2012, which did not involve two non-EEA nationals, showed that, where the information was available, around 50 per cent of all referrals featured a non-EEA national who held a student visa. This is potentially linked to the tighter rules on extending leave as a student under Tier 4 of the Points Based

System which were introduced in April 2012. These included limits on the time that can be spent studying at degree level; closing the post-study work route; making curtailment mandatory where a migrant under Tier 4 has failed to start, or has ceased, their study with their sponsor; and increasing the funds applicants have to evidence to meet the maintenance requirements.

3. Operation Mellor

Operation Mellor was launched by the Home Office in January 2013. It seeks to co-ordinate immigration work to tackle sham marriages and civil partnerships. It takes an intelligence-led approach and focuses on targeted use of in-country interviews for applications based on marriage or civil partnership and enhancing training packages for caseworkers. It is also looking to raise awareness and understanding of the issue with key partners and the public, including publicising successful enforcement operations to tackle shams.

Between January and September 2013, Operation Mellor conducted 825 operations targeting sham cases, leading to 474 arrests and 78 removals.

4. Immigration enforcement operations to tackle sham

Officers from Immigration Enforcement target those suspected of entering into sham marriages or civil partnerships, as well as facilitators. Operations may be conducted based on a variety of information, including section 24/24A reports and allegations from the public. In 2012-13, the Home Office carried out 792 enforcement operations regarding sham cases and arrested 324 people. Below are some examples of successful operations carried out recently by Immigration Enforcement, including cases with links to other criminality:

Case study 1: Hillingdon

In July 2013, acting on intelligence received, Immigration Enforcement officers went to Hillingdon register office just before a wedding was due to take place. They arrested a 24-year-old Indian man who was in the UK on a student visa. As well as intending to take part in the sham marriage he was found to be working in breach of his visa conditions. He was detained and served with removal directions. His would-be bride, a 25-year-old Portuguese woman, was questioned by officers and later released.

During a search of the man's address, officers arrested a 29-year-old Indian man who had entered the country illegally. He was also detained and subsequently removed.

Case study 2: Manchester

In a series of early morning raids in July 2013, Immigration Enforcement officers arrested 11 people: six Nigerian men, three Portuguese women, one Nigerian woman and a man from Malawi.

Six were believed to have arranged and participated in sham marriages between Portuguese and Nigerian nationals and were arrested on suspicion of conspiracy to assist unlawful immigration.

Case study 3: Blackburn

This operation involved so-called 'away day' brides from the EU, who flew in to the UK to enter into a sham marriage with a non-EEA national, and then returned home. It concerned Portuguese women coming to the UK to marry Indian men at Blackburn register office. The brides made initial trips to the UK to give notice of marriage at a register office, which was often different from the register office where they intended to hold the ceremony. They also attended appointments at banks and elsewhere, to generate documentation to support the illusion that they were based in the UK and exercising Treaty rights under the Free Movement Directive. These documents would then be used to support an immigration application to the Home Office by their Indian spouse. The brides would return home to Lisbon until their marriage ceremony in the UK, after which they would return home permanently.

The Indian nationals paid around £6,000 per wedding to the British facilitator, Mr N, who worked with a Portuguese facilitator, Miss L, to recruit the brides. In March 2013, Mr N was found guilty of conspiracy to assist unlawful immigration, and sentenced to 32 months' imprisonment. Miss L was found guilty of the same offence, and sentenced to 45 months' imprisonment. Total combined custodial sentences for all those found guilty of offences linked to the sham marriages totalled 19 years, 6 months.

5. Increased ability to curtail leave where an individual is involved in sham

In December 2012, new guidance for Home Office caseworkers allowed them to curtail (i.e. effectively cancel) a visa or other endorsement which gave a person the right to be in the UK, for unacceptable behaviour where they have “facilitated, assisted with, or entered into a sham marriage”.³⁸ Prior to this change, caseworkers had limited powers to deal with individuals who entered into sham marriages, but who held leave to be in the UK for other reasons. One such example might be a non-EEA national with a student visa. This was because the sham attempt alone was not grounds to cancel the individual's leave and remove them from the UK. Even though the migrant had attempted to enter into a sham marriage, the caseworker had to prove that the person was not (in this example) a genuine student. This made sham a low-risk enterprise for those with existing leave to be in the UK.

Statistics on the number of curtailments which have been made on the basis that a marriage is a sham, or is not genuine and subsisting, are not available. However, Table 3 shows the number of cases where an individual's leave to remain in the UK as a spouse or partner of a settled sponsor was curtailed or revoked during 2012.³⁹ It should be noted that the curtailment or revocation decision may be for reasons other than a sham marriage:

Table 3: Curtailment or revocation of leave* as a spouse or partner, by nationality, 2012

Nationals of	Number	% of the curtailments/revocations
India	100	24
Pakistan	76	18
Japan	58	14
United States of America	34	8
Bangladesh	14	3
Nigeria	11	3
South Korea	10	2
Jamaica	9	2
China	8	2
South Africa	7	2
Other	92	22
Total	419	100

*This may include temporary leave or indefinite leave to enter/remain

6. Changes to the family migration route

Family migration must be based on genuine relationships. Following a public consultation on family migration in 2011, changes were introduced in July 2012 for those coming to settle in the UK under the Immigration Rules. This included extending the minimum probationary period

³⁸ Full guidance can be found on page 25 at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/general-grounds-refusing/about.pdf?view=Binary

³⁹ Source: Management information, Performance & Compliance Unit, Operational Systems Transformation, Home Office.

before settlement for spouses and partners from two years to five years, as a better test of the genuineness of the relationship.⁴⁰

7. Increased interviewing

In December 2012, the Home Secretary announced an increase in the Home Office's interview programme for immigration applications across various routes, to help "root out abuse of British visas and improve the integrity of our immigration system".⁴¹

Caseworkers in the UK and overseas are aware of the threat posed by those seeking to enter or remain in the UK on the basis of a non-genuine relationship. They are trained to scrutinise applications and to consider all the available evidence, including that gained through interviews, before making a decision. Applicants and their sponsor may be invited for interview to address any concerns the caseworker may have as to the genuineness of the relationship, as well as to investigate the details of the application. The guidance used by caseworkers to help establish whether a relationship is genuine is available on the Home Office website.⁴²

The following scenarios are based on real examples provided by caseworkers. They relate to applicants for EEA residence documents who were interviewed as part of the case consideration process. These examples show how interviewing has helped caseworkers reach the right decision:

Scenario 1

In applications where a couple claim to have a child together, and are able to produce a birth certificate for the child, with the migrant applicant and their partner named as parents, the relationship between the couple is generally considered to be genuine.

