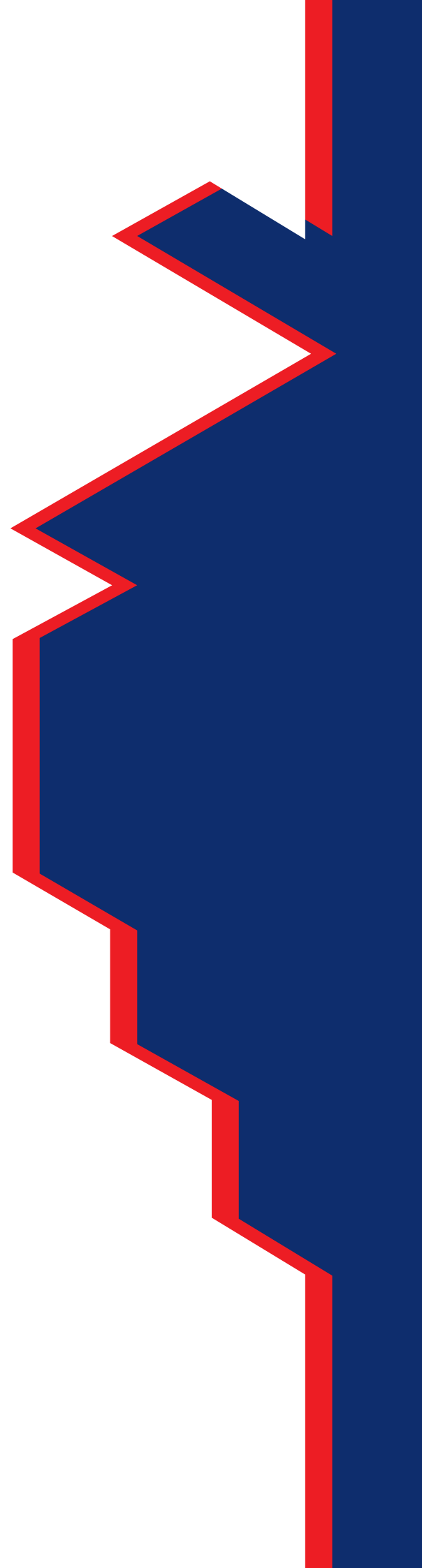




**SECURING
OUR BORDER
CONTROLLING
MIGRATION**

FAMILY MIGRATION A CONSULTATION

July 2011



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HOME SECRETARY FOREWORD



This government is determined to bring immigration back to sustainable levels and to bring a sense of fairness back to our immigration system.

We have already capped the number of economic migrants coming to the UK from outside the European Economic Area. We have announced plans to reform student visas and to clamp down on bogus colleges. We also recently launched a consultation aimed at breaking the link between temporary migration and permanent settlement. As a result of our policies we anticipate net migration will be in the tens of thousands in future.

But we have been clear that we will take action across all the routes of entry to the UK, so we must also take action on the family migration route. In the year to September 2010 family migration accounted for around 17 per cent of non-EU immigration to the UK. That is around 53,000 people.

Of course, those with a legitimate right to come here must still be able to do so. But we need to crack down on abuse of the family route and to tighten up the system.

The key themes to our approach are stopping abuse, promoting integration and reducing the burden on the taxpayer.

Families are the bedrock of society. Family migration must be based on a real and continuing relationship, not a marriage of convenience or a

marriage that is forced or is a sham. It is obvious that British citizens and those settled here should be able to marry or enter into a civil partnership with whomever they choose. But if they want to establish their family life in the UK, rather than overseas, then their spouse or partner must have a genuine attachment to the UK, be able to speak English, and integrate into our society, and they must not be a burden on the taxpayer. Families should be able to manage their own lives. If a British citizen or a person settled here cannot support their foreign spouse or partner, then they cannot expect the taxpayer to do it for them.

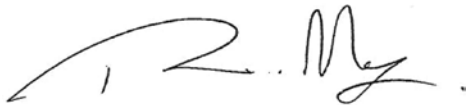
The context in which we make these decisions is important. The coalition government has a firm commitment to human rights. There has however been considerable public debate as to how these rights are interpreted and applied, and in particular the interpretation of Article 8 of the European Convention on Human Rights, the individual's right to respect for family life. Article 8 allows for consideration of the public interest as well as the individual's right to respect for family life to be taken into account. That is why we have established a commission to investigate the creation of a UK Bill of Rights. It is my sincere hope that the commission will help bring some common sense back to this, admittedly difficult, area.

In the meantime, the government has a responsibility to open the debate and to set out our views on what the new family immigration

system should look like. We want a system which is clear and consistent. We want a system that lets everyone know where they stand and makes clear what their responsibilities are. But more than this, we want to see a system that is fair and that is seen to be fair – to applicants and, more importantly, to the public.

In light of this consultation, we will bring forward proposals which will aim to strike a proper balance between the individual's right to respect for family life and the broader public interest. We will then be looking to implement changes to the Immigration Rules in April 2012.

These issues are of the utmost importance and they affect us all. It is therefore only right that we should have a proper debate and an informed discussion. I look forward to hearing all views.

A handwritten signature in black ink, appearing to read 'T. May', with a stylized flourish at the end.

Rt Hon Theresa May MP

Home Secretary and minister for women and equalities

HOW TO RESPOND TO THIS CONSULTATION

The consultation paper is available on the UK Border Agency website:
www.ukba.homeoffice.gov.uk/policyandlaw/consultations

Responses can be made by completing the online survey, which can be accessed via the website.

Responses can be emailed, using the template available on the website, to:
Familyconsultation@homeoffice.gsi.gov.uk

Responses can also be posted, using the template available on the website, to:

Family consultation
UK Border Agency
Home Office
1st Floor, Seacole
2 Marsham Street
London
SW1P 4DF

The closing date for responses is 6 October 2011.

1. EXECUTIVE SUMMARY

INTRODUCTION

- 1.1 This consultation paper sets out the government's proposals for the reform of family migration. It focuses on preventing and tackling abuse, promoting integration and reducing burdens on the taxpayer. It seeks to deliver better migration, which is fair to applicants, local communities and the taxpayer.
- 1.2 There has been a slight decrease in net family migration of non-European Union nationals since 2006, but family migration still accounted for approximately 17 per cent of all non-EU immigration in the year to September 2010.¹
- 1.3 The paper concentrates on the 'family route': those non-European Economic Area (EEA)² nationals entering, remaining in or settling in the UK on the basis of a relationship with a British citizen or a person settled in the UK. This includes fiancé(e)s, proposed civil partners, spouses, civil partners, or unmarried or same-sex partners, dependent children and adult and elderly dependent relatives.
- 1.4 But the paper also looks more widely at all forms of family migration, including the family members of those working or studying

in the UK under the points-based system (where earlier consultations have already announced some changes for dependants), refugee family reunion, and family visitors.

- 1.5 Key statistics include:³
- In 2010, family migration with a route to settlement in the UK was 114,700.⁴ This includes the 'family route' (48,900).⁵ It also includes the dependants of skilled workers under Tier 1 and Tier 2 of the points-based system and equivalents (45,200), dependants joining or accompanying non-points-based system and pre-points-based system migrants (15,400),⁶ 300 dependants of domestic workers in private households, and 4,900 people granted a family reunion visa to join a refugee in the UK.
 - In 2010, family migration without a route to settlement in the UK was 33,000.⁷ This includes the dependants of Tier 4 (students) of the points-based system (31,800) and Tier 5 and other temporary workers.
 - In 2010, 350,300 family visit visas were granted for the purpose of visiting family in the UK.⁸

1 Table 3, Office for National Statistics, International Passenger Survey estimates of long-term migration, rolling annual data to Q3 2010 http://www.statistics.gov.uk/downloads/theme_population/ips-estimates-longterm-international-migration.xls (accessed 7 June 2011)

2 By EEA, we mean EU Member States, together with Iceland, Lichtenstein, Norway and Switzerland

3 All statistics except those for family visit visas are from Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). Supporting evidence can also be found in Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

4 Not all those issued a visa will travel to the UK, either at all or in the same year as the visa was issued.

5 This figure does not include visas granted for refugee family reunion.

6 This figure includes 10,200 children. Some of these will be accompanying or joining a family route migrant. It is not possible to separate these children from the total figure.

