



# The implementation of the 2014 'hostile environment' provisions for tackling sham marriage

August to September 2016

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Independent Chief Inspector of  
Borders and Immigration



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# Foreword

A sham marriage or civil partnership is one entered into by a non-EEA national purely to gain an immigration advantage. Their EEA partner may or may not be complicit.

The Immigration Act 2014 (the '2014 Act') introduced a range of measures aimed at creating a 'hostile environment' for individuals in the UK without valid leave by denying them access to various services and benefits. The Act included new provisions in relation to sham marriages and civil partnerships, which came into force on 2 March 2015. In particular, the gap between notifying intent to marry and the ceremony was extended from 15 to 28 days, and could be further extended to 70 days to enable the Home Office to investigate the genuineness of the relationship. Couples failing to comply with an investigation are not allowed to marry, while those who comply can do so. However, if the Home Office determines a compliant couple's relationship to be sham, the new approach is to seek to refuse any future application to remain in the UK based on that marriage.

The inspection found that initial implementation of the new provisions was problematic. The new approach had not been communicated effectively, and some registrars interpreted the fact that Immigration Enforcement and Compliance (ICE) teams were no longer attending register offices to prevent ceremonies from going ahead as the Home Office being less interested in sham marriage. Staff in the new Marriage Referral Assessment Unit (MRAU) felt deskilled as they struggled with heavily administrative processes, fragmented IT and limited operational support from local ICE teams. Cases were not being determined within 70 days.

Managers intervened to devise a new process (Operation Equal), with ICE teams taking on responsibility for investigations. A pilot, which began in January 2016, produced encouraging results in terms of cases completed to time. However, a high proportion of couples were determined to be genuine, raising questions about profiling (which excluded consideration of nationality despite statistics showing certain nationalities to be prominent in sham marriages), and the ability of interviewers to expose sham couples who had prepared well or been coached by facilitators.

Operation Equal was rolled out nationally only from 20 June 2016. Consequently, this inspection was not able to test fully the efficiency and effectiveness of the new provisions, and a further inspection will be necessary when there is more evidence of how they are working. However, in order to produce a meaningful evaluation of the sham marriage provisions, the Home Office will need to improve the range and granularity of its data collection.

This report makes five recommendations for improvement. It was sent to the Home Secretary on 25 October 2016.



# 1. Purpose and scope

- 1.1 This inspection examined how efficiently and effectively the Home Office had implemented the new provisions in the Immigration Act 2014<sup>1</sup> (the '2014 Act') for tackling sham marriage.<sup>2</sup> In doing so, it took particular note of two earlier inspection reports that looked at sham marriage, both published in 2014.
- 1.2 The first of these examined Immigration Enforcement's practice of attending register offices, when intelligence had cast doubt on the genuineness of the relationship, in order to interview the couple and determine if the marriage was sham.<sup>3</sup> The second examined how European Casework staff identified shams within subsequent applications for residence.<sup>4</sup>
- 1.3 This inspection also took note of a 2016 inspection report about two other provisions in the 2014 Act relating to the denial of bank and building society accounts and of UK driving licences to individuals with no legal right to remain in the UK, which also form part of the government's package of 'hostile environment' measures.<sup>5</sup>
- 1.4 References to 'marriage' in this report are intended to include civil partnerships, the numbers of which have reduced significantly since the Marriage (Same Sex Couples) Act 2013.<sup>6</sup>
- 1.5 The scope of this inspection excluded the work of European Casework, the trafficking of EEA nationals for the purpose of sham marriage, and removals and prosecutions in relation to sham marriages following the 2014 Act. The inspectorate will address these issues, together with the realisation of savings projected in the planning for the 2014 Act, when there is a sufficient body of evidence to support meaningful inspection.

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1 <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted/data.htm>.

2 The most recent legal definition of sham marriage is at paragraph 6.2. The UK or EEA national involved in sham marriage may or may not be complicit in the sham.

3 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-a-Sham-Marriage-Enforcement-Operation-Web-PDF.pdf>.

4 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/06/European-Casework-Report-Final.pdf>.

5 <http://icinspector.independent.gov.uk/wp-content/uploads/2016/10/Hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf>.

6 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306000/140423\\_M\\_SSC\\_Act\\_factsheet\\_web\\_version\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306000/140423_M_SSC_Act_factsheet_web_version_.pdf).

## 2. Methodology

2.1 For this inspection, inspectors:

- researched and analysed legislation and relevant open-source information;
- analysed Home Office documentation, including guidance and data;
- observed processes at the Marriage Referral Assessment Unit (MRAU), Liverpool;
- held interviews and focus groups with managers and staff at Liverpool;
- interviewed senior Immigration Intelligence and Immigration Enforcement (IE) managers, including those leading IE Transformation and creating the hostile environment;
- engaged with six local IE teams to understand operational experiences of implementing the new provisions;
- surveyed the Designated Register Offices covering West London, West Midlands and Scotland; and
- attended a meeting of the National Panel for Registration.<sup>7</sup>

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<sup>7</sup> This is the key group for the General Register Office and others to liaise with representatives of the Local Registration Services at a national level.

## 3. Summary of conclusions

- 3.1 In the case of sham marriage, the provisions of the Immigration Act 2014 (the '2014 Act') heralded a markedly different approach to enforcement. Prior to 2014, Immigration Compliance and Enforcement (ICE) teams<sup>8</sup> had liaised with registrars and attended at register offices to disrupt and investigate suspected sham weddings and civil partnership ceremonies. The levels of such activity varied between ICE teams, but those who worked proactively with registrars often sought to have their activities reported in the media for their deterrent value.
- 3.2 The 2014 Act extended the period between having to notify a registrar of an intention to marry and the ceremony from 15 to 28 days, which could be extended to 70 days where the Home Office suspected a sham in order to allow it to investigate. After the new provisions came into force (on 2 March 2015), couples who did not comply with a Home Office investigation were prevented from marrying. The emphasis shifted to stopping individuals who were judged to have entered into a sham marriage from going on to obtain leave to remain in the UK on the basis of the marriage. The Home Office was not, however, informing compliant couples whether it had determined their relationship to be sham.
- 3.3 The inspection found that the different approach had not been fully understood by all registrars, and the fact that ICE teams no longer routinely attended register offices had created an impression with some registrars that the Home Office was less active in relation to sham marriage. Registrars were legally obliged to report suspicions of sham relationships, but needed to be better briefed and to receive more feedback on the outcomes for those cases they referred. Even so, one consequence of ICE teams no longer attending the register office was the loss of intelligence about 'fixers', who often attend sham ceremonies in the guise of a guest.
- 3.4 The initial implementation of the new provisions was problematic. No new resources were found and an existing group of intelligence staff became the new Marriage Referral Assessment Unit (MRAU). The IT and the overall process were cumbersome, and staff previously carrying out intelligence tasks felt they were becoming deskilled by working in a way that was administratively onerous and without sufficient support from IE teams to carry out investigations.
- 3.5 Managers recognised that the new processes were not working and took the initiative to revise them, making use of the experience and knowledge of three ICE teams that had been active in tackling shams and of the expertise within European Casework in identifying shams when non-EEA partners sought a residence card after having married. Implementation of the new process (now called Operation Equal) was piloted by the three ICE teams from January 2016, supported by detailed guidance to ensure consistency.
- 3.6 The revised process placed a responsibility on ICE teams to carry out the required investigative interviews and, instead of the latter potentially making home visits to interview some couples, all were called in for interview. This change was key to making it possible for IE to resource this as on-going core work.