A case involving a Pakistani national's application for residence under EU law on the basis of his marriage to a Latvian national, involving a child as described above, was selected for interview to test the genuineness of the relationship. On first impressions, the caseworker observed that the couple appeared to be genuine. However, during the interview the 'father' knew absolutely nothing about the child or about his wife's pregnancy, and the caseworker was satisfied that he was not the father and was not in a genuine relationship with the mother. The application was refused.

Scenario 2

A Gambian applicant and his Swedish spouse provided a birth certificate naming them as the parents of a 2 year-old child. When the couple arrived for their interview, the caseworker noted that they both seemed very comfortable with the child. However, upon questioning they appeared to have experienced different wedding days: she stated that they had celebrated with all their family at her father's home in Manchester, whilst he claimed that they had both travelled to Gambia for the ceremony. The migrant applicant changed his account several times, until he eventually admitted that he knew absolutely nothing about his wife's family.

⁴⁰ More information about the rules for family immigration is at www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/

⁴¹ A transcript of Home Secretary's speech on "An immigration system that works in the national interest" can be found at www.gov.uk/government/speeches/home-secretary-speech-on-an-immigration-system-that-works-in-the-national-interest

⁴² www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM2.1.pdf?view=Binary

Further investigation revealed that the Gambian national was suspected to be involved in drug dealing. Following the interview, the Swedish spouse informed the Home Office that she was no longer in contact with her husband or the solicitor they had instructed in connection with his application, and that she had left the UK. The application was refused.

Scenario 3

A large age difference between a couple may be a possible indicator of a sham marriage, but only where accompanied by other evidence that the relationship is not genuine. Two such cases illustrating this point were interviewed: the first involved a British man in his fifties and a young Nigerian woman; the other involved a British woman, also in her fifties, and a 30 year old Nigerian man. It became clear during interview that both couples were in genuine relationships. Both applications were granted.

8. The case for further change

The following section highlights issues which are preventing the Home Office and its partners from successfully tackling sham marriages and civil partnerships, and the abuse and criminality related to them.

a) Limitations on sharing marriage and civil partnership information

Registration officials have limited powers to share information that might be used to tackle immigration crime, other criminality (e.g. identity fraud) or wider abuse, e.g. of social housing or Housing Benefit.⁴³

This means that:

- If a registration official suspects a couple of attempting to enter into a sham marriage or civil partnership, they cannot inform the Home Office until notice is taken. If they reject the notice, e.g. because the couple provide false documentation, they cannot refer the incident to the Home Office. The Home Office is therefore unaware of valuable information (which could be linked to wider criminality) and cannot consider enforcement or prosecution action against those involved.
- Registration officials lack adequate statutory powers to share information with Local Authority colleagues (e.g. to prevent abuse of Housing Benefit), or even other registration officials.
- Registration officials are unable to inform the Home Office where they take notice of marriage or civil partnership from a suspected illegal entrant or overstayer, where a sham is not suspected.
- The Home Office is unable to use information from the database which holds all marriage and civil partnership notices to help provide a joined-up national picture showing sham marriage/civil partnership abuse types and trends.

There is a wide variety of acceptable documents that individuals can provide to establish their identity and nationality when giving notice.⁴⁴ Registration officials are not required to verify the

⁴³ Registration officials are statutory officers with no common law powers and require legislation to undertake any data sharing. Sections 24/24A of the 1999 Act facilitate the sharing by registration officials of specific data with the Home Office concerning suspected cases of sham marriage or civil partnership, but not other information which may relate to a sham (e.g. about couples seeking but failing to give notice) or information about suspected immigration offenders.

⁴⁴ www.gov.uk/government/uploads/system/uploads/attachment_data/file/183306/Acceptable_docs.doc.pdf

integrity of the documents presented to them and there is no clear process for querying the genuineness of a document. This could mean that sham marriages or civil partnerships involving identity fraud (e.g. where someone falsely claims to be an EEA national) go undetected.

Illustrative scenarios

This section provides some fictional scenarios, based on feedback received from registration officials during the development of the proposals, which illustrate the limitations and frustrations registration officials face when dealing with marriage and civil partnership notices involving non-EEA nationals, including cases where they suspect sham and related abuse:

Scenario 1

A British groom and an Indian bride, who says she is a student in the UK and works in a café, attend to give notice. Her passport contains a visa which expired a week ago. The registration officer noted the dates on RON, the Registration Online database, although they are not obliged to do so.

The groom provides documents establishing his identity and British citizenship. The couple provide their gas bill and mobile phone contracts showing they live at the same address. They appear to be very comfortable together and know a lot about each other. The registration officer has no doubts about the genuineness of their relationship.

The registration officer has no power to inform the Home Office that the bride appears to have overstayed her student visa and is also still working as a waitress. This would not change even if the bride admitted to the registration officer that she had overstayed her visa and was working illegally, as they can only refer cases to the Home Office where the proposed marriage or civil partnership is suspected to be a sham.

Scenario 2

A couple fail to attend to give notice of their marriage, despite having booked their appointment two weeks ago. The appointment information shows that they are Pakistani and Lithuanian nationals.

The couple also came to the same register office a few weeks ago, but the registration officer refused to take their notice as they suspected that some of the evidence the couple provided to show they had lived in their registration district for at least seven days was not genuine. The couple also claimed to live together at the same one-bedroom council property, but the rental paperwork provided by the groom listed another woman as a co-tenant. The couple did not appear to speak a common language and could not understand each other. Instead of being able to refer the documents to Local Authority colleagues who deal with housing and Housing Benefit, to alert them to this potential abuse, the registration officer had to give the papers back to the couple as there are strict rules preventing them from sharing information. The registration officer was also unable to inform the Home Office by a section 24 report that there were reasonable grounds to suspect a sham, as they are only allowed to do so once a notice has been taken.

Scenario 3

The registration officer remembers taking the marriage notice from the couple – an Indian groom and a French bride. They had doubts about whether they were a genuine couple or not at that time, primarily around the way they interacted with each other which seemed very awkward. However, it was not felt that there was enough evidence to justify making a section 24 report of their concerns to the Home Office. The groom arrives with a woman who is wearing a wedding dress, but it is not the woman from whom the registration officer took notice.

Having confronted the couple, the matter is referred to the superintendent registrar, who instructs the registration officer to call the General Register Office for advice immediately. Upon returning to the waiting area, the wedding party has disappeared. A section 24 report is submitted to the Home Office giving all the details the registration officer is allowed to provide.