7 Not all those issued a visa will travel to the UK, either at all or in the same year as the visa was issued.

8 This is management information and a subset of published data. It is derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

All statistics are rounded to the nearest 5 in tables and 100 in the text, except where specific sample analysis was undertaken.

- 1.6 An important context for this consultation is our obligations under the European Convention on Human Rights (ECHR) and in particular Article 8 (right to respect for private and family life). Our policies and practices must comply with the ECHR, but Article 8 is not an absolute right and our proposals aim to set out requirements that must be satisfied in family migration cases which are consistent with our ECHR obligations. We also want to be clear about circumstances in which the wider public interest will outweigh an individual's Article 8 right.

SECTION 2: MARRIAGE AND CIVIL AND OTHER PARTNERSHIP

- 1.7 In 2010, 40,500 family migrants were issued a visa to come to the UK having married, or to marry, a British citizen or a person settled here, or as their civil partner, proposed civil partner or unmarried or same-sex partner.⁹ In addition, in 2010, a further 11,600 people switched in the UK into the marriage or partner route from other routes.¹⁰
- 1.8 British citizens and those settled here are able to enter into a genuine marriage or civil or other partnership with the person of their choice. But if they want to establish their family life in the UK rather than overseas, those they bring to the UK through marriage or partnership must integrate into British society and not be a burden on the taxpayer.
- 1.9 Family migrants must have access to enough money to support themselves, without their British citizen or UK-resident spouse or partner seeking, or needing, help from the taxpayer. If as a British citizen or a person

settled here, you cannot support your foreign spouse or partner in a reasonable way of life in the UK, you cannot expect the taxpayer to do so for you.

- 1.10 Family ties and support are important, but they are not enough to allow new arrivals to the UK to thrive. All those who come to the UK with the intention of settling, including new family arrivals, also need to speak English well enough to communicate and forge links with people in the UK. It is important that all those intending to live permanently in the UK, including those who go on to seek British citizenship and regardless of route of entry, can speak and understand English well enough to make a success of living permanently in the UK. It is also important that they have an understanding of the values and principles underlying British society.
- 1.11 This consultation paper sets out proposals to reform the family route to achieve better family migration and better integration. The main points are:
- Family migration must be based on a genuine and continuing relationship, not a sham or marriage of convenience, and not a forced marriage. We want to find an objective way of identifying whether a relationship is genuine and continuing or not. We therefore propose to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership for the purposes of the Immigration Rules, and we invite views on how that definition should be framed.
 - We also invite views on whether a similar provision to the attachment requirement which operates in Denmark (where a couple have to show that their combined attachment to Denmark is greater than that to any other country before being granted a visa or leave to remain based on their relationship) could support better integration of family migrants in the UK and provide an additional safeguard against sham or forced marriages.
 - We propose to introduce a new minimum income threshold for sponsors of spouses and partners, to bring greater clarity to maintenance requirements (for sponsors, applicants and UK Border Agency staff) and to ensure family

9 Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011
<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011)

10 The analysis was conducted using management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis
<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

migrants are supported at a reasonable level that ensures they do not become a burden on the taxpayer and allows sufficient participation in everyday life to facilitate integration. We have asked the independent Migration Advisory Committee to advise on what the threshold should be.

- The Department of Health will consider, in a later consultation, whether the provision of medical insurance for certain categories of migrant, including on the family route, should be a requirement. We are also considering whether wider pre-entry TB screening of overseas applicants should be part of the visa application process.
- We propose to extend the probationary period before spouses and partners can apply for settlement from 2 years to 5 years, to test the genuineness of the relationship before permanent residence in the UK is granted on the basis of it, to encourage the integration of the spouse or partner into British life before reaching settlement, and to reduce burdens on the taxpayer by postponing access to non-contributory benefits by 3 years. Access to the labour market, to the NHS (including maternity services) and to schooling will be unaffected by this change. Family migrants in work will continue to have access to contributory benefits once they have made at least 2 years' National Insurance contributions, and the entitlement of the spouse or partner who is a British citizen or is settled here to child benefit and child tax credit will be unaffected.
- We also propose, in moving to a consistent approach to all family migrants with a route to settlement, to end immediate settlement (indefinite leave to enter) for spouses and partners who have been married or in a relationship for at least 4 years before entering the UK, and require them to complete a 5-year probationary period before they can apply for settlement. Indefinite leave to enter gives spouses and partners full and immediate access to the benefits system, potentially without ever having contributed towards its cost or having ever been to the UK before. It is right that we test all couples' attachment to the UK. The probationary period will also assist with integration and give time to develop the English language skills needed to live permanently in the UK.

- Building on the requirement for basic English language skills (A1 level of the Common European Framework of Reference) introduced in November 2010 for spouses and partners on entry and for leave to remain, and on the existing English language requirement for spouses and partners for settlement, we propose to require spouses and partners applying for settlement to be able to demonstrate that they can understand everyday English (B1 level). We will also consider the method by which this requirement can best be met.

SECTION 3: TACKLING SHAM MARRIAGE

1.12 Family migration must be based on a genuine and continuing marriage or partnership. Those involved in sham marriages or marriages of convenience undermine our immigration system, and damage the institution of marriage. They also – wittingly or otherwise – help the organised criminal gangs who profit from exploiting vulnerable people and breaking our immigration laws.

1.13 This consultation paper sets out how we are tackling this abuse and looks at possible new measures for identifying and disrupting sham marriages, ensuring they bring no advantage in immigration terms, and bringing to justice those involved. The main points are:

- We will explore, through discussion with local authorities, registration officers and the General Register Office, the feasibility in certain circumstances of combining some of the role and functions of the registrar and the UK Border Agency in designated officers in England and Wales trained and empowered to act in both areas, as a platform for more effective enforcement interventions.
- We will explore the case for requiring, if necessary through legislation, more documentation of foreign nationals wishing to marry in England and Wales to establish their entitlement to marry. This would broadly reciprocate the requirements on British citizens marrying overseas.

- We will explore the case for legislating to make ‘sham’ a lawful impediment to marriage in England and Wales, and to introduce powers to delay (with the agreement of the UK Border Agency) a marriage from taking place where sham is suspected so that this can be investigated.
- We propose to define more clearly what constitutes a genuine and continuing marriage or partnership (one that is ‘subsisting’ for the purposes of the Immigration Rules) to help us identify sham marriages more clearly and to evidence this in refusing immigration applications based on them.
- We will consider the case for restricting the scope for those sponsored as a spouse or partner to sponsor another spouse or partner within 5 years of obtaining settlement. We propose greater scrutiny of marriage visa and leave to remain applications where the sponsor or partner has previously sponsored such an application. We also propose a ban on sponsorship for up to 10 years for serial sponsors abusing the process, and for any person convicted of bigamy or an offence associated with sham marriage.
- We will consider the scope for building on the nationality and settlement application checking services local authorities can provide by enabling them to offer a similar, charged service for leave to remain applications, including those based on marriage, alongside the existing responsibilities of local authority registration offices for administering the civil marriage process.
- We plan further joint work with the European Commission and EU partners on policy and operational responses to the abuse of free movement rights through sham marriage. The consultation paper sets out some proposals.

SECTION 4: TACKLING FORCED MARRIAGE

- 1.14 Marriage must be based on the free consent of both parties. There is no place in British society for the practice of forced marriage – of forcing a young woman or man into marriage against their will, for family advantage, or out of fear of bringing shame on the family or perceived notions of family honour. There can be no justification – cultural, religious or otherwise – for marriage without free consent. It is a breach of human rights and a form of violence against the victim. That must be made clear, here and to those overseas who may be planning such marriages. And we must do as much as we can to protect the victims, and potential victims, of this terrible practice.
- 1.15 This consultation paper sets out our proposals for tackling forced marriage. The main points are:
- The Forced Marriage Unit plans greater publicity, both in the UK and overseas, of the consequences of forced marriage, and more work with communities affected by forced marriage, to publicise Forced Marriage Protection Orders and the support available from the Forced Marriage Unit.
 - The Home Affairs Committee of the House of Commons has recommended that the government legislate to make forced marriage a criminal offence in England and Wales.¹¹ The government will respond to that recommendation in due course.
 - Subject to the Supreme Court’s judgment in *Quila*, we plan to maintain the minimum age of 21 for marriage visa applicants and sponsors.
 - We propose to define more clearly what constitutes a genuine and continuing marriage (one that is ‘subsisting’ for the purposes of the Immigration Rules), to help UK Border Agency caseworkers

11 Home Affairs Committee, *Forced Marriage*, 8th Report of session 2010-12, HC880, 17 May 2011 <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/880.pdf> (accessed 8 June 2011)

and presenting officers, and Immigration Judges focus on the factual aspects of the relationship which indicate that the marriage is not genuine and continuing.