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<sup>8</sup> Teams are located regionally to carry out intelligence-led enforcement operations that target illegal migrants who have no right to be living and working in the community.

- 3.7 The revised process was rolled out nationally only from 20 June 2016. As a result, there was insufficient evidence of how it was working across the whole of IE for inspectors to assess its effectiveness. However, the data available from the pilot was encouraging in terms of managing the flow of cases referred for investigation.
- 3.8 The outcomes from piloting Operation Equal showed that a high proportion of couples complied with the investigation and were determined by interviewers not to be sham relationships. This could point to the need to adjust the sensitivity of the 'dial' used to assess whether a marriage looks to be sham, or a need to improve ICE teams' interviewing skills as sham couples are too well-prepared to be caught out giving answers that do not tally.
- 3.9 Registrars and ICE teams had noticed new patterns in sham marriages and in the way that those invited to an investigative interview prepared. For example, men were now seeking brides who were pregnant or who already had a child, apparently with a view to a potential Human Rights claim relating to family life. Some were making other applications before the interview because a live application was a barrier to immediate removal under the 2014 Act.
- 3.10 Nationality was not used in the profiling that contributes to the 'dial', despite the fact that statistics indicate that certain nationalities are prominent in relation to shams, both as parties to sham marriages and as facilitators for others. To use nationality for profiling requires Ministerial approval, but this had not been sought.
- 3.11 Since 2 March 2015, the Home Office had collected performance statistics relating to the new provisions. However, these were not sufficiently disaggregated. For example, they did not show how many referrals for criminal prosecution had been made, or actual prosecutions begun, for the cases identified as sham after 2 March 2015. This will make it harder to evaluate the impact of the new provisions and the change in approach.

## 4. Summary of recommendations

### The Home Office should:

1. Where a marriage is determined to be sham but is allowed to proceed because the couple has been compliant with an investigation, ensure that the couple is informed in writing of the determination to act as a deterrent.
2. Recommunicate the aims of Part 4 of the Immigration Act 2014 to registrars and provide more feedback on the outcomes from referrals.
3. Ensure that staff are provided with:
  - interview skills training and development to enable them to deal effectively with well-prepared sham couples; and
  - sufficient understanding of the experiences of potentially duped and of vulnerable partners to inform effective questioning.
4. Seek Ministerial agreement to add certain nationalities to the profiling approach.
5. Ensure that data is collected in relation to sham marriage in a form that enables an accurate and comprehensive evaluation of the outcomes from the Immigration Act 2014 changes and provides Ministers and Parliament with a clear picture of the threat and how it is being met.

## 5. Background and context

### Definition of sham marriage

5.1 The Immigration and Asylum Act 1999 introduced a definition of sham marriage:

‘(5) “Sham marriage” means a marriage (whether or not void) –

(a) entered into between a person (“A”) who is neither a British citizen nor a national of an EEA<sup>9</sup> State other than the United Kingdom and another person (whether or not such a citizen or such a national); and

(b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.’<sup>10</sup>

5.2 The relevant European Directive definition is similar, but uses the term ‘marriages of convenience’.<sup>11</sup>

### Other relevant marriage terms

5.3 ‘Forced marriage’ is where one, or both parties, are coerced into marrying against their will. This may involve a criminal offence, which it would fall to the police to investigate. In an immigration context, for example, Eastern European women are known to have been trafficked to the UK and exploited as sham brides for immigration offenders. Other vulnerable individuals, including some with learning disabilities, have also been exploited in this way.

5.4 ‘Arranged marriage’, where the consenting couple may not have established a relationship prior to the marriage ceremony, is traditional in some cultures. It does not fall within the definition of sham. However, this form of marriage can be abused to conceal a sham.

5.5 ‘Proxy marriage’, where one or both of the couple are not physically present at the ceremony but usually represented by someone else, is not a legal marriage in the UK. It is recognised as legal in some countries. Many sham marriages identified by European Casework have involved the submission of fraudulent proxy ceremony certificates.

5.6 A ‘convenient marriage’, where a couple in an existing relationship bring forward their marriage because one of them is about to run out of leave to remain, is not a sham.

5.7 While not a term used by the Home Office, ‘marriage fraud’ has been coined to refer to what might include long-running sham situations.<sup>12</sup> Here, person ‘A’ at 5(b) above may desert an apparently subsisting marriage, even after a number of years, once having acquired the right

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9 The European Economic Area (EEA) comprises member states of the European Union plus Iceland, Liechtenstein and Norway. Switzerland benefits via another agreement. <https://www.gov.uk/eu-eea>.

10 [http://www.legislation.gov.uk/ukpga/1999/33/pdfs/ukpga\\_19990033\\_en.pdf](http://www.legislation.gov.uk/ukpga/1999/33/pdfs/ukpga_19990033_en.pdf) Section 24.

11 Directive 2004/38/EC – ‘(a) entered into between a person (‘A’) who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national); and b) entered into by ‘A’ for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the Immigration Rules.’

12 The term is used by the group ‘Immigration Marriage Fraud UK’ and has been considered by the Parliamentary Home Affairs Committee.

to live in the UK permanently. In such cases, often involving children and accumulated marital property, the British or EEA partner may not have suspected that the marriage was entered into for immigration advantage.

- 5.8 Whether obtaining settlement and UK nationality was or was not the sole motive at the outset is hard to assess years after the event. As a practical measure to deter deliberate deceptions, the waiting time for foreign spouses of British citizens to qualify for settlement in the UK was raised from three to five years in 2012. Such frauds are a matter for UK Visas and Immigration (UKVI) and fall outside the scope of this inspection. However, the inspection identified a need for interviews under the 2014 Act provisions to be aware of these situations, so some further information is provided at Appendix 3.

### Scale of sham marriages

- 5.9 In January 2013, the Home Office estimated that between 3,000 and 10,000 applications to stay in the UK per year were made on the basis of sham marriages. It could not be more precise as there were significant gaps in its knowledge. At this time, it launched Operation Mellor, a strategic initiative to tackle sham marriages and sham civil partnerships, which began on 14 January 2013.
- 5.10 In its Impact Assessment for the Immigration Act 2014, dated 9 September 2013,<sup>13</sup> the Home Office noted that around 35,000 marriages and civil partnerships a year in the UK involved a non-EEA national. However, there was still no more accurate figure for those that were sham.

### Prevalence of EEA spouses and civil partners

- 5.11 It is more straightforward for non-EEA nationals to obtain residency in the UK through marriage to an EEA national than by marrying a British citizen. European free movement rights that allow EEA nationals to live in each other's countries extend to their non-EEA spouses. A non-EEA national who, with or without the knowledge of their EEA spouse, uses marriage to benefit from their partner exercising Treaty rights to be in the UK can apply initially for a residence card and subsequently for permanent residence. Meanwhile, non-EEA nationals who marry British citizens are subject to the UK Immigration Rules, as they are not exercising Treaty rights<sup>14</sup> in order to be in the UK. Therefore, sham marriages frequently involve an EEA national.