There is no requirement for a couple to prove, when they marry, that they are the same individuals who gave notice. It is fortunate that in this scenario the registration officer who took the original couple's notice was the same one who was to conduct the ceremony, and that they remembered the couple, otherwise this attempted sham marriage may have gone undetected. The registration officer cannot alert colleagues, in their or other register offices, to this couple who may make a similar attempt again, owing to legal restrictions on sharing such information.

b) Timeframes for action

The notice period for marriages following civil preliminaries and civil partnerships is currently 15 calendar days in England and Wales. This means that after a notice has been taken and displayed for 15 days, the couple are free to marry (unless a legal impediment has been established). Though the majority of (but not all) section 24/24A reports are submitted by registration officials before the ceremony takes place, there is often limited time for Home Office staff to assess the information, and then for officers from Immigration Enforcement to arrange action where appropriate, e.g. a home visit to the couple or attendance at the register office.

Although action can still be taken against the couple after the marriage or civil partnership has taken place, there are real benefits to the Home Office in being able to establish, at the earliest point, where a relationship is not genuine. This is particularly important in cases involving non-EEA nationals marrying or entering into a civil partnership with an EEA national with a view to making an application under the Immigration (EEA) Regulations 2006 as, under EU case law, the Home Office must prove that the marriage or civil partnership was not genuine at the point it was entered into.

c) Marriages in the Anglican Church

There is no statutory duty on the Anglican Church to report suspected sham marriages to the Home Office. However, the Church of England's guidance to its clergy gives advice on how to handle requests to marry where the minister considers that the couple are attempting to enter into a sham marriage. This advice suggests that the Diocesan Registrar, the Home Office and/or the police should be alerted and clarifies the reasons why a minister may refuse to marry a couple, which include:

“While incumbents are under a legal duty to conduct the marriages of their parishioners, that duty does not extend to conducting the marriages of persons who assert that they are parishioners but are in fact not; nor does it extend to marrying persons in pursuance of a criminal enterprise.”⁴⁵

The number of cases where a minister refuses to conduct a ceremony for such reasons is not centrally recorded by the Anglican Church.

⁴⁵ Page 3 of www.churchofengland.org/media/1228433/house%20of%20bishops%20guidance.pdf

9. Marriage and civil partnership statistics

The following section provides statistics relating to marriages and civil partnerships in the UK.

a) Number of marriages and civil partnerships in the UK

According to the provisional data for 2011 published by the Office for National Statistics, the number of marriages registered in the UK was 285,391, an increase of around 2 per cent compared to 2010. There was also approximately a 6 per cent increase in the number of civil partnerships registered in the UK in 2011 (6,795) compared to 2010.

In Scotland the number of marriages increased, from 28,480 in 2010 to 29,135 in 2011, an increase of more than 2 per cent. Northern Ireland also recorded a rise in the number of marriages, by almost 3 per cent to 8,366 in 2011, from 8,156 in 2010.

Table 4: Marriages in the UK by number, year and country⁴⁶ (P = Provisional)

Year	Marriages (civil and religious)					
	United Kingdom	England and Wales	England	Wales	Scotland	Northern Ireland
2005	286,826	247,805	233,827	13,978	30,881	8,140
2006	277,611	239,454	225,971	13,483	29,898	8,259
2007	273,920	235,367	222,483	12,884	29,866	8,687
2008	273,207	235,794	222,869	12,925	28,903	8,510
2009	267,898	232,443	219,890	12,553	27,524	7,931
2010	280,444	243,808	230,723	13,085	28,480	8,156
2011	285,391 ^P	247,890 ^P			29,135	8,366
2012					30,534 ^P	8,480 ^P

Table 5: Civil partnerships in the UK by number, year and country⁴⁷ (P = Provisional)

Year	Civil Partnerships					
	United Kingdom	England and Wales	England	Wales	Scotland	Northern Ireland
2005	1,953	1,857	1,790	67	84	12
2006	16,106	14,943	14,383	560	1,047	116
2007	8,728	7,929	7,635	294	688	111
2008	7,169	6,558	6,276	282	525	86
2009	6,281	5,687	5,443	244	498	96
2010	6,385	5,804	5,536	268	465	116
2011	6,795	6,152	5,900	252	554	89
2012					574 ^P	101 ^P

b) Type of ceremony

According to data from the Office for National Statistics, in 2011, around 30 per cent of marriages conducted in England and Wales were religious.

⁴⁶ Office for National Statistics - Vital Statistics: Population and Health Reference Tables, Autumn 2013 update: www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-314699

⁴⁷ Office for National Statistics - Vital Statistics: Population and Health Reference Tables, Autumn 2013 update: www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-314699

The following table provides details of marriages conducted in England and Wales, by the type of ceremony.

Table 6: Marriages in England and Wales by type of ceremony ⁴⁸ (P = Provisional)

	2008	2009	2010	2011 ^P
Total marriages	235,794	232,443	243,808	247,890
Manner of solemnisation				
Civil ceremonies	157,296	155,950	165,680	174,600
Religious ceremonies	78,498	76,493	78,128	73,290
of which:				
Church of England & Church in Wales	57,057	56,236	57,607	53,700
Notes: ^P = Provisional; Religious marriages can include Roman Catholic, Sikh, Muslim, Jewish, Methodist, Calvinistic Methodist, United Reform Church, Congregationalist, Baptist, Presbyterian, Society of Friends, Salvation Army, Brethren, Mormon, Unitarian and Jehovah's Witness ceremonies.				

c) Impact of the 28-day notice period for all couples

We propose to apply a notice period of 28 days (instead of the current 15 days) to all couples, including British Citizens, EEA nationals and non-EEA nationals, intending to marry following civil preliminaries or enter into a civil partnership in England and Wales.

HM Passport Office estimates that in England and Wales, around 85 per cent of those intending to marry following civil preliminaries give notice in a non-designated register office (non-DRO).

Management information recorded by registration officials in England and Wales for 2010 suggests that:

- 10 per cent (18,250) of all marriages where notice was given at a non-DRO took place within 28 days of notice being given, i.e. within 13 days of the end of the current 15-day notice period. On average, the waiting time for a marriage once notice had been given was 153 days for marriages where notice was given at a non-DRO, i.e. 138 days after the end of the current 15-day notice period.
- 49 per cent (10,025) of all marriages where notice was given at a DRO took place within 28 days of notice being given, i.e. within 13 days of the end of the current 15-day notice period. On average, the waiting time for a marriage once notice had been given was 53 days for marriages where notice was given at a DRO, i.e. 38 days after the end of the current 15-day notice period.

⁴⁸ Office for National Statistics, Marriages in England and Wales (Provisional), 2011, Table 1: Marriage Summary of Characteristics 2011.