- We propose to ask local authority social services departments in England to carry out an assessment of an individual's capacity to consent to marriage when the sponsor of a marriage-based visa or leave to remain application is a person with learning difficulties or of another particularly vulnerable group, to confirm that the person understands and has consented to what they are doing.
- We will look at current interview arrangements for sponsors to see what more can be done to enable the UK Border Agency to identify those most likely to be at risk of forced marriage and, where appropriate, to refer sponsors to the Forced Marriage Unit and other support available.
- We also propose to publish clear guidance on the pathway out of forced civil marriage where the victim is willing to make a public statement.

SECTION 5: OTHER FAMILY MEMBERS

1.16 Extended family ties can be an important source of emotional and practical support to both adults and children. We welcome those who want to make a real life here with their family, who want to work hard and contribute to their local community, and who are not seeking to abuse the system or the rights of others. That is the type of family migration to the UK that we want to see.

1.17 We have reviewed current arrangements for other family members to come to the UK under the family route in that light. These are the dependent children under the age of 18 and adult and elderly dependent relatives of British citizens and persons settled here, or of their non-EEA spouse or partner. The main points are:

- Reflecting our approach to spouses and partners, we have asked the independent Migration Advisory Committee for advice on a new minimum income threshold for sponsors of dependants for maintenance and accommodation. We have also asked

the Migration Advisory Committee for advice as to how the minimum income threshold should take account of the number and age of dependants sponsored.

- We propose to end indefinite leave to enter for adult dependants and dependants aged 65 or over and require them to complete a 5-year probationary period before being eligible to apply for settlement. This will bring greater fairness and consistency by generally requiring all family migrants - spouses, partners and dependants - to meet the same requirements at each stage of the process. It is also right that, as we rationalise the immigration system and bring greater transparency by clearly categorising visas as either temporary or permanent, we also look to bring greater consistency to the requirements for reaching settlement by ensuring that family migrants complete the same probationary period. The probationary period will also encourage integration into British life before settlement is reached.
- Currently a parent or grandparent can come to the UK to settle if they are aged 65 or over, are financially dependent on a relative in the UK, and have no close relative in their home country who can support them financially. We need to look carefully at what this means in practice, in particular at whether the relative aged 65 or over is necessarily "dependent" on the UK-based sponsor and whether there are other ways of them being supported short of settling in the UK, for example by being sent money by their relative in the UK.
- We also propose to consider whether there should be any change to the length of leave granted to dependants nearing their 18th birthday, reflecting the fact that, once they reach the age of 18, they will be able to apply for leave to remain in the UK in their own right.
- In line with our arrangements for spouses and partners, we propose to require dependants aged 16 or 17, and adult dependants aged under 65, to demonstrate they can speak and understand a basic level of English (A1 of the Common European Framework of Reference)

before being granted entry to or leave to remain in the UK.

- We propose to require adult dependants aged under 65 to be able to understand everyday English (B1 of the Common European Framework of Reference) before they can apply for settlement in the UK after the proposed 5-year probationary period.

SECTION 6: POINTS-BASED SYSTEM DEPENDANTS

1.18 We have already reviewed current arrangements for dependants under the points-based system, and set out some changes in earlier consultations:¹²

- In Tier 2 (skilled workers), dependants will have to meet an English language requirement before switching to a route leading to settlement.
- In Tier 4 (students), only those here for 12 months or more and studying at master's level or above will be able to bring dependants to the UK.
- In Tier 5 (temporary workers), we have proposed that there should not be scope to bring dependants to the UK, or that there should be restrictions on their access to the labour market.

1.19 We propose the following further changes, in line with primary migrants under the points-based system, and with what is proposed for the family route:

- To increase the probationary period for dependants under the points-based system on a route to settlement from 2 to 5 years. We also propose that only time spent in the UK on a route to settlement will count towards the 5-year probationary period.
- To require adult dependants under the points-based system (aged under 65) to be able to understand everyday English (B1 of the Common European Framework of Reference) before they can apply for settlement in the UK.

¹² For previous UK Border Agency consultations, please go to: <http://www.ukba.homeoffice.gov.uk/?requestType=form&view=Search+results&simpleOrAdvanced=simple&page=1&contentType=All&searchTerm=consultations> (accessed 8 June)

SECTION 7: OTHER GROUPS

1.20 On **refugee family reunion**, the Immigration Rules were amended in July 2011 so that refugees and those with humanitarian protection can sponsor other dependent relatives to join them in the UK, subject to conditions similar to those that need to be met by persons settled in the UK sponsoring such relatives. We will consider how far these arrangements should remain aligned with those for the family route following this consultation.

1.21 We have reviewed arrangements for the **family visit visa**. Many British citizens and persons settled in the UK have family members living outside the UK. This results in a high volume of visa applications from people wishing to visit family in the UK. Around 73 per cent of these applications are granted on initial decision and the resulting visits are a means of maintaining family links and of enabling family members living abroad to participate in important family occasions in the UK, such as births, weddings and funerals.¹³ Such visits and associated tourism also bring economic benefits to the UK.

1.22 We have some concerns about the operation of these arrangements:¹⁴

- In 2009-10, family visit visa appeals made up just under 40 per cent (63,000) of all immigration appeals going through the system, costing the taxpayer around £40 million a year.¹⁵
- New evidence is often submitted on appeal which should have been submitted with the original application. The 'appeal' then becomes in effect a second decision, based on the new evidence,¹⁶ which is

¹³ Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

¹⁴ Statistics on family visit visas can be found in Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

¹⁵ Table 4.1, p25, Annual Statistics for the Tribunals Service 2009-10 <http://webarchive.nationalarchives.gov.uk/20110207135458/http://www.tribunals.gov.uk/Tribunals/Documents/Publications/tribs-annual-stats-2009-10c.pdf> (accessed 6 July 2011)

¹⁶ As the Home Affairs Select Committee observed in 2005: "In over half of entry clearance appeals, the outcome appears to be not so much a judgement on the original decision as a completely new decision reached on the basis of different evidence", Home Affairs Select Committee 5th Report (Session 2005/6) on the evidential basis of decisions taken in the Asylum and Immigration Tribunal.

often why an appeal is allowed.¹⁷ Analysis of a sample of 363 allowed family visit visa appeal determinations received by the UK Border Agency in April 2011 showed that new evidence produced at appeal was the only factor in the Tribunal's decision in 63 per cent of allowed appeals.¹⁸

- There is evidence of a small but increasing level of misuse of the family visit visa as a means of seeking to remain in the UK. In 2009, asylum intake was 24,500 (principal applicants only), 280 (1 per cent) of which were matched to family visit visas issued on appeal. In 2010, intake was 17,800, 480 (3 per cent) of which were matched to family visit visas issued on appeal.¹⁹

1.23 Although around 73 per cent of family visit visa applications are granted on initial decision,²⁰ indicating that most applicants have no difficulty completing the visa application form, we would welcome any suggestions for how the family visit visa application form or guidance could be made any more user-friendly. We have published guidance for applicants on our website on what documentation they may wish to submit with their application. The visitor visa guidance is translated into six languages: Arabic, Chinese, Hindi, Russian, Thai and Turkish, and we would welcome suggestions of any additional languages to consider.

1.24 If the application is refused, the refusal notice contains full and clear reasons for that decision. We suggest that, rather than submitting further evidence on appeal (and in the majority of cases obtaining at the taxpayers' expense a new decision based on new information), a person refused a family visit visa should submit a fresh application. It is open to anyone who has been refused a family visit visa to apply again, on payment of the £76 visa application fee, and provide further information in support of their application. We make decisions on family visit visa applications quickly: 95 per cent within 15 working days in 2010-11, far more quickly than an appeal can be concluded, which can take up to 34 weeks.²¹

1.25 In the light of this, we will retain the right of appeal for family visit visas on race discrimination and ECHR grounds in line with other categories of temporary entry clearance, but we invite views on whether there are other circumstances in which an appeal right should be retained for family visit visas.