### The involvement of organised crime

- 5.12 Some sham marriages are arranged by the individual seeking to gain immigration advantage. These individuals often use websites where those willing to be paid to enter into a sham marriage advertise their availability. However, there are also organised criminals who seek to make money by facilitating sham marriages. This may involve a 'fixer', operating in a local area,<sup>15</sup> but there are also organised criminal networks that operate internationally and may be involved in a range of immigration and other crimes, including human trafficking and violent crime.
- 5.13 The *Immigration Intelligence Annual Threat Assessment 2015* refers to sham marriage. It states that sham marriage is a route often used by the 'highest risk nationalities' (with widespread use of fraudulent documents) and that, because of organised crime activity, there is a significant threat of Eastern Europeans being trafficked to the UK for exploitation. It says that, from April

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<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/249122/sham\\_marriage\\_impact\\_assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249122/sham_marriage_impact_assessment.pdf).

<sup>14</sup> An EEA national has a right of residence in the UK for longer than three months if they are a worker, jobseeker or student, or a self-employed or self-sufficient person and meet the conditions for residency. This is also referred to as 'exercising Treaty rights'.

<sup>15</sup> Examples - <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/sham-marriage-matchmaker-flew-partners-11064688> and <http://www.coventrytelegraph.net/news/coventry-news/coventry-woman-mrs-big-behind-10631680>.

2014 to February 2015, some 1,233 Eastern European females were involved in marriages believed to be non-genuine, but how many of these were possibly trafficked remains 'unclear'.

- 5.14 The National Crime Agency's *National Strategic Assessment of Serious and Organised Crime 2016*<sup>16</sup> stated: 'The unprecedented scale of irregular migration, with domestic and European ramifications, has highlighted the damaging impact of organised crime involvement.'
- 5.15 Two themes within that document's National Control Strategy<sup>17</sup> are directly related to sham marriage:
- 'Facilitation of illegal immigration (Priority Band 1 – the highest priority); and
  - Abuse of legitimate means to remain (Priority Band 3).'

### Previous legislation and efforts to stop abuse

- 5.16 To be valid in the UK, a marriage must be monogamous and have no other impediments.<sup>18</sup> It must be 'accomplished in accordance with' the requirements of the Marriage Acts 1949 to 1994, the Marriage (Scotland) Act 1977 and the Marriage (Northern Ireland) Order 2003, as amended by any subsequent legislation.
- 5.17 To give notice of an intention to marry and get a wedding date, British and EEA citizens have to attend in person at the register office in the district where they have had their usual residence for seven days prior to giving notice. Other nationals can attend at any of the UK's Designated Register Offices (DROs).<sup>19</sup>
- 5.18 Prior to the Immigration Act 2014, anyone intending to marry in a civil ceremony at a register office had to give 15 days notice and provide evidence of name, age, marital status and nationality. Assuming no irregularities, the couple was able to marry from day 16. In Scotland, where there was a thriving and world famous marriage tourism industry, attracting celebrities such as Madonna, couples also had the option of giving notice by post.
- 5.19 Section 24(5) of the Immigration and Asylum Act 1999 introduced a requirement for registrars to report whenever they suspected a marriage to be a sham. Their suspicions might have been aroused during the visit to notify the registrar of the intention to marry, or at the marriage ceremony itself. The 2014 inspections<sup>20</sup> found that those seeking to make fraudulent use of marriage to remain in the UK (whether individuals or 'fixers') moved from clearly vigilant DROs to others submitting fewer section 24 reports or less frequently visited by IE, and that some areas had made a slow start in providing section 24 reports. A recommendation that the Home Office work with the General Register Office to encourage section 24 reports was acted on and reports increased.

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16 <http://www.nationalcrimeagency.gov.uk/publications/731-national-strategic-assessment-of-serious-and-organised-crime-2016/file>.

17 The NCA's National Control Strategy prioritises the response to the threats and cross-cutting issues identified in the National Strategic Assessment.

18 Bigamy is a criminal offence. Impediments include either of the parties being under the age of 16 or the couple being closely related.

19 There are 76 DROs in England and Wales. All register offices in Scotland and Northern Ireland are DROs.

20 <http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-a-Sham-Marriage-Enforcement-Operation-Web-PDF.pdf> and <http://icinspector.independent.gov.uk/wp-content/uploads/2014/06/European-Casework-Report-Final.pdf>.



- 5.20 In February 2005, the Home Office had introduced the ‘Certificate of Approval’ scheme requiring non-EEA nationals to obtain permission to marry, subject to an application fee (initially £135, this had risen to £295 by 2009). Case law in relation to Article 12 (the right to marry) of the European Convention on Human Rights (ECHR)<sup>21</sup> had established that States may impose reasonable conditions on the right to marry in order to ascertain whether the proposed marriage is a sham.<sup>22</sup> However, the scheme was abolished on 9 May 2011 as it was found to be in breach of Article 14 (prevention of discrimination).
- 5.21 One issue with the ‘Certificate of Approval’ scheme was that churches were not included. The Church of England did, however, tighten up its own procedures when a problem with sham marriages was identified, as in the case of the East Sussex vicar jailed for four years in September 2010 for conducting 370 sham marriages.<sup>23</sup>
- 5.22 Operation Mellor, run by Immigration Enforcement (IE), brought an enforcement focus on preventing sham ceremonies. However, the 15 day notification period required rapid research and action, and depended on enforcement resources being available. Some enforcement teams were more able to resource the work and more engaged with local registrars to facilitate their efforts, while some local authorities were not supportive of groups of officers in full uniform with stab vests, batons and handcuffs entering public buildings. Where officers did encounter an immigration offender, the individual could maintain that the relationship was genuine and make an application to stay under the Human Rights Act, even if liable to be removed.<sup>24</sup>
- 5.23 In January 2014, while Operation Mellor was still running, EEA regulations were amended to allow greater powers to remove EEA nationals for abusing Treaty rights.<sup>25</sup> One of the four circumstances for removal was involvement in sham marriage. The change also prevented those removed from re-entering the UK within 12 months (unless they could prove that they were immediately compliant with the requirements for residence, for example that they had a genuine job to go to).

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21 [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

22 <http://www.refworld.org/docid/4d5bceb02.html>.

23 <https://www.theguardian.com/uk/2010/jul/29/vicar-convicted-fake-weddings>.

24 ‘Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.’ <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

25 Regulation 19(3)(c) of EEA regulations.

# 6. The Immigration Act 2014

## Creation of a ‘hostile environment’

- 6.1 The Immigration Act 2014 (the ‘2014 Act’) introduced a range of measures aimed at denying access to services and benefits to individuals without valid leave to remain in the UK. By creating a ‘hostile environment’ for such individuals, the government expected that large numbers would be persuaded to depart the UK voluntarily and that it would reduce the ‘pull factor’ for anyone thinking of coming to the UK to settle illegally.

## New provisions in relation to sham marriage

- 6.2 The 2014 Act<sup>26</sup> revised the definition of a sham marriage. It defined a marriage as sham if all of the following applied:
- ‘either, or both, of the parties to the marriage is not a relevant national,<sup>27</sup>
  - there is no genuine relationship between the parties to the marriage, and
  - either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes –
    - avoiding the effect of one or more provisions of UK immigration law or the immigration rules;
    - enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in the UK.’
- 6.3 When introducing the 2014 Immigration Bill in October 2013, the then Immigration Minister, Mark Harper, said: ‘Sham marriages have for too long been an easy target for migrants seeking to circumvent our immigration rules, often assisted by organised criminals. Registrars are frustrated when they marry couples who are obviously sham; we need more effective tools to deal with it.’ The new legislation was intended to make it ‘easier to identify illegal immigrants by extending ... powers to examine the status and credibility of migrants seeking to marry or enter into civil partnership’.
- 6.4 In November 2014, the new Immigration Minister, James Brokenshire, made a Written Ministerial Statement detailing the changes due to come into force on 2 March 2015. In it he stated: ‘Part 4 of the Act will give us a much stronger platform for effective, systematic action to disrupt and deter sham marriages and civil partnerships.’