Designated Register Offices in England and Wales

NORTH EAST

Middlesbrough
Newcastle upon Tyne

NORTH WEST

Blackburn with Darwen
Cumbria (Kendal)
Liverpool
Manchester

YORKSHIRE AND HUMBER

Hull
Leeds
Sheffield

EAST MIDLANDS

Leicester
Lincolnshire (Lincoln)
Northamptonshire (Northampton)
Nottingham

WEST MIDLANDS

Birmingham
Coventry
Shropshire (Shrewsbury)
Stoke on Trent

EAST ENGLAND

Cambridgeshire (Cambridge)
Essex (Brentwood)
Hertfordshire (Hatfield)
Luton
Norfolk (Norwich)
Peterborough
Suffolk (Ipswich)

GREATER LONDON – INNER

Camden
Hackney
Hammersmith and Fulham
Haringey
Islington
Kensington and Chelsea
Lambeth
Lewisham
Newham
Southwark
Tower Hamlets
Wandsworth
Westminster

GREATER LONDON – OUTER

Barking and Dagenham
Barnet
Brent
Croydon
Ealing
Enfield
Greenwich
Harrow
Havering
Hillingdon
Hounslow
Kingston upon Thames
Merton
Redbridge
Waltham Forest

SOUTH EAST

Brighton and Hove
Hampshire (Winchester)
Kent (Maidstone)
Milton Keynes
Oxfordshire (Oxford)
Reading
Slough
Southampton
Surrey (Weybridge)
West Sussex (Crawley)

SOUTH WEST

Bristol
Cornwall (Truro)
Devon (Exeter)
Gloucestershire (Cheltenham)
Plymouth
Swindon

WALES

Cardiff
Ceredigion (Aberystwyth)
Conwy (Llandudno)
Pembrokeshire (Haverfordwest)
Powys (Llandrindod Wells)
Swansea
Wrexham

Persons exempt from immigration control

This section provides information on those categories we propose should be considered exempt from immigration control for the purposes of the new referral and investigation scheme. Such persons will not be required to give notice at a designated register office and will not be subject to the scheme, unless their partner is subject to either requirement.

a) Holders of Right of Abode

The Immigration Act 1971 gives complete exemption from immigration control to anyone who holds the right of abode.⁴⁹ People who have the right of abode are defined as British Citizens and certain other Commonwealth citizens as well as dual nationals holding a foreign nationality together with British Citizenship. Any person holding the right of abode should be treated the same as a person holding a British passport.

b) Members of diplomatic missions

Section 8(3) of the 1971 Act exempts from immigration control members of diplomatic missions. An accredited member of a diplomatic mission, the United Nations or a recognised international organisation who is to be posted to the UK is exempt from immigration control.

c) Consular officers and employees

Article 3 of the Immigration (Exemption from Control) Order 1972, made under section 8(2) of the 1971 Act, exempts from immigration control consular officers and employees (and their families forming part of their households) of the following states with which the UK has concluded a Consular Convention:

Armenia; Austria; Azerbaijan; Belarus; Belgium; Bosnia-Herzegovina; Bulgaria; China, Croatia; Cuba; Czech Republic; Denmark; Egypt; France; Georgia; German Federal Republic; Greece; Hungary; Italy; Japan; Kazakhstan; Kyrgyzstan; Macedonia; Mexico; Moldova; Mongolia; Netherlands; Norway; Poland; Romania; Russia; Slovak Republic; Slovenia; Spain; Sweden; Tajikistan; Turkmenistan; Ukraine; USA; Uzbekistan; and the Former Federal State of Yugoslavia.

A consular officer is any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions. A consular employee to whom the exemption also applies is any person employed in the administrative or technical service of a consular post, provided that he or she is in full-time service of the state concerned and is not engaged in the UK in any private occupation for gain.

d) Heads of State

Under section 20(3) of the State Immunity Act 1978, Heads of State, members of their families forming part of their household and their private servants enjoy total exemption from immigration control unless otherwise directed by the Secretary of State.

⁴⁹ Section 2 of the 1971 Act as amended on 1 January 1983 by section 39(2) of the British Nationality Act 1981 defines the categories of persons who have the right of abode.

- e) Under Article 4 of the Immigration (Exemption from Control) Order 1972, the following, and members of their family forming part of their household, are exempt from immigration control, except those under deportation orders:
- I. Members of Governments – Article 4(a). Any member of the government of a country or territory outside the UK and Islands who is visiting the UK on Government business, unless the Secretary of State directs otherwise.
 - II. Persons performing consular functions for the Governments of Commonwealth countries and the Republic of Ireland – Article 4(f). This covers “Agents general” and their official secretaries.
 - III. Persons attending a Commonwealth conference – Article 4(e). Any person not covered by section 8(3) of the Immigration Act 1971 who is the representative or member of the official staff of the Government of a Country attending a conference and entitled to diplomatic immunity under the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961.
 - IV. Consular officers or employees (other than honorary consular officers) in the service of a state with which the UK does not have a Consular Convention – Article 4(h).
 - V. Officials, members and employees of certain International Organisations: section 8(4) of the 1971 Act.

f) Armed Forces

Members of the Armed Forces, including NATO forces: section 8(4) of the 1971 Act, and members of a visiting force serving or posted for service in the UK: section 8(4)(c) of the 1971 Act.

HOME OFFICE

POLICY EQUALITY STATEMENT

Immigration Bill: measures to tackle sham marriages and civil partnerships

The Immigration Bill published on 10 October 2013 introduces new measures to tackle sham marriages and civil partnerships. The measures will apply to marriages and civil partnerships taking place in England and Wales, with provision for the scheme to be extended to Scotland and Northern Ireland by secondary legislation. The changes proposed will:

- Extend the notice period for marriage following civil preliminaries and civil partnership from 15 days to 28 days for all couples (including British Citizens and EEA nationals).
- Require all non-EEA nationals to complete civil preliminaries before marrying in the Church of England or the Church in Wales, except in limited circumstances.
- Require all non-EEA nationals not exempt from immigration control to attend a designated register office and provide specified information and evidence in order to give notice.
- Require registration officials to refer to the Home Office all proposed marriages and civil partnerships involving at least one party who is a non-EEA national without settled status, an EU law right of permanent residence in the UK, a marriage or civil partnership visa or exemption from immigration control.
- Allow the Home Office to check all referrals against immigration and other records and intelligence/evidence-based risk profiles and factors, together with reports from registration officials under section 24/24A of the Immigration and Asylum Act 1999 of suspected sham marriages and civil partnerships and other relevant information, to identify suspected sham cases for investigation.
- Enable the Home Office to extend the notice period from 28 days to 70 days where it considers there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham, in order for the Home Office to investigate the genuineness of the couple's relationship.
- Prevent a marriage or civil partnership from proceeding if a couple has failed unreasonably to comply with a Home Office investigation under the scheme.
- Enable the Home Office to take enforcement action (curtailment of existing leave to remain, removal) against the non-EEA national, in cases where the Home Office is satisfied following an investigation that the proposed marriage or civil partnership is a sham, or to use that evidence to refuse a subsequent immigration application based on a sham marriage or civil partnership.
- Allow more effective information-sharing between registration officials, the Home Office and other partners in order to tackle sham marriages and civil partnerships and related criminality and abuse.