1.26 In proposing this we are mindful of the fact that:

- The taxpayer is currently footing the bill for appeals where people are misusing the appeals system - namely where the information submitted on appeal should have been put forward as part of the original application, or where a second application is the most appropriate route for securing a visa.
- It is a disproportionate use of taxpayer funding (of around £40m per year for an appeal process which can take up to 34 weeks to be concluded) for the benefit sought: a short-term visit to family in the UK.²² Greater priority should be given to appeal cases that have far-reaching impacts for the individuals concerned and for the public at large, for example asylum claims, settlement applications and the deportation of foreign criminals.

17 The allowed appeal rate for family visit visas is around 40%. Please note this information is management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

18 Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

19 For asylum intake figures for 2009 and 2010, please go to table 2.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). For asylum intake matched to family visit visas granted on appeal, please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

20 Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

21 Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

22 Table 4.1, p25, Annual Statistics for the Tribunals Service 2009-10 <http://webarchive.nationalarchives.gov.uk/20110207135458/http://www.tribunals.gov.uk/Tribunals/Documents/Publications/tribs-annual-stats-2009-10c.pdf> (accessed 6 July 2011)

SECTION 8: ECHR ARTICLE 8: INDIVIDUAL RIGHTS AND RESPONSIBILITIES

- 1.27 This government believes in human rights. Everyone has a right under ECHR Article 8 to respect for their private and family life, but it is not an absolute right. It is legitimate to interfere with the exercise of that right where it is in the public interest to do so, and in particular where it is necessary for public protection or for the economic well-being of the UK, which includes maintaining our immigration controls.
- 1.28 The government has established a commission to investigate the creation of a UK Bill of Rights. The commission will look at the way rights are protected in the UK and explore a wide range of different views as it carries out its work. In the meantime, the government has a responsibility to set out a framework for where and why the wider public interest in protecting the public and controlling immigration justifies rational and proportionate interference in the right to respect for private and family life, and wants to use this consultation to help determine what that framework should be.
- 1.29 The consultation paper therefore seeks to open up public discussion of these issues, and sets out the questions we think are relevant to that discussion. We invite views on how we should approach the balance to be struck between the individual's right to respect for private and family life and the wider public interest in protecting the public and controlling immigration. In the light of this consultation, the government will set out its approach and lay Immigration Rules before Parliament which reflect this.

APPENDIX A: STATISTICAL OVERVIEW

- 1.30 This appendix sets out the net migration context for this consultation, and provides a statistical overview of family migration.

APPENDIX B: LIST OF CONSULTATION QUESTIONS

- 1.31 This appendix sets out particular questions on which we would welcome a response. It also invites views on the wider issues raised in this consultation paper.

2. MARRIAGE AND CIVIL AND OTHER PARTNERSHIP

OVERVIEW

- 2.1 In 2010, 40,500 family migrants were issued a visa to come to the UK having married, or to marry, a British citizen or a person settled here, or as their civil partner, proposed civil partner or unmarried or same-sex partner. There has generally been a slight decrease in the number of such visas issued over the last few years. This may be linked to the general economic climate and reduced employment prospects, with couples settling outside the UK for work or financial reasons; the raising of the minimum age for a marriage visa to 21 in November 2008 may also have contributed.
- 2.2 In addition, a further 11,600 switched in the UK into the marriage or partner route for the first time from other routes in 2010.²³
- 2.3 British citizens and those settled here are able to enter into a genuine marriage or civil or other partnership with the person of their choice. But if they want to establish their family life in the UK rather than overseas, those they bring to the UK through marriage or partnership must not be a burden on the taxpayer and must integrate into British society.
- 2.4 Family migrants must have access to enough money to support themselves,

without their British citizen or UK-resident spouse or partner seeking, or needing, help from the taxpayer. We do not want to see migrant families struggling to get by, living in overcrowded housing or dependent on welfare. If as a British citizen or a person settled here, you cannot support your foreign spouse or partner in a reasonable way of life in the UK, you cannot expect the taxpayer to do so for you. This consultation paper sets out how we propose to change the maintenance and other requirements for those sponsoring a spouse or partner to ensure that this is so.

- 2.5 Family ties and support are important, but they are not enough to enable new arrivals to the UK to thrive. All those who come to the UK with the intention of settling, including new family arrivals, need to speak English well enough to communicate and forge links with people in the UK. It is important that those intending to live permanently in the UK, including those who go on to seek British citizenship and regardless of route of entry, can speak and understand English well enough to make a success of living permanently in the UK. It is also important that they have an understanding of the values and principles underlying British society. This consultation paper sets out our plans to reform the family route to achieve better family migration and better integration.

Figure 1: Marriage and partner visas²⁴

	2005	2006	2007	2008	2009	2010
Partner (probationary period)	45,485	49,620	48,860	44,500	38,245	38,450
Partner (settlement granted on arrival - indefinite leave to enter)	3,860	3,520	1,870	600	1,315	2,055

²³ The analysis was conducted using management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

²⁴ Table 1.1, Control of Immigration Statistics Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). The term 'partner' in the table includes spouses, civil partners, fiancé(e)s, proposed civil partners, same sex and unmarried partners.

CURRENT MARRIAGE AND CIVIL AND OTHER PARTNERSHIP ROUTES²⁵

Those subject to immigration control who are in a relationship with, married to, or in a civil or other partnership with a British citizen or a person settled in the UK can apply for permission to come to or remain in the UK.

If the applicant is applying from overseas:

Fiancé(e)/proposed civil partnership visa

Both the British citizen or person settled here (the sponsor) and the migrant (the applicant) must be at least 21 years old (or 18 years old if either party is a serving member of the armed forces) and both the sponsor and the applicant must show that:

- They plan to marry or register a civil partnership within a reasonable time;
- They have met each other;
- They plan to live together permanently after the marriage or civil partnership;
- Adequate maintenance and accommodation without recourse to public funds will be available to the applicant until the marriage or civil partnership;
- After the marriage or civil partnership there will be adequate accommodation for them and any dependants which they own or occupy exclusively without public funds; and
- After the marriage or civil partnership they will be able to maintain themselves and any dependants adequately without recourse to public funds.

The applicant must demonstrate they can speak and understand a basic level of English (A1 of the Common European Framework of Reference for Languages).

Fiancé(e) visas are normally granted for a period of 6 months, during which time work is not permitted. After the couple have married or entered into a civil partnership, leave to remain can be applied for in the UK, which, if granted, is valid for 2 years and permits work.

Marriage/civil partner visa

The couple must meet the same requirements as the fiancé(e)/proposed civil partnership visa, except they must demonstrate that:

- They are legally married to each other or have registered a civil partnership;
- They intend to live together permanently as husband and wife, or as civil partners, and the marriage or civil partnership is subsisting;
- They will be able to maintain themselves and any dependants adequately without recourse to public funds.

If the application is successful, spouses and civil partners are given permission to live and work in the UK. They will be granted leave for a period of up to 27 months. After a 2-year probationary period they are able to apply for settlement (indefinite leave to remain) as the spouse or civil partner of the British citizen or person settled in the UK.

Spouses and civil partners may be eligible for immediate settlement (indefinite leave to enter) if:

- They married or formed a civil partnership at least four years ago;
- They spent those 4 years living together outside the UK;
- They are both coming to the UK to settle here together; and
- They have sufficient knowledge of the English language and of life in the UK (unless aged 65 or over or unless they qualify for an exemption on the grounds of disability).

²⁵ The full requirements can be found in Part 8 of the Immigration Rules (HC 395). <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/> (accessed 9 June 2011)

If the applicant is already in the UK:

Migrants are able to switch into the category of spouse, civil partner or unmarried or same-sex partner in the Immigration Rules if they have already been granted a total of more than 6 months' permission to live in the UK since their most recent admission to the UK, except those granted a fiancé(e) or proposed civil partner visa, or the spouse or partner of a migrant in Tier 1 (entrepreneurs, investors and people of exceptional talent).²⁶

To switch into the marriage or civil partner category in the UK, migrants must meet the same requirements as those applying for a marriage or civil partner visa overseas. In addition they must also demonstrate that:

- They have not remained in the UK in breach of the immigration laws; and
- Their marriage or civil partnership did not take place after a decision was made to deport or remove them from the UK.

There are comparable requirements for **unmarried or same-sex partners**, except that applicants for leave to enter or remain in the UK and their partner settled in the UK must have been living together in a relationship akin to marriage for 2 years or more.