## Changes to the notification period and registrar referrals

- 6.5 The 2014 inspection *A Short Notice Inspection of a Sham Marriage Enforcement Operation* found that sham couples generally married as soon as possible after the required 15 day period between notification of their plan to marry and the marriage ceremony.

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<sup>26</sup> Also the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 (SI 2015/396): <http://www.legislation.gov.uk/id/ukSI/2015/396> and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 (SI 2015/395): <http://www.legislation.gov.uk/id/ukSI/2015/395>.

<sup>27</sup> British citizens, other EEA nationals, and Swiss nationals – see footnote 9.

- 6.6 The 2014 Act extended the notification period from 15 to 28 days. The Immigration Minister explained: ‘By extending the notice period and channelling to the Home Office all proposed marriages and civil partnerships which could bring an immigration benefit, the new system will give us much more time and information to identify and act against sham marriages and civil partnerships before they happen and, where they do go ahead, we will have the evidence we need on file to be able to refuse any subsequent immigration application in terms which will withstand appeal.’
- 6.7 The new period of 28 days carried an option to extend to 70 days if the Home Office decided to investigate whether the relationship was genuine.<sup>28</sup> In order to extend the period to 70 days, Home Office officials acting on behalf of the Secretary of State had to ensure that conditions A and B of Part 4, section 48(4) and (5) of the 2014 Act were met:
- ‘(4) Condition A is met if the Secretary of State is satisfied that –
- (a) only one of the parties to the proposed marriage or civil partnership is an exempt person, or
  - (b) neither of the parties are exempt persons.
- (5) Condition B is met if the Secretary of State has reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham.’
- 6.8 Section 49 of the 2014 Act defined the exempt categories:
- ‘(1) A person who is a party to a proposed marriage or civil partnership is an exempt person if the person –
- (a) is a relevant national;<sup>29</sup>
  - (b) has the appropriate immigration status; or
  - (c) holds a relevant visa in respect of the proposed marriage or civil partnership.
- (2) A person has the appropriate immigration status if the person –
- (a) has a right of permanent residence in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972;
  - (b) is exempt from immigration control; or
  - (c) is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act).’

6.9 Superintendent registrars were required to identify any ‘exempt’ persons. Where any parties claimed to be exempt but failed to provide the relevant evidence, the registrar was required to refer them.

6.10 The requirement placed on superintendent registrars under section 24 of the Immigration and Asylum Act 1999 to report wherever they had suspicions of a sham marriage remained in force. However, the new process covered concerns formed by registrars only at the brief notification interview, while registrars might also form concerns during the marriage ceremony itself, when a sham couple may be more likely to let down their guard, assuming that they have evaded detection.

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<sup>28</sup> Deathbed marriages under the Marriage (Registrar General’s Licence) Act 1970 are excluded.

<sup>29</sup> See footnote 9.

## Following up referrals

- 6.11 A section 24 report setting out substantive concerns automatically triggers an investigation. For other referrals, the new process requires the Home Office to check names and other details against immigration records and intelligence-based risk profiles and factors, to decide whether to investigate and so whether to extend the period to 70 days.
- 6.12 Notwithstanding the extended notice period and the availability of the further extension, if required, the 2014 Act signalled a change of approach by the Home Office. Instead of focusing its efforts on preventing sham marriages from taking place, the emphasis shifted to ensuring that individuals who enter into a sham marriage do not gain an immigration advantage from having done so. Where the Home Office determined a couple to be sham but the couple had complied with an investigation, they could go on to marry,<sup>30</sup> but the Home Office would then look to refuse any further applications for leave to remain.
- 6.13 Senior managers explained to inspectors that the threat of an investigation was intended to act as a deterrent, and that this was part of ‘a longer term vision’. However, they saw the power lying not in preventing a marriage from taking place but in preventing the non-EEA national from obtaining leave to remain on the basis of the sham. They acknowledged, however, that any appreciable gap before such an application was made would require an assessment of any changed circumstances.

## Compliance with the investigation

- 6.14 The 2014 Act requires the Home Office to decide whether a couple has complied with an investigation by, for example, providing contact details and attending an interview with a valid travel document and other requested documents.<sup>31</sup> Where the Home Office decided there was non-compliance, it would take appropriate action, for example curtailing leave or looking to effect removal.
- 6.15 The 2014 Act also amended Section 10 of the Immigration and Asylum Act 1999 to read: ‘A person may be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer if the person requires leave to enter or remain in the United Kingdom but does not have it.’ Therefore, removal of a non-EEA overstayer or illegal entrant who has notified their intention to marry is not dependent on the result of any investigation into the genuineness of their relationship with their intended spouse.
- 6.16 The requirement to bring a valid travel document to the notification meeting with the registrar and to any interview with the Home Office investigators means that, subject to any Human Rights application, either relating to the right to marry or to private and family life, removal is not delayed because the individual does not have the necessary travel documents.
- 6.17 Curtailment of existing leave is an option where an investigation concludes that a non-EEA national, who has limited leave to remain in the UK, is looking to marry solely because that leave is coming to the end.

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<sup>30</sup> Article 12 of the European Convention on Human Rights: ‘Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.’ [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>31</sup> Set out in section 50, subsections (3) to (8) of the 2014 Act.

## Inclusion of church weddings

- 6.18 The Church of England and Church in Wales were included in the provisions of the 2014 Act by means of an amendment to the Marriage Act 1949. Now, in order to get married on the basis of banns of marriage or by common licence,<sup>32</sup> both parties have to be exempt. Couples wanting an Anglican marriage must give notice to a DRO, except where the Archbishop of Canterbury's Special Licence provisions apply,<sup>33</sup> or where the parties are exempt and have to attend in person at the register office in the district where they have had their usual residence for seven days prior to giving notice.

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<sup>32</sup> This replaces the need for banns but cannot be used for marriage other than in the designated church.

<sup>33</sup> Given by the Archbishop under powers exercised since 1533. Someone with a genuine connection with a particular church or chapel, but unable to satisfy the legal residential requirement to marry there, may apply for the Archbishop of Canterbury's Special Marriage Licence.

# 7. Inspection findings – initial implementation of the new provisions

## The framework and operational context for the new approach

- 7.1 Immigration Enforcement’s strategic objectives are set out under four headings: Prevent, Pursue, Protect and Prepare (which is a model used across UK law enforcement, and which IE adopted in July 2014). The ‘4Ps’ break down into various sub aims, some of which relate to tackling the problem of sham marriage, for example:
- Prevent includes ‘Drive voluntary departures.’
  - Pursue includes ‘Investigate and prosecute immigration crime.’
  - Protect includes ‘Deny and switch off services.’
  - Prepare includes ‘Clear consequences for failing to comply.’
- 7.2 IE’s *Concept of Operations* sets out how it will deliver its overall aims of reducing the size of the illegal migrant population and the harm done to the UK by foreign nationals through threat and intelligence-led activities, including targeting enablers (for example, sham marriage ‘fixers’). Working with partners and sharing data are seen as key to denying those with no legal right to be in the UK access to public and private services (such as being able to marry in the UK) and creating a ‘hostile environment’ that encourages individuals to depart voluntarily.