Summary of the evidence considered in demonstrating due regard to the Public

Sector Equality Duty

Family Migration – a Consultation, published on 13 July 2011

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/>

Response to the Family Migration consultation, published on 11 June 2012 and available with the statement of intent on family migration

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/june/13-family-migration>

SCS sign off	<i>J. Thompson</i>	Name/Title	John Thompson Head of Migration Policy Unit
<p>I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that <u>due regard</u> has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.</p>			
Directorate/Unit	Migration Policy	Lead contact	Alison Bennett
Date	10 October 2013	Review Date	Ongoing

Retain the completed PES for your records and send a copy to SDAT@homeoffice.gsi.gov.uk and your relevant business area Equality and Diversity Lead.

IMMIGRATION BILL: NEW LEGISLATIVE SCHEME TO TACKLE SHAM MARRIAGES AND CIVIL PARTNERSHIPS

INTRODUCTION

Policy context

Sham marriages (or marriages of convenience) and sham civil partnerships – where the marriage or civil partnership is entered into for immigration advantage by a non-genuine couple – pose a significant threat to UK immigration control. The Home Office estimates that 4,000 to 10,000 applications a year to stay in the UK, under the Immigration Rules or under the Immigration (European Economic Area (EEA) Regulations 2006, are made on the basis of a sham marriage or civil partnership.

In July 2011, we published a consultation on family migration which set out proposed reforms of the family migration route and included measures to tackle sham marriages. The consultation ran for 12 weeks and more than 5,000 responses were received. An overview of the responses is included in *Response to the Family Migration consultation*.

In July 2012, the Government made changes to the Immigration Rules to extend the probationary period before settlement for non-EEA national spouses and partners from two years to five years, as a better test of the genuineness of the couple's relationship. Casework guidance, which included a list of factors associated with genuine and non-genuine relationships, to help caseworkers to focus on these issues was published when the new rules came into effect.

The Government has now brought forward legislation in the Immigration Bill published on 10 October 2013 to further tackle the problem of sham marriage and civil partnership. The new scheme will extend and amend the marriage and civil partnership notice process. It will enable the Home Office to identify and investigate suspected sham marriages and civil partnerships entered into for immigration advantage, as a basis for taking enforcement or other immigration action under existing powers in cases established as a sham. The Bill will also extend powers for information to be shared by and with registration officials.

Policy objectives and outcomes

Those involved in sham marriages and civil partnerships undermine our immigration system. They also – wittingly or otherwise – help the organised criminal gangs who profit from exploiting vulnerable people and breaking our immigration laws.

The objective of the legislation is to introduce a new scheme to tackle sham marriages and civil partnerships. The new scheme will:

- Assist in the identification of sham marriages and civil partnerships through the referral of all relevant marriage and civil partnership notices to the Home Office.
- Enable the Home Office to take appropriate enforcement or other immigration action where a sham marriage or civil partnership is identified.
- Act as a deterrent against people entering into a sham marriage or civil partnership by reducing the scope for immigration advantage.

The Policy

The referral and investigation scheme contained in the Immigration Bill will extend and amend the marriage and civil partnership notice process. It will enable the Home Office to identify and investigate suspected sham marriages and civil partnerships entered into for immigration advantage, as a basis for taking enforcement or other immigration action under existing powers in cases established as a sham.

Policy impacts

The measures proposed in the Immigration Bill will have the following impacts on those intending to marry or enter into a civil partnership in England and Wales.

The legislation contains provision to enable the scheme to be extended to Scotland and Northern Ireland. This Policy Equality Statement does not therefore discuss the potential impact of the changes on marriages and civil partnerships taking place in Scotland or Northern Ireland.

Notice of marriage or civil partnership:

All couples (including British Citizens and EEA nationals)

- Extension of the notice period from 15 days to 28 days.
- Specified evidence to be provided in order to give notice.

Non-EEA nationals

- Those intending to marry in the Church of England or the Church in Wales will have to complete civil preliminaries before they can marry, except where the provisions for the Archbishop of Canterbury's Special Licence or for Anglican preliminaries at sea apply.
- Required to give notice in person at a Designated Register Office, unless exempt from immigration control.
- Additional specified information and evidence to be provided in order to give notice.

The referral scheme:

- Where one of the couple (or both) is a non-EEA national without settled status, an EU law right of permanent residence, a marriage or civil partnership visa or exemption from immigration control, the notice will be referred to the Home Office to assess whether there are reasonable grounds to suspect the proposed marriage or civil partnership is a sham and to decide whether to investigate.
- Extension of the notice period from 28 days to 70 days where the Home Office has reasonable grounds to suspect the proposed marriage or civil partnership is a sham and decides to investigate the genuineness of the couple's relationship.
- Failure to complete the notice process if the couple fail unreasonably to comply with any Home Office investigation, which will mean that the couple will have to give notice again if they still wish to marry or enter into a civil partnership.
- Where a sham is established, enforcement action under existing immigration powers against the non-EEA national involved or refusal of any subsequent immigration application based on a sham marriage or civil partnership.
- Consideration of prosecution for sham-related criminal offences, e.g. perjury, conspiracy to facilitate illegal immigration.

Information-sharing powers:

- Extension of existing information-sharing powers to enable registration officials and the Registrar General to share information relevant to countering sham with:

- the Home Office and other government departments.
 - other registration officials.
 - other local authority staff.
 - the police and other law enforcement agencies.
- New information-sharing powers to enable the sharing of information received as part of the registration process for marriages, civil partnerships, births and deaths, which is relevant to identifying and countering immigration offences and related abuse, with the partners listed above.

What outcomes it will achieve

The legislation will reduce the scope for immigration advantage from entering into a sham marriage or civil partnership. It will also reduce the scope for organised crime to benefit from sham marriages and civil partnerships. It will help the Home Office to remove migrants from the UK where they have no basis to remain here.

Consultation

Within Government

As well as within the Home Office (including HM Passport Office), the departments consulted or involved in the formulation of the policy include the Ministry of Justice, the Government Equalities Office and HM Treasury.

We have also consulted the Church of England, the Church in Wales and senior representatives of the Local Registration Service in England and Wales.

Public Consultation

A 12-week public consultation on Family Migration, including measures to tackle sham marriage, was conducted from 13 July 2011 to 6 October 2011. 5,046 responses were received. 75% of respondents agreed that the authorities should have the power in England and Wales to delay a marriage from taking place where 'sham' was suspected and 62% agreed that some couples should be required to attend an interview to establish the genuineness of their relationship.