PROPOSALS

2.6 We have a range of proposals to tackle abuse, to reduce burdens on the taxpayer, and to support the integration in the UK of the non-EEA fiancé(e)s, proposed civil partners, spouses, and civil, unmarried or same-sex partners, of British citizens and persons settled in the UK.

(a) Requirements on applicants and sponsors

2.7 We propose changes affecting who can apply to come to or remain in the UK on the basis of marriage or partnership, and who can sponsor such an application.

A genuine and continuing relationship

2.8 Migration based on marriage or partnership must be based on a genuine and continuing relationship, freely entered into by both parties. It must not be based on a marriage or partnership of convenience, entered into in an attempt to gain immigration advantage. And it must not involve coercion.

2.9 We want to find objective means of identifying whether a relationship, marriage or partnership is genuine and continuing or not. **We therefore propose to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership** (one that is 'subsisting' for the

purposes of the Immigration Rules) and we invite views on how that definition should be framed. This will not make entry to or leave to remain in the UK on the basis of arranged marriage more difficult.

2.10 The Immigration Rules and EEA Regulations allow the UK Border Agency to refuse a non-EEA national leave to enter, remain in or settle in the UK, or an EEA residence permit, based on a relationship, marriage or partnership, if the UK Border Agency can evidence that it is a sham. If we set out factors or criteria for assessing whether a relationship, marriage or partnership is genuine and continuing, this could help UK Border Agency caseworkers and presenting officers and Immigration Judges to focus on the **factual** aspects of the relationship, marriage or partnership which indicate that it is not genuine and continuing. This could better enable the UK Border Agency to identify sham or forced marriages and refuse visa and leave to remain applications based on such a marriage. It would also make clear to applicants what the criteria are and whether they are likely to meet them, and could deter some false applications.

2.11 UK Border Agency caseworkers will continue to reach a decision on each application on a case-by-case basis taking account of all the circumstances of each case. The fact that a case had or met one or more factors or criteria would not necessarily determine the decision: the caseworker would continue to look at the circumstances of the case as

²⁶ The spouse or partner of a Tier 1 migrant can switch into the marriage or partner route if they have less than 6 months' leave.

a whole. An application found to be based on a relationship, marriage or partnership which is not genuine and continuing would continue to be refused for that reason: that it was not ‘subsisting’ for the purposes of the Immigration Rules.

2.12 Possible factors or criteria which could highlight cases which require further scrutiny, and which could be taken into consideration in assessing whether a relationship, marriage or partnership is genuine and continuing could include:

- The relationship, marriage or partnership was entered into voluntarily.
- The relationship, marriage or partnership was not entered into solely for the purpose of obtaining an advantage under the Immigration Rules or EEA Regulations.
- The couple are able to provide accurate personal details about each other, and to provide consistent evidence, and have a shared understanding, of the core facts of their relationship, for example how they met for the first time. Account will need to be taken of the circumstances which may apply where the marriage is an arranged marriage.
- The couple are able to communicate with each other in a language understood by them both.
- The couple, or their families acting on their behalf, have had a discussion or made definite plans concerning the practicalities of the couple living together in the UK.²⁷ In the case of an arranged marriage, the couple agree with the plans made by their families.

We could also include:

- The couple have been in a relationship for a minimum of 12 months prior to the marriage visa or leave to remain application, and must be able to evidence regular contact during those 12 months. Where the couple cannot meet this criterion, for example because theirs is or will be an arranged marriage and they have not yet been together as a couple for that period, we could grant 12 months’ initial temporary leave to enable them to meet this criterion, and ask them to apply for further leave after 12 months. This would enable a further assessment to be made at that point of whether theirs is a genuine and continuing relationship.

2.13 Other indicators which caseworkers could take into account in assessing whether a marriage is one of convenience or is forced could include:

- The age of the sponsor and the applicant at the time of the wedding.
- Whether the wedding ceremony or reception prompts the need for further enquiries. For example, if there were very few or no guests, whether those in attendance were significant family members of both parties or complete strangers, and whether the couple eloped. We would generally look at all the circumstances of the event.
- Whether the sponsor has previously been sponsored for a marriage visa, or has previously sponsored a marriage application.
- Whether the applicant has a compliant history of visiting or living in the UK.

²⁷ Recent analysis of a sample of 531 case files from 9 of the top 10 marriage visa nationalities (by number of applications) highlighted that when looking at the sample as a whole, most of the applicants had not been to the UK before, although there was a great amount of variation by nationality. For more information, please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

HOW OTHERS IDENTIFY MARRIAGES OF CONVENIENCE

The **European Council Resolution** of 4 December 1997 (97/C 382/01)²⁸ on combating marriages of convenience set out a list of factors which might provide grounds for believing that a marriage is one of convenience:

- The fact that matrimonial cohabitation is not maintained;
- The lack of an appropriate contribution to the responsibilities arising from marriage;
- The spouses have never met before their marriage;
- The spouses are inconsistent about their respective personal details (name, address, nationality and job), about the circumstances of their first meeting, or about other important personal information concerning them;
- The spouses do not speak a language understood by both;
- A sum of money has been handed over in order for the marriage to be contracted (with the exception of money given in the form of a dowry in the case of nationals of countries where the provision of a dowry is common practice);
- The past history of one or both of the spouses contains evidence of previous marriages of convenience or residence anomalies.

The **Danish Immigration Service** website²⁹ sets out, alongside its requirements for spouses and civil partners, the factors it considers may indicate a marriage of convenience. These include:

- Whether the couple has ever lived together at a shared address;
- Whether the couple can speak the same language;
- Whether there is a large age difference between the couple;
- How well the couple knew each other before marrying;
- Previous marriages (if applicable);
- Whether the couple have children together.

And, if the Danish spouse or partner was previously married to a foreign national, and if this marriage ended shortly after the foreign national was granted a permanent residence permit, the Danish Immigration Service will view this as a circumstance that indicates it was a marriage of convenience.

Question 1: Should we seek to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership, for the purposes of the Immigration Rules? If yes, please make suggestions as to how we should do this.

2.14 We could consider additional measures to test the genuineness of the relationship, marriage or partnership, and promote the effective integration of family migrants to the UK. In Denmark, for example, the **combined attachment**³⁰ to Denmark of both parties to a visa or leave to remain application based

on marriage must be greater than their combined attachment to any other country. In determining whether this is so, the Danish Immigration Service takes a number of factors into consideration, including:

- How long each party has lived in Denmark;
- Whether one or both parties have family and/or acquaintances in Denmark;
- Whether one or both parties have custody of or visiting rights to a child under 18 in Denmark;
- Whether one or both parties have completed an educational programme in Denmark, or have a solid connection to the Danish labour market;
- How well both parties speak Danish;

28 <http://eurlex.europa.eu/Notice.do?mode=dbl&lang=en&ihtmlang=en&lng1=en,en&lng2=da,de,el,en,es,fi,fr,it,nl,pt,sv,&val=221503:cs&page=> (accessed 8 June 2011)

29 http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/family_reunification.htm (accessed 8 June 2011)

30 For more information about the attachment requirement, please go to http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/family_reunification.htm (accessed 5 July 2011)

- The extent of both parties' ties to another country, including whether extended visits have been made to that country; and
- Whether the applicant has children or other family members in any other country.

2.15 In order to meet the attachment requirement, the applicant for a marriage visa must have visited Denmark at least twice and the sponsor must have resided legally in Denmark for 15 years. The attachment requirement is not applicable if either party has held Danish citizenship or resided legally in Denmark for at least 28 years. **We invite views on whether a similar attachment provision in the UK could support better integration of family migrants, and could provide additional safeguards against abuse of family migration through sham or forced marriages.**

Question 2: Would an 'attachment to the UK' requirement, along the lines of the attachment requirement operated in Denmark:

- a) Support better integration?**
- b) Help safeguard against sham marriage?**
- c) Help safeguard against forced marriage?**

MAINTENANCE AND ACCOMMODATION

2.16 Those wishing to bring a non-EEA national spouse or partner (and dependants) to the UK already have to show they can maintain and accommodate them. But it can be difficult for the UK Border Agency to apply this requirement consistently, and for sponsors to assess whether they meet it. The threshold is set at Income Support level, and there are two possible thresholds for those wishing to sponsor dependants: one based on the pre-September 2005 benefits system and one based on the post-September 2005 benefits system of child tax credits.

CURRENT MAINTENANCE AND ACCOMMODATION REQUIREMENT

Sponsors are required to demonstrate that they are able to maintain and accommodate themselves, their spouse or partner and any dependants without recourse to public funds.