## Marriage Referral Assessment Unit

- 7.3 In 2014, the Home Office had created a thematic intelligence hub to support the Permanent Migration teams in Liverpool and become a centre of excellence on sham marriage. The decision was taken not to seek additional resources to deliver Part 4 of the 2014 Act, so the hub staff instead became the new Marriage Referral Assessment Unit (MRAU).

**Figure 1: MRAU staffing as at 31 July 2016**

Grade	Staff in post	Budgeted headcount
Senior Executive Officer – also manages other intelligence teams in several locations	1	1
Higher Executive Officer	2	2
Executive Officer	10.48 <sup>34</sup>	12
Administrative Officer	9.25 <sup>35</sup>	10
<b>Total</b>	<b>22.73</b>	<b>25</b>

<sup>34</sup> Full-time equivalents (FTEs).

<sup>35</sup> As previous footnote.

## Problems with the initial process from 2 March 2015

- 7.4 The provisions in the 2014 Act in relation to sham marriage came into effect on 2 March 2015. From that date, MRAU received details of non-exempt individuals who had given notice of their intention to marry and had been referred by a registrar. These were received from the General Register Office for England and Wales (GRO), National Records of Scotland (NRS) and the General Register Office for Northern Ireland (GRONI). Also from that date, MRAU provided a helpline for registrars to check, for example, whether someone was an 'exempt' person under the 2014 Act.
- 7.5 In order to decide which cases needed to be investigated, MRAU used its own triage model, known as the 'dial'. This brought together known intelligence, profiling agreed by Immigration Intelligence and section 24 reports in order to categorise couples as either 'red' (liable to be extended to 70 days for an investigation) or 'green' (could marry at 28 days). MRAU carried out further research on the red cases to add detail. Senior managers told inspectors that they would not seek to adjust the sensitivity of the dial until further evaluation of the outcomes.
- 7.6 Profiling by nationality is not permitted without Ministerial authority.<sup>36</sup> Although there was information showing which nationalities were prominent in sham marriages, both entering into sham marriages and facilitating others,<sup>37</sup> the Home Office did not seek such authority for introducing the 'dial'.
- 7.7 The profiling used for the 'dial' was instead based upon the harm posed to the UK by particular categories of individuals. In March 2015, these included:
- immigration offenders, absconders or individuals otherwise in breach of leave to remain;
  - illegal entrants; and
  - individuals with a criminal conviction or evidence of links to criminality.
- 7.8 The IT to support the 'dial' was a major problem. Multiple IT failures from day one contributed to MRAU falling behind schedule. The initial Excel spreadsheet had to be manipulated simply to pair up the couples within the marriage notifications. The overall process involved multiple handovers between different IT systems, with each human intervention providing an opportunity for inputting error.
- 7.9 For example, data travelled via the Managing Integrated Data Solutions Service (MIDAS) for one stage but, when it exited, names from different alphabets were often rendered into 'special characters'. Staff therefore had to go back into the initial information to find the names affected and re-enter them manually as the Case Information Database (CID), which records details and cases for the immigration system, cannot cope with special characters. Yet another system was involved before the information was placed on CID.
- 7.10 These IT problems persisted and were still an issue when inspectors visited MRAU in September 2016. Senior managers told inspectors that they were seeking to improve the IT (and, ideally, to automate the front end of the process) as a matter of urgency.
- 7.11 The process also required stock letters to be sent to couples at particular points. The final letter set out the determination of whether the compliance requirement had been met and the

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<sup>36</sup> Authorisation on the nationality issue is specifically provided by 17(4) of Part 4, Schedule 3 of the Equality Act 2010.

<http://www.legislation.gov.uk/ukpga/2010/15/schedule/3>.

<sup>37</sup> For example, The Rights of European Citizens and their Spouses to Come to the UK: Inspecting the Application Process and the Tackling of Abuse <http://icinspector.independent.gov.uk/wp-content/uploads/2014/06/European-Casework-Report-Final.pdf>.

proposed marriage could proceed. However, neither letter (complied or non-complied) currently mentions 'sham'. Both state that the decision to allow the marriage to go ahead 'does not constitute a determination as to the genuineness of the relationship'.

- 7.12 A number of staff at all levels commented that this missed the opportunity to reinforce the message to sham couples that the marriage would not be accepted in support of a later application for leave, thereby increasing the deterrent value of the new approach. Senior managers told inspectors that a request to consider such a change had been with policy colleagues for some time.
- 7.13 Staff previously of the thematic intelligence hub and now undertaking MRAU work felt that they had been deskilled by the new process. They were unhappy to be passing intelligence to the local Operational Intelligence Unit rather than developing it themselves. They felt that their work was 'just admin and data input' and that, overall, setting up and trying to operate the initial MRAU process had been 'ridiculously demanding'. Morale was low, attrition was high and, at one stage, 23% of staff were away on sick leave.
- 7.14 Managers at all levels told inspectors that the staff had worked extremely hard to try to make the initial process work despite all the difficulties. Senior managers reported that they expected matters to improve over time, and that this would allow MRAU staff to do more core intelligence work.
- 7.15 In view of the workload in the initial process, management had arranged for intelligence staff from Croydon and Sheffield to provide support to get through the caseload. However, ICE teams did not adopt many of the intelligence packages asking them to undertake investigations.<sup>38</sup> The outcome was more pressure on MRAU staff, and many cases which could not be investigated in the timescale had to be given a 'no determination' outcome.
- 7.16 Overall, the initial months of the new process did not deliver the projected outcomes – neither the investigations, nor 'the evidence we need on file to be able to refuse any subsequent immigration application in terms which will withstand appeal' (see paragraph 6.6).

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<sup>38</sup> All the information added by Home Office immigration records and further research to the original information received from the registrars makes up a 'package'.



## 8. Inspection findings – testing a new process

### Conduct of investigations

- 8.1 The 2014 Act specifies the grounds for referral and outcomes relating to ‘compliance’, but leaves the Secretary of State to determine how investigations should be conducted.
- 8.2 Section 50 (‘Conduct of investigation’) states:
- ‘(1) An investigation must be conducted in accordance with any regulations made by the Secretary of State for this purpose.<sup>39</sup>
  - (2) In conducting an investigation, regard must also be had to any guidance published by the Secretary of State for this purpose.’

### Pre-2014 Act enforcement operations

- 8.3 The January 2014 inspection report *A Short Notice Inspection of a Sham Marriage Enforcement Operation* recommended that the Home Office should provide ‘clear and comprehensive guidance to enforcement staff on how to conduct sham marriage operations’ and establish ‘a mechanism that ensures good practice is shared between enforcement teams’.
- 8.4 This recommendation arose from the finding that some enforcement teams were knowledgeable and effective in tackling sham, but others had little or no experience, and that detailed guidance on running operations in register offices was not in place to assist them. The inference was that the teams with the knowledge should be leading the development of the others.