EQUALITY ISSUES

This Policy Equality Statement has been prepared to accompany the Immigration Bill published on 10 October 2013. The impacts of the proposed changes will be kept under review to ensure that no adverse equality issues arise as a result of the application of these changes.

Public sector equality duty

The public sector equality duty under section 149 of the Equality Act 2010 requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The equality duty covers the following eight protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation.

Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status.

Schedule 18 to the 2010 Act sets out exceptions to the equality duty. In relation to the exercise of immigration and nationality functions, section 149 (1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – does not apply to the protected characteristics of age, race or religion or belief.

Section 19 of the 2010 Act sets out that indirect discrimination does not occur if an individual is not put at a particular disadvantage when they have one or more protected characteristics and if the provision, criterion or practice can be shown to be a proportionate means of achieving a legitimate aim.

Paragraph 17 of Schedule 3 to the 2010 Act provides an exception from the prohibition on discriminating against a person in the provision of services or the exercise of a public function because of his or her ethnic or national origins or nationality, in relation to the exercise of immigration functions.⁵⁰

The table below summarises the expected equalities impact of the changes according to each of the three aims of the equality duty.

Policy	Summary of the expected equalities impact of the changes according to the three aims of the equality duty: (a) Eliminate conduct prohibited by the 2010 Act (b) Advance equality of opportunity (c) Foster good relations
<i>Marriages following civil preliminaries and civil partnerships:</i>	
<ul style="list-style-type: none"> Extension of the notice period to 28 days. 	(a) A notice period of 28 days will apply to all couples, including British Citizens, EEA nationals and non-EEA nationals, intending to marry following civil preliminaries or enter into a civil partnership. It will assist in tackling sham marriages and civil partnerships by providing additional time for the Home Office to make an initial assessment about whether there are reasonable grounds to suspect that a proposed marriage or civil partnership is a sham, following referral of the notice for a couple within scope of the new scheme. The Registrar General (and the Secretary of State, for a couple within scope of the scheme) will have powers to reduce the notice period where they are satisfied there are compelling reasons to do so because of exceptional circumstances of the case. The Registrar General has powers to authorise a marriage or civil partnership

⁵⁰ We must have due regard to “pregnancy and maternity” for the purposes of section 149, but indirect discrimination on the basis of pregnancy and maternity is excluded by virtue of section 19(3).

	<p>to proceed without a notice period in death-bed cases. As the extension of the notice period to 28 days (and the scope to reduce it or for there to be no notice period) will apply to all couples intending to marry following civil preliminaries and or enter into a civil partnership, it does not give rise to any discrimination issues.</p> <p>(b) Measures to advance equality of opportunity are not necessary in respect of this change because there is little or nothing to suggest that the relevant protected groups would be adversely affected by it.</p> <p>(c) Not applicable.</p>
<ul style="list-style-type: none"> • Specified evidence to be provided in order to give notice. • Non-EEA nationals to provide additional specified information and evidence. • In scope couples to provide their photographs and usual address when giving notice. 	<p>(a) All couples giving notice of a marriage following civil preliminaries or a civil partnership will be required to provide evidence of their name, date of birth, whether previously married or in a civil partnership (where the person has been so), place of residence and nationality. The documents which will be accepted, including as evidence of nationality, will be specified in regulations. This is a change from the current position, where a wide variety of documents can be used as evidence of identity and nationality when giving notice. For non-EEA nationals, the specified evidence of nationality will be the individual's passport (with the exception of asylum seekers and persons issued with a Home Office Travel Document). This change will help to reduce sham marriages and civil partnerships involving false identity or nationality.</p> <p>Non-EEA nationals will be required to provide additional information at the time of giving notice. This will include evidence of their exemption from immigration control (including to satisfy the registration official that they are able to give notice at a non-designated register office) or of their immigration status (to establish whether they are in scope of the scheme). A non-EEA national who satisfactorily evidences their immigration status, according to documentation to be specified in regulations, as settled, EU law right of permanent residence, holder of marriage or civil partnership visa or exempt from immigration control, will not be referred under the scheme, if the other party also has one such status or is a British Citizen or EEA national. A non-EEA national who does not provide specified evidence that their immigration status means they are exempt from the scheme will be referred under it, if other requirements are met.</p> <p>Couples in scope of the referral scheme will also need to provide specified evidence of their usual address; (if</p>

	<p>this address is outside the UK) to provide a UK contact address; and (together with couples where one holds a marriage or civil partnership visa) to provide specified photographs, in order to give notice. Photographs will enable the registration official to be satisfied that the couple who gave notice are the couple who later marry or enter into a civil partnership, particularly where this occurs in a different registration district. Couples in scope of the scheme will be required to keep the Home Office informed of any change of address.</p> <p>(b) Measures to advance equality of opportunity are not necessary in respect of this change because there is little or nothing to suggest that the relevant protected groups would be adversely affected by it.</p> <p>(c) Not applicable.</p>
<ul style="list-style-type: none"> • Extension of the DRO requirement to non-EEA nationals with a right to enter, remain in or reside in the UK under EU law. 	<p>(a) The requirement for a person subject to immigration control to attend a designated register office (DRO) for the purpose of giving notice was introduced by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The DRO requirement will be retained under the new scheme, to utilise the experience in dealing with immigration-related issues of registration officials which has been built up since it was introduced in 2005. The requirement will be extended to non-EEA nationals with an EU law right to enter, remain in or reside in the UK as the family member of an EEA national to ensure that such persons are treated on an equal basis to persons with limited leave to remain or with settled status (indefinite leave to enter or remain) under the Immigration Rules.</p> <p>(b) Measures to advance equality of opportunity are not necessary in respect of this change because there is little or nothing to suggest that the relevant protected groups would be adversely affected by it.</p> <p>(c) Not applicable.</p>
<p><i>Marriages in the Anglican Church:</i></p>	
<ul style="list-style-type: none"> • All non-EEA nationals intending to marry in the Church of England or the Church in Wales will have to complete civil preliminaries before they can marry, except where the provisions for the Archbishop of Canterbury's Special 	<p>(a) It is necessary to ensure that the referral and investigation scheme applies to in scope couples marrying in the Church of England or the Church in Wales, as well as to in scope couples entering into other marriages and civil partnerships, in order to ensure equal treatment and to provide a platform for addressing sham cases on a systematic basis geared to enabling a more effective immigration response. Unlike registration officials, especially those in DROs, members of the Clergy are not competent to undertake the function of assessing an individual's</p>