The following benefits are classed as 'public funds':

- Attendance allowance
- Carer's allowance
- Child benefit
- Child tax credit
- Council tax benefit
- Disability living allowance
- Income-related employment and support allowance
- Housing and homelessness assistance
- Housing benefit
- Income-based jobseeker's allowance
- Income support
- Severe disablement allowance
- Social fund payment
- State pension credit
- Working tax credit

Maintenance

The current maintenance threshold is set at Income Support level following a court ruling in 2006 in which the Asylum and Immigration Tribunal suggested that it would not be appropriate to have migrant families existing on resources that would be less than Income Support level for a British family of that size.³¹ Income Support is provided to those on a low income who are not required to look for work. Anyone entitled to Income Support is also entitled to housing benefit and council tax benefit, which is also taken into account in assessing whether they meet the current maintenance threshold. The current personal allowance for a couple both aged 18 or over is £105.95 a week.

The joint income of the couple is currently taken into consideration when assessing the adequacy of the funds available. To satisfy caseworkers that the couple will be able to maintain themselves without recourse to public funds, they have to provide evidence of:

- Sufficient independent means;
- Employment for one or both of the parties; or
- Sufficient prospects of employment for one or both parties.

A couple who are unable to produce sufficient evidence to meet the maintenance requirement may provide an undertaking from members of their families that they will support the couple until they can support themselves from their own resources.

If dependants to the applicant are going to accompany them to the UK, resources must be available for the whole family to be maintained.

Accommodation

The applicant or sponsor must provide evidence that the accommodation will be adequate and not breach the statutory definition of overcrowding under the Housing Act 1985. This states that a house is overcrowded if 2 persons aged 10 years old or more of opposite sexes (other than husband and wife) have to sleep in the same room, or if the number sleeping in the house exceeds that permitted under the 1985 Act.

To show evidence of adequate housing, couples often provide a letter from a housing authority, a copy of the mortgage or rental agreement, or a letter from a building society.

31 KA and others (Pakistan) [2006] UKAIT 00065
<http://www.bailii.org/uk/cases/UKIAT/2006/00065.html>
 (accessed 9 June 2011)

APPLYING THE CURRENT MAINTENANCE REQUIREMENT

In calculating whether a sponsor meets the current maintenance requirement, caseworkers follow a 5-stage process:

1. **Establish the sponsor's current income:** From evidence provided. The net income is established and if the income varies, an average is calculated. Disability living allowance can be included as income.
2. **Establish the sponsor's current housing costs:** From evidence provided.
3. **Deduct the housing costs from the net income**
4. **Calculate how much the sponsor and his family would receive if they were on Income Support:** The Income Support rates are increased annually. Note that (a) if the sponsor has dependent children under 18, they will receive child tax credit in addition to personal allowances (cases pre-dating September 2005 will receive a personal allowance for each dependent child and a family premium); and (b) where the sponsor is aged 60 or over, the calculation should be based on the minimum guarantee pension credit rates, rather than Income Support.
5. **Compare the sponsor's net income after deduction of housing costs with the equivalent Income Support rate**

Example calculation

Sponsor is a married man aged 40 asking for entry clearance for his wife and their 16 year old son. Sponsor's average weekly income is £300 and his weekly rent and council tax payments amount to £180.

Sponsor's net income	£300.00
Less housing costs	£180.00
Net income for comparison	£120.00

Equivalent Income Support rates	
Personal allowance for couple aged over 18	£105.95
Basic family rate	£ 10.48 (£17.40 for legacy cases)
Tax credit for dependent child	£ 49.13 (£57.57 for legacy cases)
Total Income Support rate for comparison	£165.56 (£180.92 for legacy cases)

As the Income Support rate is higher than the net income, the sponsor would not meet the maintenance requirement.

2.17 Recent analysis of a sample of 531 case files from 9 of the top 10 marriage visa nationalities (by number of applications) highlighted, for those cases that had provided the information, the significant differences between income levels of both sponsors and applicants.³³ Of those in the sample who provided the information on their visa application, only 28 per cent of applicants reported being in paid in employment at the point of application. 53 per cent reported being unemployed, 14 per cent of applicants reported being homemakers, and 3 per cent said they were students. This indicates that, unless they were intending to seek employment in the UK, and were successful in doing so, 70 per cent of these applicants may

be dependent on their spouse or partner to support them. The same analysis highlighted that around 6 per cent of the sponsors sampled were not in employment, and around 7 per cent earned less than £5,000 per annum³⁴ (the current level of basic Income Support for a couple), indicating that they might struggle to support a spouse or partner, let alone dependants.

2.18 A recent survey of visa posts dealing with the top 10 nationalities for family route visas reported that initial refusal on the basis of maintenance and accommodation was the main reason for refusing an application in at least a quarter of family visa applications.³⁵

33 The analysis looked at 531 cases granted a probationary visa on the basis of marriage or civil partnership in 2009. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

34 Information on the sponsors' income in 2009. It is likely to have increased now.

35 Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

2.19 **We propose to introduce a new minimum income threshold for sponsors.** This will:

- Set a clear threshold, which will be easier for UK Border Agency caseworkers to apply, and make it easier for sponsors to determine whether they qualify.
- Ensure spouses and partners are supported at a reasonable level, as a basis for them to participate in everyday life and integrate in British society.
- Reduce the risk that a spouse or partner becomes a burden on the taxpayer because the sponsor has to have to recourse to public funds to support them.

2.20 We have asked the independent Migration Advisory Committee³⁶ for advice on a new minimum income threshold for sponsors for maintenance and accommodation. We think that the level should be higher than that of the safety net of Income Support, which is how the courts have interpreted the current maintenance requirement under the Immigration Rules. It should represent what

is needed, in the light of the cost of living in the UK, to support a spouse or partner (and dependants) at a reasonable level that helps to ensure they do not become a burden on the taxpayer and allows sufficient participation in everyday life to facilitate integration. We have asked the Migration Advisory Committee for advice. We have drawn their attention to the approach taken in some other countries. We will take account of their advice, which will be published, in setting the level of the new minimum income threshold.

2.21 In applying the minimum income threshold, we propose:

- To take into account only the income and cash savings (including in a joint account with the spouse or partner) of the UK-based sponsor. We will set out in the rules or guidance the supporting evidence to be provided (e.g. P60s, bank statements) and the period over which any cash savings must have been or remain available to the sponsor.

Country	Maintenance requirement ³⁷
Denmark	Must be able to maintain spouse – no specific threshold, but sponsor cannot have claimed benefits in the 3 years prior to a marriage application and must post a bond (currently around £12,000) against any future claim on public funds
The Netherlands	100 per cent of the gross compulsory minimum wage plus minimum holiday allowance for couples (currently 1,538.35 euros a month)
Austria	Sponsor has to have a fixed income of at least 793.40 euros a month for a single person, 1,189.56 for a couple and an additional 122.41 per child
Latvia	Minimum wage for each adult and 60 per cent of minimum wage for each child. Currently for a family of 2 adults and 1 child, this would be approximately 650 euros a month
Canada	No minimum threshold, but have to satisfy Immigration Service that sponsor has sufficient resources to support applicants. Sponsor cannot be in default of an earlier sponsorship undertaking, immigration loan or support payment; cannot be in receipt of social assistance (other than for a disability); and cannot have an undischarged bankruptcy
The USA	Income at or above 125 per cent (100 per cent for US forces) of the Federal Poverty Guidelines
Italy	5,349.89 euros a year, which increases if the sponsor wishes to bring in dependent children
Australia	No specific requirement, but sponsor must be able to maintain applicant and can be required to sign an Assurance of Support to ensure any social welfare payments claimed in the first 2 years are repaid

36 For more information about the work of the Migration Advisory Committee, please go to: <http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/> (accessed 8 June 2011)

37 For more information, please go to European Migration Network (EMN) ad hoc query [http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?jsessionId=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family Reunification](http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?jsessionId=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family+Reunification) (accessed 9 June 2011). Information on the USA, Australia, and Canada from an ad hoc query.

- The foreign spouse or partner will continue to have immediate access to the labour market in the UK but, in the current economic climate, we do not consider it appropriate to take into account their potential earnings should they gain employment here. We also consider that this is difficult for caseworkers to apply or verify in practice.
- To review whether support from third parties, which is not easy for the UK Border Agency to verify, should be allowed only in compelling and compassionate circumstances.