### Post-2014 Act investigations

- 8.5 A senior manager told inspectors that, while the 2014 Act was seen as ‘a massive game changer’, a ‘clear steer was lacking’ in the implementation of the new (from 2 March 2015) investigation process. A large part of that process fell to MRAU to deliver, but the IT did not enable MRAU to work at speed. Furthermore, there was no requirement on ICE teams to take any action on cases passed to them by MRAU. The guidance allowed ICE teams to decide not to investigate due to ‘matters of operational prioritisation and workflow management within the resources available at the time the decision is made’.
- 8.6 Where ICE teams did take up a case the process required them to call the couple in for interview or carry out a home visit. There was no power of entry for home visits since the circumstances would not justify seeking a warrant.
- 8.7 By late 2015, it was evident that the MRAU process was struggling to deliver packages for investigation within the set timescales and that the take up of packages by ICE teams was low. Immigration Intelligence and Immigration Enforcement managers came together to find a way

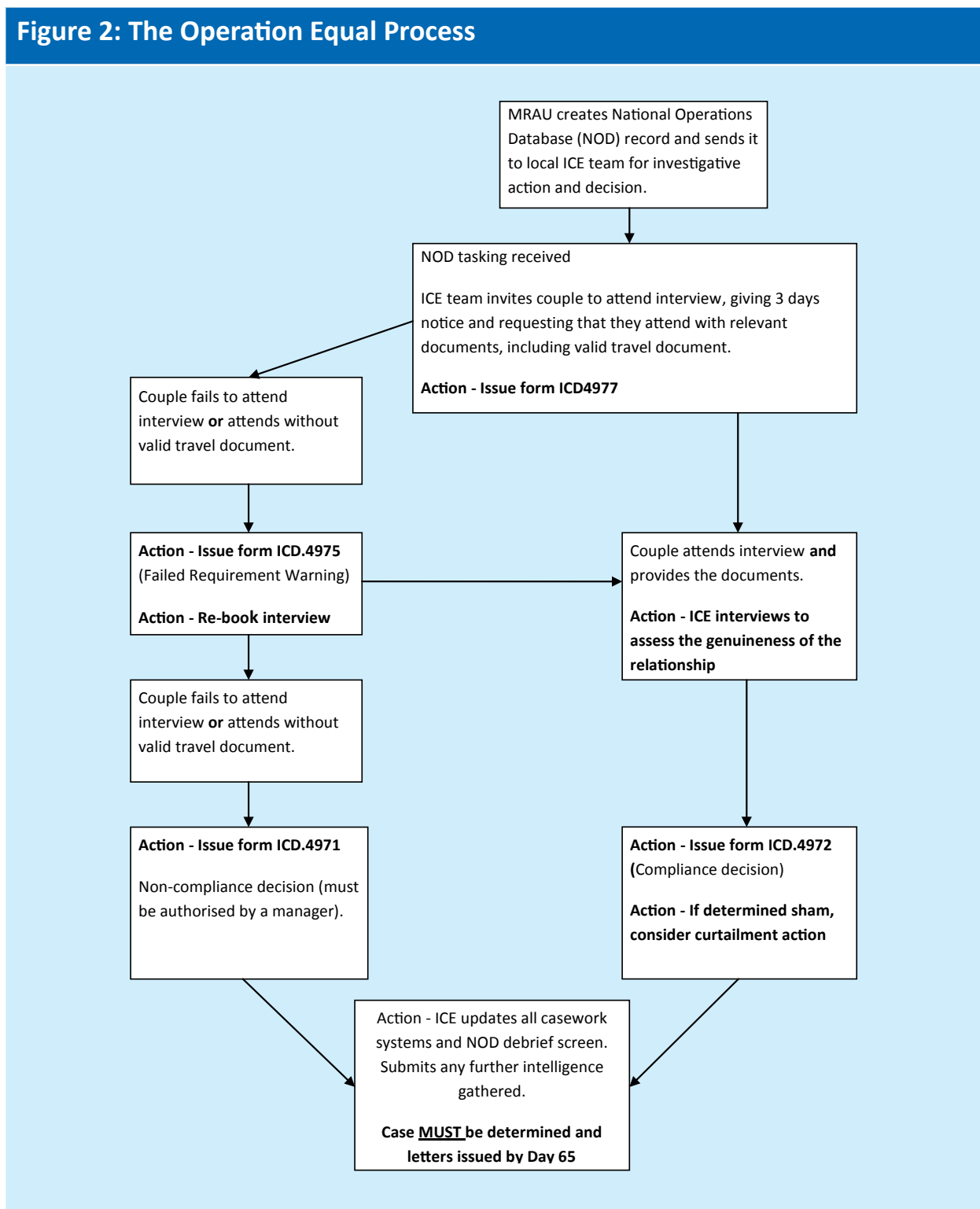
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<sup>39</sup> The Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015  
<http://www.legislation.gov.uk/uksi/2015/397/contents/made>.

forward, and working with officers from the three ICE teams most experienced in tackling sham marriage, and recognised as such by other teams, devised an improved process.

8.8 This revised process was piloted by the three ICE teams, under Operation Equal. The intention was that, having used experienced officers to develop and test good practice, this would be rolled out nationally with training and new guidance (produced with input from policy staff) in a 'phased implementation'. Figure 2 sets out the revised process for officers to follow, which shifted the investigative burden to the ICE teams and established calling couples in for interview as the normal approach.

**Figure 2: The Operation Equal Process**



- 8.9 Inspectors assessed the guidance (v.7, dated 12 April 2016) for the Operation Equal pilot. This provided the three ICE teams with the address of the shared MRAU email inbox and contact numbers for staff. It also gave contact details for the General Register Office for England and Wales (GRO), National Records of Scotland (NRS) and the General Register Office of Northern Ireland (GRONI).
- 8.10 MRAU remained responsible for identifying and researching the 'red' referrals requiring investigation. These would be passed to the Tasking & Coordination meeting of the relevant ICE team. The three teams involved in the pilot, which had previously organised their resources to enable anti-sham activity, took on as many of the referred cases as possible to test the new process. They invited the couples in for interview, giving them three working days notice.
- 8.11 The pilot emphasised the need for consistency. For example, the section on compliance and non-compliance set out all the possible scenarios:
- the couple complied by attending an interview with their passports and other required documents;
  - the couple initially failed to provide documents but subsequently complied;
  - the couple initially failed to attend for interview then complied;
  - the couple failed to provide further documents; and
  - the couple failed to attend for interview.
- 8.12 Staff experienced in sham work had compiled a comprehensive list of the actions to be taken for each scenario, including the appropriate form and letters to issue. As the guidance was informed by experience, it covered the likelihood of 'no comment' responses to interview questions by directing that these should be considered for a decision that the couple had not complied with the investigation. Non-compliance decisions had to be authorised by a manager.
- 8.13 Prompt updating of CID was required because Home Office caseworkers might be dealing with other live applications from the non-EEA individual. Officers also had to update the National Operations Database (NOD).<sup>40</sup> The final aspect was to complete the debrief stage and submit any further intelligence via the electronic referral form.
- 8.14 To ensure consistency, the guidance contained standard letters to be used at various stages, for example when initially informing the couple that the waiting period had been extended to 70 days, and when recording failure to comply because of non-attendance. The texts of these letters had been agreed with Home Office policy staff.
- 8.15 A second annex gave prompts for interview questions, set out under separate headings: 'work', 'social media', 'house', 'personal', and 'immigration history'. The 'work' questions were designed to help establish whether an EEA partner was genuinely resident in the UK, exercising his or her Treaty rights. A number of these prompts were derived from the experiences of European Casework. The intention was that the couple would be interviewed separately and their answers under each heading compared for discrepancies. Inspectors noted little appropriate questioning for someone who might have been deceived into thinking the relationship was genuine. Some factors common to cases which may be considered as long term shams are set out at Appendix 3, and these suggest other aspects that could usefully be included in that area of questioning.

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<sup>40</sup> NOD holds information on operations and can be used both for tasking and for drawing off management information.