<p>Licence or for Anglican preliminaries at sea apply.</p>	<p>immigration status. Training for more than 20,000 Clergy, some of whom may conduct only a very small number of marriages each year (which may or may not involve non-EEA nationals), would be a significant exercise and would need to be carried out on an ongoing basis. The costs to the Anglican Church would be considerable and would not be proportionate given the estimated number of Anglican marriages involving non-EEA nationals (around 6,700 a year). It is also likely that significant practical support for the Clergy would be required from the immigration authorities to ensure that in scope couples were not married without referral to the Home Office.</p> <p>The intention is to remove access to the banns or common licence process for couples where one or both of the parties is a non-EEA national and require them instead to complete civil preliminaries before being able to marry in the Anglican Church. This would enable the Home Office to be satisfied that all couples within the scope of the referral scheme were correctly identified (by registration officials) and referred to the Home Office. After the civil preliminaries to the marriage had been completed, such couples would be able to marry in the Anglican Church in the same way as couples not within the scope of the scheme. To the extent that this change raises any discrimination issues, these are considered justified and proportionate to achieving the Government's objective of tackling sham marriages and civil partnerships and related abuse.</p> <p>(b) Measures to advance equality of opportunity are not necessary in respect of this change because the relevant protected groups would not be adversely affected by it.</p> <p>(c) Not applicable.</p>
<p><i>Referral and investigation scheme:</i></p>	
<ul style="list-style-type: none"> All marriage and civil partnership notices involving at least one party who is a non-EEA national without settled status, an EU law right of permanent residence, a marriage or civil partnership visa or exemption from immigration control, to be referred to the Home Office. 	<p>(a) All proposed marriages requiring civil preliminaries and all civil partnerships involving at least one party who is a non-EEA national without settled status, an EU law right of permanent right of residence, a marriage or civil partnership visa or exemption from immigration control, will be referred to the Home Office. When the notice is referred, the Home Office will check relevant details against immigration and other records to establish or confirm relevant information about identity and immigration status. The referral will also be assessed against intelligence/evidence-based risk profiles and factors to identify whether cases at high risk of being a sham, e.g. that one or both parties:</p>

<ul style="list-style-type: none"> • All referrals to be checked against immigration and other records and agreed intelligence/evidence-based risk profiles and factors, together with section 24/24A reports, to identify suspected sham marriages and civil partnerships for investigation. • Extension of the notice period from 28 days to 70 days where there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham and the Home Office decides to investigate the genuineness of the couple's relationship. 	<ul style="list-style-type: none"> - is of a nationality considered at high risk of sham, on the basis of objective information and intelligence about sham cases; - holds a visa in a category linked by objective information and intelligence to sham cases; - has no immigration status or holds leave which is due to expire shortly; - has had an application to stay or remain in the UK refused; - has previously sponsored another partner or spouse to enter or remain in the UK; - cannot communicate in a common language; - is or has been the subject of a credible section 24/24A report. <p>The profiles and factors will be intelligence-based and evidence-based and kept under review. They will be drawn initially from recent section 24/24A reports, recent sham-based enforcement and prosecution cases and recent applications refused on the basis the relationship is not genuine. They will inform an initial assessment of whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham and whether, subject to further review, the notice period should be extended to 70 days in order to enable the Home Office to conduct an investigation of the genuineness of the couple's relationship.</p> <p>Information on the approach taken to identifying cases for investigation will be published, as far as operationally feasible.</p> <p>Consideration will be given, in light of the detail of the processes to be put in place, as to whether a Ministerial authorisation under Schedule 3, Part 4, paragraph 17(4)(a) of the Equality Act 2010 is necessary to ensure that any nationality-based risk profiling used as part of the process for identifying suspected sham cases for investigation under the scheme is properly authorised. That consideration will learn from the operation of the procedures for border control and enforcement in place under the Equality (Transit Visa, Entry Clearance, Leave to Enter, Examination of Passengers and Removal Directions) Authorisation 2011, made under that provision of the 2010 Act.</p> <p>To the extent that any discrimination arises, this is considered justified and proportionate to achieving the Government's objective of tackling sham marriages and civil partnerships and related abuse.</p> <p>(b) Measures to advance equality of opportunity do</p>
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	<p>not apply to the protected characteristics of age, race or religion or belief in relation to the exercise of immigration and nationality functions.</p> <p>(c) Not applicable.</p>
<ul style="list-style-type: none"> • Investigation of the genuineness of the couple's relationship where there are reasonable grounds to suspect that the marriage or civil partnership is a sham. • Refusal of certificates or Schedule if a couple have failed unreasonably to comply with the Home Office investigation. • Enforcement action against the non-EEA national under existing immigration powers. • Refusal of any subsequent immigration application based on a sham marriage or civil partnership. • Prosecution for sham-related criminal offences. 	<p>(a) Where the Home Office assesses, in light of the process described above, that there are reasonable grounds to suspect that a proposed marriage or civil partnership referred under the scheme is a sham, and decides that it should conduct an investigation of the genuineness of the couple's relationship, the couple (and the registration official) will be notified by the Home Office, before the end of the 28-day period, that the notice period has been extended to 70 days.</p> <p>That notification will, subject to regulations, set out the requirements as to the investigation with which the couple will have to comply if they are to be issued with the superintendent registrar's certificates or the Schedule required to marry or enter into a civil partnership. For example, the investigation may involve the submission to the Home Office of further information or evidence and/or an interview with and/or home visit by Home Office officials. If the couple comply with the investigation, they will be able to marry or enter into a civil partnership after the 70-day notice period has been completed and they are issued with the superintendent registrar's certificate or the Schedule. If they fail unreasonably to comply with the investigation, they will not have completed the notice process and will have to give notice again if they still wish to marry or enter into a civil partnership.</p> <p>If, following an investigation, the Home Office is satisfied that the proposed marriage or civil partnership is a sham, the Home Office may take the following action:</p> <ul style="list-style-type: none"> - enforcement action against any non-EEA national involved (curtailment of any extant leave; removal of any overstayer or illegal entrant), subject to any appeal. - refusal of any subsequent immigration application based on a sham marriage or civil partnership, although a fresh assessment of the genuineness of the couple's relationship would be made at that stage. A refusal decision would be subject to any appeal. - prosecution against individuals complicit in the sham (in consultation with the Crown Prosecution Service) for any criminal offence, such as perjury or facilitating illegal immigration (including British Citizens, EEA nationals or non-EEA nationals who are involved as facilitators or other third parties).