CASE STUDY

Mrs Y applied for a marriage visa to join her husband who was reliant on welfare benefits. In support of her application she submitted a letter with a job offer as a part-time teacher. The offer letter was dated a year prior to the application and could not be verified, even after several attempts to contact the employer. The applicant also submitted evidence about her qualifications and earning potential that could not be verified as credible. The application was refused.

Question 3: Should we introduce a minimum income threshold for sponsoring a spouse or partner to come to or remain in the UK?

- 2.22 **We will consider the scope for other restrictions which have the effect of increasing confidence in a sponsor's ability to support their foreign spouse or partner in the UK.** For example, we will consider whether a person should generally be unable to sponsor a marriage visa or leave to remain application if they have claimed certain specified welfare benefits (excluding, for example, disability living allowance) in the year prior to the application, or if they are an undischarged bankrupt.
- 2.23 The UK Border Agency currently has a memorandum of understanding with DWP and HM Revenue & Customs (HMRC) to conduct checks on sponsors to help the UK Border Agency verify whether they are able to support their spouse or partner. The checks have also been successful in identifying a small number of people involved in benefit and tax fraud. **We propose to consider with DWP and HMRC the case for increasing**

the use of checks on sponsors' benefit and tax history as part of our processes for checking that sponsors have the capacity they claim to support their spouse or partner and dependants in the UK.

CASE STUDIES

Mrs A applied for a marriage visa to join her husband in the UK. In support of her application she provided her husband's bank statements and employment documents, as her sponsor, showing his income. The UK Border Agency conducted a check with DWP and found that the husband was claiming means-tested benefits. The visa application was refused and the details of the husband's claimed employment were passed to DWP to investigate and to reconsider his entitlement to benefits.

Mrs M applied for a marriage visa to join her husband in the UK. In support of her application she provided documentation, including her husband's P60 as evidence that her husband, as her sponsor, could maintain and accommodate her in the UK. The UK Border Agency conducted a check with HMRC and found that, although the husband's P60 stated that he had earned £20,107.68 in 2009-10, HMRC records showed that he had earned only £1,256.00. The visa application was refused and the documents were sent to HMRC for investigation.

- 2.24 The Immigration Rules require sponsors to be able to provide adequate accommodation for their spouse or partner (and dependants) and themselves which they themselves own or of which they have the sole use. Recent analysis of a sample of 531 case files from 9 of the top 10 marriage visa nationalities (by number of applications) highlighted that 37 per cent of sponsors sampled were living with family members or friends.³⁸ Currently sponsors can ask their local authority, for a small fee, to visit their home and certify in writing that it does not breach the definition of overcrowding in the Housing Act 1985, to help them demonstrate that they meet this accommodation requirement. **We therefore propose to provide scope in the Immigration Rules to require sponsors to obtain a housing certificate, where**

38 Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

they cannot provide clear proof of ownership of, or a copy of a mortgage or tenancy agreement for, appropriate accommodation that does not breach the definition of overcrowding.

Question 4: Should there be scope to require those sponsoring family migrants to provide a local authority certificate confirming their housing will not be overcrowded, where they cannot otherwise provide documentation to evidence this?

2.25 We also propose to ask local authorities in England to report to the UK Border Agency suspicions a couple are not residing together where they make a home visit to provide a housing certificate in support of a leave to remain application. We will invite the Scottish Government, the Welsh Government and the Northern Ireland Executive to consider making a similar request of local authorities in other parts of the UK.

HEALTH

2.26 Based on Department of Health calculations, a person who lives until their 85th birthday can be expected to cost the NHS almost £150,000, with more than 50 per cent of those costs occurring between the ages of 65 and 85. This figure does not take account of any social care costs met by local authorities.

2.27 The Department of Health intends later in 2011 or in early 2012 to conduct a further review of arrangements for access by foreign nationals to NHS services in England (see pages 24-25 of the Department of Health document ‘Access to the NHS by foreign nationals – government response to the consultation’).⁴⁰ The review will look at the residence requirements for access to healthcare and **consider whether the provision of medical insurance for certain categories of migrant, including spouses and partners, should be a requirement.** The review will involve discussion with the Scottish Government, the Welsh Government and the Northern Ireland Executive about what arrangements for the UK as a whole might be appropriate and mutually beneficial.

2.28 **We are also considering whether wider pre-entry TB screening of overseas applicants should be part of the marriage visa application process.** The Health Protection Agency’s ‘Report on tuberculosis surveillance in the UK 2010’ found that the UK is seeing the highest incidence of TB since the late 1970s with more than 9,000 cases detected in 2009.⁴¹ The majority of cases were detected amongst the non-UK born population, with a rate of disease twenty-fold higher than the UK-born population. The UK already screens for TB in 15 high-risk countries, and on-entry at Heathrow and Gatwick airport as necessary.⁴² However,

Figure 2: Estimated Primary Care Trust expenditure on hospital treatment, prescriptions and GP services, by age group³⁹

	0-4 years	5-14 years	15-44 years	45-64 years	65-74 years	75+ years
Hospital and Community Health Services (HCHS) costs	566	452	602	1,246	2,549	4,480
Prescription costs	24	27	66	192	397	511
Primary medical services costs (GP services)	207	55	87	151	251	383
Total (£s per head)	796	535	755	1,588	3,196	5,375

39 Based on 2009-10 PCT spend (£000s) on HCHS (£62,888,781), Prescriptions (£7,944,487), Primary Medical Services (£7,467,663) – source 2009-10 Summarised Account for PCTs. These figures are estimates only.

40 http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_125271

41 http://www.hpa.org.uk/web/HPAweb&HPAwebStandard/HPAweb_C/1287143581697 (accessed 4 July 2011)

42 Rules 36-39 enable an Immigration Officer to refuse entry to the UK for medical reasons: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part1/>

screening on-entry is not as effective as screening pre-entry and costs approximately £2.5 million per annum and a further £6,000 per case for further testing and treatment.⁴³

- 2.29 Moving to pre-entry screening will detect more cases (using enhanced testing that is not possible at a port), delay the travel of those infected until they are clear of infection, better protect public health in the UK, reduce costs to the taxpayer, and avoid delays to new arrivals in passing through immigration and health controls at our ports. Visa applicants from the 15 high-risk countries are currently required to produce a certificate confirming that they have been screened when lodging an application (and a certificate is not issued to those who have active TB). This could be extended to other at-risk countries for TB.

(b) Requirements for settlement

- 2.30 We also propose changes affecting who can apply to settle permanently in the UK (known as indefinite leave to remain) on the basis of marriage, civil partnership or other partnership.

⁴³ Screening at ports uses x-rays which do not provide definitive diagnosis and can produce significant numbers of false positives. The costs of conducting this screening, approximately £2.5m pa at Heathrow and Gatwick, the costs of further testing and providing treatment where required (upwards from £6000) are borne by the public purse. These £2.5m pa figure is available from the Health Protection Agency and the cost of treatment has been arrived at taking available data on costs in NICE guidance issued in 2006 and adjusted for inflation. (NICE Clinical Guidance 33: Tuberculosis, Appendix H, Annex 5 March 2006)
Pre-entry screening using a combination of x-ray and laboratory tests (sputum and culture testing) is a more effective means of detecting the disease, can be conducted in advance of travel and so afford an opportunity to delay the travel of those living with the disease until treatment has been completed. This protects the NHS from the costs of case detection and treatment. The costs of screening are reasonable at around \$50-75 US and data from the existing pre-entry screening activity suggests that over 90% of those who have previously been found to be living with the active infectious disease have subsequently returned to the visa application process having completed a course of treatment.

SETTLEMENT

In order to qualify for settlement, migrants need to meet certain criteria, including proof of relationship; evidence of maintenance and accommodation; having no unspent convictions and not being on the sex offender register; evidence of good character and conduct; and demonstrating knowledge of the English language and of life in the UK.

Once a person has obtained settlement, he or she is entitled to live in the UK permanently, without immigration restrictions, to travel freely into and out of the UK, and to access state benefits on the same basis as a British citizen. A person settled in the UK may also sponsor an immigration application, for example to be joined by a spouse or dependent relative. A child born in the UK since 1 January 1983 to a person settled here is a British citizen.

Settlement rights may be lost if a person lives outside the UK for more than 2 years, but otherwise settlement rights are generally only removed in cases of fraud or deception, or where a person is liable to deportation or removal but they cannot be deported for legal reasons.