- 8.16 Officers are not permitted to ask highly personal questions. As might be expected, the ‘personal’ category covers aspects such as living arrangements and regular religious observation.
- 8.17 A key question was whether their partner had been married before. In many of the cases examined for the June 2014 report *The Rights of European Citizens and their Spouses to Come to the UK: Inspecting the Application Process and the Tackling of Abuse*, the non-EEA party had been married before and often to another EEA national. Past prosecutions have shown that bigamy may feature in a sham marriage as ‘fixers’ often provide the same partner for a number of sham ceremonies.

## Outcomes

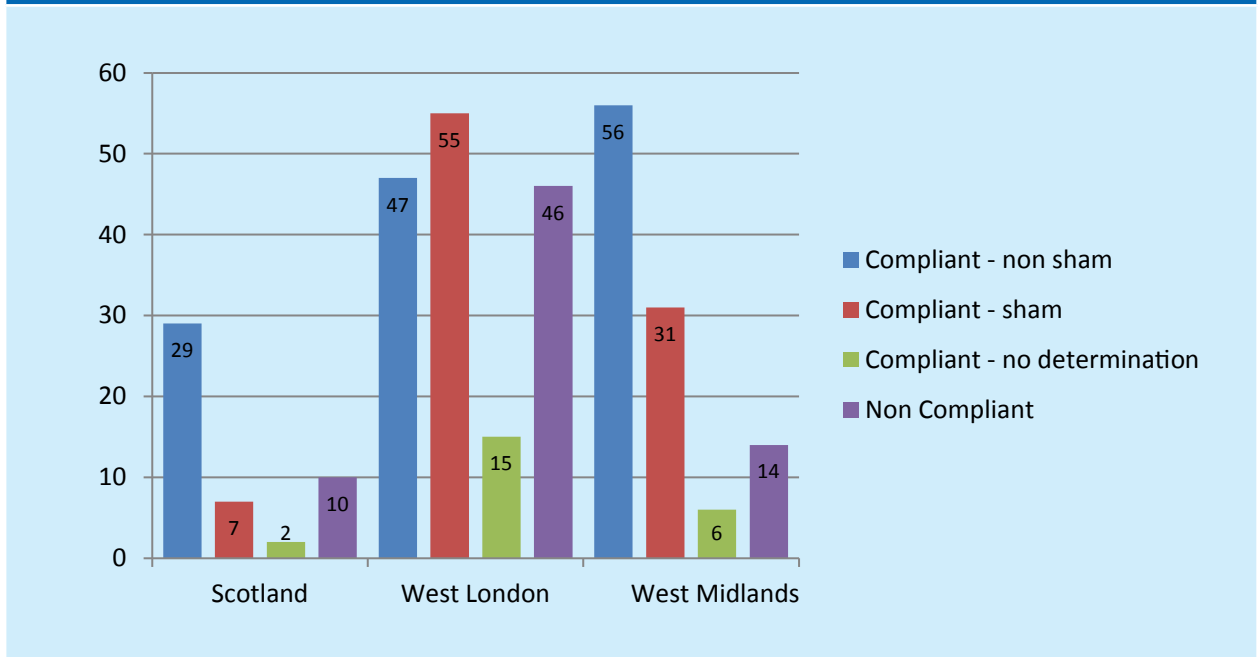
- 8.18 Figures 3 and 4 below give the results from the three pilot ICE teams for the six months of the pilot (January-June 2016) and for the first two months following the national rollout of the revised process, which followed acceptance by IE senior management of an evaluation of Operation Equal that concluded it had been a success.

**Figure 3: Referral packages sent to the three pilot ICE teams and activity – January 2016 to 29 August 2016**



- 8.19 As Figure 3 shows, the percentage of packages rejected at the tasking stage was extremely low (5.3% for Scotland, 4.7% for West London, and 1.5% for West Midlands). At the same time, the completion rate by that date for the accepted packages was high (92.6%, 81.4% and 88.2% respectively), which indicated that there was no build-up of backlog cases.

**Figure 4: Breakdown of conclusions reached by the three pilot ICE teams – January 2016 to 29 August 2016<sup>41</sup>**



- 8.20 Figure 4 shows that for two teams, Scotland and West Midlands, more than half (60.4% and 52.3% respectively) of the recorded results were ‘compliant – non sham’. The percentage for West London was 28.8%. ‘Compliant – non sham’ possibly indicates the need to adjust the sensitivity of the ‘dial’ used to assess whether a marriage looks to be sham, or a need to improve ICE teams’ interviewing skills as sham couples are too well prepared to be caught out giving answers that do not tally.
- 8.21 Inspectors spoke to the two teams, who confirmed that many of those interviewed were ‘too good for us’ and, over four hours of interviews, officers could not identify substantial discrepancies in the couples’ responses. An ICE team manager made the point to inspectors that offenders very quickly hear about and prepare for a new enforcement process – ‘within ten minutes the average offender knows what that process is’.

## Training and guidance

- 8.22 National training and guidance was devised and delivered by MRAU and the IE staff who had developed the new process. A manager described this to inspectors as using those who had a ‘passion for it’ to deliver the new process. The latter included a weekly telephone conference for representatives from each ICE team to discuss issues and to promote consistent practice. Immigration Intelligence and Immigration Enforcement staff were enthusiastic about the development value of this weekly call. For example, it had identified the importance of couples bringing statements for every bank account they held to interview and this had been made clearer in invitation letters.
- 8.23 Training workshops were held and business-embedded trainers took the new process back to their teams (these were local staff within teams who acted as trainers for cascading such training). The new guidance (published on the Home Office intranet on 25 July 2016) covered all types of ‘Marriage Investigations’ in one document. It is succinct, and intended to be accessed electronically.

<sup>41</sup> Not all the packages accepted for action in the period would have been completed by the end date for these statistics (the most up to date statistics available at the time of writing the report).

The contents page sets out all the aspects, but the documents covering the potential variations are accessible via links. At the beginning is a grid setting out a summary of 'sham marriage removal pathways' for non-EEA and EEA nationals. This provides links to the full guidance for each category of person to ensure that actions comply with the relevant rules.

# 9. Inspection findings – Operation Equal national rollout

## The evidence base for this inspection

- 9.1 The evidence-gathering stage of this inspection was completed in September 2016. Information and data relating to the national rollout of Operation Equal was still extremely limited by then. On 20 June 2016, when the rollout began, some ICE teams were not in a position to implement the new process immediately. Meanwhile, MRAU still had to work through those referrals received before 20 June, applying the old process, which took until the end of August 2016 to complete.
- 9.2 However, inspectors were able to speak to sham specialists from six ICE teams (the three teams involved in the pilot and three others) and they surveyed the DROs in the piloted areas in order to find out about the impact of the new provisions and Operation Equal so far.

## Consequences of the shift of emphasis away from preventing marriages

- 9.3 As the 2014 Act signalled a shift of emphasis away from ICE teams seeking to prevent sham marriages to preventing those involved in a sham gaining an immigration advantage by virtue of that marriage, most ICE teams ceased to maintain their relationships with registrars. One team told inspectors that it had continued with anti-sham work by looking at the notifications of intention to marry published locally (usually online within a town hall or civic centre, etc).<sup>42</sup> They checked the names against Home Office records to identify anyone in the UK illegally who could be subject to immediate enforcement action. This team deployed three times a week to visit 20 addresses on each occasion. This local approach was described as ‘trying to turn up our dial’.
- 9.4 The survey of registrars, and discussion at the National Panel for Registration, indicated that while the Home Office had communicated the shift of emphasis, some registrars were still confused about allowing identified sham couples who had complied with an investigation to go ahead and marry, and were concerned that their section 24 reports were not being acted upon.
- 9.5 By not attending at the register office, ICE teams were no longer observing the sham marriage ‘fixers’, who often attended the ceremony in the guise of a guest. One ICE team raised its concern with inspectors that intelligence that could support criminal prosecutions was not being collected to the same extent as before.