	<p>To the extent that any discrimination arises, this is considered justified and proportionate to achieving the Government's objective of tackling sham marriages and civil partnerships and related abuse.</p> <p>(b) Measures to advance equality of opportunity do not apply to the protected characteristics of age, race or religion or belief in relation to the exercise of immigration and nationality functions.</p> <p>(c) Not applicable.</p>
<p><i>Information-sharing powers</i></p>	
<ul style="list-style-type: none"> • Extension of existing information-sharing powers to enable registration officials and the Registrar General to share information relevant to countering sham with: <ul style="list-style-type: none"> ○ the Home Office and other government departments. ○ other registration officials. ○ other local authority staff. ○ the police and other law enforcement agencies. • New information-sharing powers to enable the sharing of information received as part of the registration process for marriages, civil partnerships, births and deaths, which is relevant to identifying and countering immigration offences and related criminality, with the partners listed above. 	<p>(a) The information-sharing provisions will enable information provided in the course of registering a marriage, civil partnership, birth and death to be disclosed to the Home Office and other government departments; other registration officials; other local authority staff; and the police and other law enforcement agencies for the purpose of tackling sham marriages and civil partnerships. They will also enable information to be disclosed where it is relevant to identifying and countering immigration offences and for the purpose of prevention and detection of crime.</p> <p>Registration officials are statutory officers with no common law powers and require legislation to undertake any data-sharing. At present they have limited powers which only allow information-sharing in relation to a suspected sham marriage or civil partnership once notice has been taken.</p> <p>These new powers will apply to information given by any individual to a registration official as part of the registration process for marriages, civil partnerships, births and deaths although information in relation to suspected sham marriages and civil partnerships and immigration offences is likely to only involve couples where one of the parties is subject to immigration control (without settled status, permanent residence in the UK or exemption from immigration control). Since these powers will apply universally to all registration information (relating to marriages, civil partnerships, births and deaths), they do not give rise to any discrimination issues.</p> <p>(b) Measures to advance equality of opportunity are not necessary in respect of this change because the relevant protected groups would not be adversely affected by it.</p> <p>(c) Not applicable.</p>

The impact of the policies on the eight protected characteristics is discussed below.

Protected characteristic	Are people with this protected characteristic particularly likely to be affected?	What mitigation will reduce any adverse impacts?
<p>Race</p>	<p>The banns and common licence process for those marrying in the Church of England and the Church in Wales will not be available to couples in which one party (or both) is a non-EEA national. Such couples will generally be required to complete civil preliminaries before marrying in the Anglican Church.</p> <p>However, there will be no change to the scope for couples (including where one party or both is a non-EEA national) to marry on the authority of the Archbishop of Canterbury’s Special Licence or following the procedure for Anglican preliminaries on board HM ships (under section 14 of the Marriage Act 1949).</p> <p>Non-EEA nationals exempt from immigration control will have to give notice at their local register office. All other non-EEA nationals will have to give notice at one of 75 designated register offices in England and Wales.</p> <p>The cost of marrying by banns can range from £22 to £79 depending on whether the couple reside in the parish in which they intend to marry. The cost of marrying by common licence is £165. There will be a reduction in the fee required for those who would have used the common licence process (which is currently the usual process for non-EEA nationals marrying in the Anglican Church). However, in view of the additional information and evidence requirements, the additional time that will be likely to be taken (about 30 minutes per couple) for a registration official to take notice of marriage or civil partnership from a couple in-scope of the referral scheme may need to be reflected in the level at which the notice fee is set for a couple in-scope of the scheme.</p> <p>The minimum time in which a person can marry by banns is four weeks and one day and the maximum is four months. There is no time frame for the issuing of a common licence, but is unlikely to be quicker than four weeks. The time frame for civil preliminaries</p>	<p>The changes will be to the preliminaries before a marriage takes place. Once a couple have given notice (and complied with any investigation), there will be no difference between their marriage and that of any other couple marrying in the Church of England or the Church in Wales.</p>

	<p>(28 days or 70 days if the notice period is extended) will not differ significantly from those for the banns or common licence process, and will be the same for all couples in-scope of the referral and investigation scheme.</p> <p>Some couples may have to travel further to give notice of their marriage at a designated register office. The extra distance is unlikely to be a significant factor in many cases.</p> <p>The nationality-related aspects of the Home Office assessment of whether there are reasonable grounds to suspect that a proposed marriage or civil partnership referred to it under the scheme is a sham, and of its decision whether to investigate, were discussed in the previous section.</p>	
Age	No.	N/A
Disability	No. There will be no change to the Registrar General's powers to authorise a marriage or civil partnership to proceed without a notice period in death-bed cases. For a couple within scope of the scheme, the Secretary of State will have a power to reduce the notice period where she is satisfied there are compelling reasons to do so because of exceptional circumstances of the case (which may for example be as a result of a terminal illness). The Registrar General will retain existing powers to reduce the notice period for couples who do not come within scope of the scheme.	N/A
Sex	No.	N/A
Religion or belief	Non-EEA nationals who wish to marry in the Church of England or the Church in Wales will still be able to do so. The change to the preliminaries required before the marriage does not interfere with a person's religious beliefs or ability to marry in the Anglican Church. It is a mechanism by which the Home Office can be satisfied that the requirements of a scheme covering all in-scope couples have been fulfilled, without requiring the Clergy to undertake the function of assessing the immigration status of non-EEA nationals, which would involve extensive training and significant cost.	For couples marrying following civil preliminaries rather than having banns read, the Clergy may choose to acknowledge this to the congregation after any banns have been read.
Sexual orientation	No. The proposed changes will apply to all marriages following civil preliminaries,	N/A

	including those between same sex couples, and to all civil partnerships.	
Gender reassignment	No.	N/A

Current thinking on evidence which may be specified to give notice of marriage or civil partnership

Information requirement to give notice	Potential specified evidence
Nationality Name Age	Valid UK Passport
	British Citizens only: if born before 1 January 1983, they may provide their original UK birth certificate, plus another piece of specified evidence to establish current name (in case of name change since birth). If born on or after 1 January 1983, they may provide a naturalisation/registration certificate or evidence (birth certificate or passport) of British nationality of their parents.
	Valid EEA Passport
	Valid EEA ID card
	Valid Non-EEA Passport
	Valid Home Office Travel document
Name Age	Valid Photo Driving Licence (full or provisional) UK/Isle of Man /Channel Islands
	HM Forces ID Card (UK)
Immigration status	Valid Biometric Residence Permit
	Valid UK Visa/Entry Clearance in passport
	Valid HO endorsement in passport (including ILR vignette; Right of Abode Certificate; Certificate of entitlement)
	Valid UK Residence Permit in passport
	Valid Application Registration Card
	Valid Immigration Status Document bearing a valid photo-endorsed vignette (referral to Home Office may be required for confirmation of status).
	Home office Form IS 96 (referral to Home Office required for confirmation of status and identity).
Current/usual address	Utility bill (not older than 3 months).
	Bank/Building society statement (not older than 1 month).
	Most recent Council Tax bill.
	Valid UK Driving Licence.
	Letter signed by someone who is able to confirm period of residence at address, e.g. hotel manager, relative/friend accommodating the individual. etc. (nb: further supporting evidence may be required)