## Accommodation needs

- 9.6 Not all ICE teams have interview rooms with public access and therefore suitable for calling couples in for an interview. Two of the six teams to whom inspectors spoke were struggling with accommodation issues. One of these had officers spread across several offices in different counties but no interview rooms with public access. The team was having to approach others for suitable accommodation, including another government department.

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<sup>42</sup> This is the Banns of Marriage – a series of announcements in a church, or information made available by the local authority in civil marriages, which enables a member of the public to bring attention to any valid impediment to the marriage such as a previous undissolved marriage or the couple being too closely related.

- 9.7 A London team, which at the time was receiving the most sham marriage referrals (16% of all referrals), told inspectors that it was experiencing extreme difficulty with both waiting areas and interview rooms because it was collocated with IE colleagues who also needed the use of these facilities. The team had deployed five officers to get through the first large batch of referrals following the national rollout in order to avoid a backlog building up, but was due to cut back to a planned 'business as usual' level of two interviewing officers.

### **Approaches to interviewing suspected sham couples**

- 9.8 Some ICE teams were using Executive Officers (administrative rather than operational grades) as interviewers. This was enriching the Executive Officers' jobs and adding to their transferable skills. Teams comprising only operational officers did not have this option, and most preferred to allocate the interviewing to a small (typically two-person) team of selected officers, noting that these were roles that could be taken on by officers on restricted or recuperative duties.
- 9.9 However, one team told inspectors that it would be scheduling every officer to carry out sham marriage interviews as this would enhance their general interviewing skills, which would be valuable for the team's other work.
- 9.10 The general view was that interviewing skills in relation to potential shams would increase with practice: 'The more they do the better at it they will become.'

### **Bulk work and trends**

- 9.11 For the period March to August 2016 inclusive, a total of 23,948 marriage notices were referred to MRAU. Of those couples 17,818 were allowed to marry at 28 days. The remaining 6,130 were extended to 70 days and ICE teams were asked to undertake investigations.
- 9.12 Inspectors were told that, before attending an interview, some non-EEA nationals made multiple new applications for leave. An outstanding application, even one with no realistic chance of succeeding, can act as a barrier to removal.
- 9.13 Teams had noticed a pattern of preparing for Human Rights claims under Article 8 (the right to family life). They were now seeing couples attending for interview where the woman was pregnant or had a child or children with her. One team reported a new trend for non-EEA men paying extra for a sham bride who was already pregnant. While detailed inspection of trafficked and vulnerable persons involved in shams was out of scope for this report, one representative told inspectors that their team had seen 'more vulnerability than ever before'.
- 9.14 Inspectors were also told about concerns of some displacement of sham marriages to other countries. By marrying overseas rather than in the UK, the non-EEA national in question was able to avoid notifying their intention to marry and the possible IE investigation and instead seek entry to the UK via the family permit system.<sup>43</sup>

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<sup>43</sup> The family permit scheme enables eligible EEA nationals living in the UK on a permanent basis to sponsor their foreign partner for an EEA family permit to live and work in the UK. It is operated by UKVI.



## Evaluation of the changes brought in since the 2014 Act

- 9.15 Inspectors asked the Home Office for a range of statistics specific to the new legislation. However, disaggregated statistics for some aspects of sham marriage were not available. For example, there were no separate figures for criminal prosecutions from sham marriage referrals. One ICE team told inspectors that it could go back over tasking meeting records and identify its sham marriage referrals for possible prosecutions; however, this would take some effort.
- 9.16 A senior manager confirmed that the outcomes of the Immigration Act 2014 provisions will be evaluated when more results are available and 'success criteria will develop' to help inform the Home Office on whether to adjust the sensitivity of the 'dial'.

# Appendix 1 – Role and remit of the Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach;
- the practice and performance of listed persons compared to other persons doing similar activities;
- the procedure in making decisions;
- the treatment of claimants and applicants;
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim);
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions);
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure);
- practice and procedure in relation to the prevention, detection and investigation of offences;
- the procedure in relation to the conduct of criminal proceedings;
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue;
- the provision of information;
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

# Appendix 2 – Criteria used in this inspection

<b>Inspection criteria</b>
<b>Operational delivery</b>
1. Customs and immigration offences should be prevented, detected, investigated and where appropriate, prosecuted.
2. Resources should be allocated to support operational delivery and achieve value for money.
<b>Safeguarding individuals</b>
3. All individuals should be treated with dignity and respect and without discrimination in accordance with the law.
<b>Continuous improvement</b>
4. The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.
5. Risks to operational delivery should be identified, monitored and mitigated.

## Appendix 3 – ‘Marriage fraud’

1. The Immigration Act 2014 establishes that a marriage or civil partnership is a sham if: ‘either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes:
  - avoiding the effect of one or more provisions of UK immigration law or the immigration rules; and
  - enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in the UK.’
2. The term ‘marriage fraud’, used by the group ‘Immigration Marriage Fraud UK’, highlights the longer term outcomes of what may have begun as sham marriages where a partner with the right to live in the UK was deceived by someone who was actually looking for a route to obtaining legal residence. Non-EEA nationals deceiving partners into marriage or civil partnership are seeking an immigration benefit of such high value (settled status leads to citizenship and a UK passport) that they may stay within the relationship in the UK for the necessary time. The current period for seeking settlement is five years.
3. The group has brought a range of cases to the attention of the Home Office, the College of Policing, the Parliamentary Home Affairs Committee and the Parliamentary Ombudsman.
4. The following list includes aspects of cases that they have highlighted.
  - The majority of those who have practised such deception are men.
  - There is a strong element of grooming to entice the UK or EEA partner, for example via the internet or when the deceived partner is on holiday abroad.
  - A proportion of cases involve female British citizens who met their partners abroad and supported the immigration application (and sometimes further representations and an appeal) in order to bring them to the UK.
  - Sham partners may be assisted by their family members or others involved in arranging shams.
  - A sham partner may already be married, making a subsequent UK marriage a bigamous one; not a valid marriage according to UK marriage law; but bigamy, when the previous marriage took place abroad, can be difficult to prove for legal annulment.
  - Those already married may use funds from the new ‘marriage’ to support their legal spouse and family abroad or bring offspring to the UK to have the new partner act as step-parent.
  - False identities and fraudulent documents figure, in which case a UK marriage is not a valid one and can be annulled where evidence is available; there may also be incidence of criminality in the home country or others before coming to the UK.
  - After a substantial period of an apparently subsisting marriage, and where there is no finding of bigamy, divorce courts will apportion marital property and goods to the sham partner even if held by the duped partner from before the relationship.

- The sham partner may have planned to have a child in the marriage with a view to supporting an Article 8 Human Rights claim (referred to by Immigration Marriage Fraud UK as an 'anchor child'). The duped partner may have been subject to abuse during the marriage, and may then be threatened to stop them informing the authorities when the non-EEA national leaves the relationship.
- Allegations of domestic violence have been made by non-EEA partners seeking a legal right to stay in the shared accommodation and/or gain custody of children.

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Lead Inspector

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