Dependants of migrants are eligible to apply for settlement at the same time as the principal migrant, as long as they have lived with them in the UK for a minimum of 2 years. Children are usually eligible to apply for settlement at the same time as their parents.

Settlement is not the same as citizenship. It does not entitle a person to a British passport, or to vote in general elections. However, a person in the UK without time restrictions attached to their stay may apply for naturalization as a British citizen, subject to meeting the requirements.

- 2.31 There is currently a probationary period of 2 years in the UK before the foreign spouse or partner can apply for settlement (permanent residence). This was introduced in 2003, but is significantly shorter than the 5-year temporary residence requirement before work-based migrants can now apply for settlement.
- 2.32 The UK Border Agency receives allegations from sponsors that their foreign spouse or partner has disappeared, sometimes immediately, once settlement has been granted after 2 years. We believe that there will be less incentive to enter into a marriage

CASE STUDIES

The UK Border Agency received notice from a settled spouse that as soon as he was granted indefinite leave to remain, her husband left her. She subsequently discovered that he had another partner and children living in the UK. The case was referred to the local immigration team for further investigation and considered for revocation of the husband's indefinite leave to remain.

The UK Border Agency received notice from a British woman that her Albanian husband wanted to divorce her. They had met in the UK and when he returned to Albania, she followed him and they got married. He obtained a visa to come to the UK and they travelled here together and worked. She sent money back to his family in Albania. They also got married in a church in the UK. They did not have children together.

After 2 years the Albanian man qualified for settlement in the UK and later for British citizenship and received a British passport. He then became withdrawn and less interested in the relationship. Suddenly, in January 2011, he disappeared without explanation, taking his belongings with him. He is now thought to be living in the UK or elsewhere in the EU.

A settlement applicant submitted a photocopy of the British sponsor's passport and forged their signature. The application was granted and the documents returned to the marital home. It was then that the sponsor rang the UK Border Agency to inform us that they were no longer together and had not been for a while. The case was reconsidered and the application refused.

of convenience in the first place if the probationary period before settlement is 5 years, in line with other routes.

- 2.33 In other countries, marriage or partnership to a citizen does not normally qualify a migrant to immediate permanent residence; the USA is an exception to this where the couple have been married for 2 years or more.
- 2.34 **We therefore propose extending the probationary period before spouses and partners can apply for settlement from the current 2 years to 5 years**, to test the genuineness of the relationship before permanent residence in the UK is granted on the basis of it, to encourage the integration

Country	Probationary period for spouses ⁴⁴
The Netherlands	5 years
Austria	5 years
Latvia	5 years (initially granted a visa for a year and required to renew for a further 4 years before eligible for permanent residence)
Denmark	4 years
Germany	3 years
Canada	2 years (proposed)
New Zealand	2 years
Australia	2 years
The USA	Permanent legal resident on arrival for those married for 2 years or more. Foreign spouses married to a US citizen or permanent resident for less than 2 years are granted a 2-year probationary period.

of the spouse or partner into British life before reaching settlement, and to reduce burdens on the taxpayer by postponing access to benefits for which no tax or National Insurance contribution has been made by 3 years. Access to the labour market, to the NHS (including maternity services) and to schooling will be unaffected by this change. Family migrants in work will continue to have access to contributory benefits (for example contribution-based jobseeker's allowance, statutory maternity pay, maternity allowance and widow's benefit) once they have made at least 2 years' National Insurance contributions, and the entitlement of the spouse or partner who is a British citizen or is settled here to child benefit and child tax credit will be unaffected.

- 2.35 This will bring the family route in line with other routes which lead to settlement. We will consider whether the spouse or partner should be required to apply to the UK Border Agency after 2 or 3 years to extend the period to 5 years. We will consider whether any transitional arrangements should apply to this change. We will also consider what

⁴⁴ European Migration Network (EMN) ad hoc query [http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?jsessionid=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family Reunification](http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?jsessionid=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family+Reunification) (accessed 9 June 2011). Information on the USA, Canada, Australia and New Zealand from an ad hoc query.

special arrangements would be appropriate for victims of domestic violence or forced marriage, or for the spouses and partners of serving members of the armed forces. The change will not apply to bereaved spouses or partners.

- 2.36 The Office for National Statistics provides statistics for divorce rates by the number of years married, and although these statistics are not broken down by nationality and immigration status, they do provide an indication of the number of people who may not qualify for settlement because their relationship is no longer subsisting after 5 years. The most recent statistics suggest that 10 per cent of marriages end in divorce after five years (compared to 3 per cent after 2 years).⁴⁵ Therefore, it is possible that around 10 per cent of spouses and partners will not apply for settlement after a 5-year probationary period owing to divorce or relationship breakdown. It is also possible that fewer marriages of convenience will be entered into in the first place if the probationary period for the family route is in line with other routes.

Question 5: Should we extend the probationary period before spouses and partners can apply for settlement (permanent residence) in the UK from the current 2 years to 5 years?

- 2.37 In 2010, 2,100 people were issued with a visa allowing immediate settlement upon entry to the UK (known as indefinite leave to enter) on the basis of a marriage or partnership that had been in existence for at least 4 years.⁴⁶ Indefinite leave to enter gives spouses and partners full and immediate access to the benefits system, potentially without ever having contributed towards its cost or having ever been to the UK before.
- 2.38 We believe that migrants should achieve settlement in the UK and the benefits that come with it, by participating and integrating in British society, and demonstrating their attachment to the UK, over time. **We**

therefore propose to end indefinite leave to enter for spouses and partners who have been married or in a relationship for at least 4 years before entering the UK, and require them to complete a 5-year probationary period before they can apply for settlement. We will consider whether the spouse or partner should be required to apply to the UK Border Agency after 2 or 3 years to extend the period to 5 years.

- 2.39 Ending indefinite leave to enter will bring greater fairness by generally requiring all couples wishing to set up home in the UK to meet the same requirements at each stage of the process: to enter, remain in or settle in the UK on the basis of their relationship.

Question 6: Should spouses and partners who have been married or in a relationship for at least 4 years before entering the UK, be required to complete a 5-year probationary period before they can apply for settlement (permanent residence)?

- 2.40 All those wishing to settle here, and perhaps move onto become British citizens, regardless of their route into the UK, need to be able to speak English well enough to enable them to live effectively in the UK on a permanent basis and to participate and integrate in British society. And, if migrants cannot speak English, this can create significant costs for the taxpayer. In 2009-10, the Department for Work and Pensions for example spent £2.6 million on telephone interpreting services and nearly £400,000 on document translation.⁴⁷ Comparable costs fall on other government departments, the Scottish Government, the Welsh Government, the Northern Ireland Executive, the NHS and local authorities.

45 For more information, please go to <http://www.statistics.gov.uk/cci/nscl.asp?ID=7479> (accessed 6 July 2011)

46 Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011)

47 This information comes from DWP management information. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

THE BENEFITS OF INTEGRATION AND LEARNING ENGLISH

There has been a good deal of research into the benefits of learning the host country's language. Amongst the most cited authors are Dustmann and van Soest, whose study on 'The language and earnings of immigrants' found that language increases productivity and communication (and hence market wage) and employment prospects.⁴⁸

Shields and Wheatly-Price found that fluency in English (as assessed by an interviewer) increased the average hourly occupational wage by approximately 20 per cent.⁴⁹

The European Integration Fund is aimed at newly arrived legal migrants to introduce them to the UK and enable them to acquire knowledge of the UK's language, history, values and culture.⁵⁰

Testimonies from migrants who have benefitted from European Integration Fund support to pursue English courses highlight the benefits of speaking English:

"Before if there was someone ringing on the phone I couldn't understand, now I can. That's a difference. [...] If someone had an accident or something, I can ring them up and say I have a problem. I can understand what they are asking me, that's the difference now." Male student, longer course.

"When I came to England I had no friends, no one to even talk with other than my husband. But now I have many friends through the course." Female student, longer course

"When my baby was born and the midwife came to my home I asked her to speak slowly and then I can understand. But now when she is talking I can understand now properly. I can listen properly now to what she is saying. It's the benefit from coming here." Female student, one-week course and further ESOL course.

"If I live here and I go to an interview, if you don't speak English you have no job. Somebody said English is needed for a citizenship course and a passport, definitely. I think no, English is as much for a job. If you speak you can get a job, if you don't understand English there are no jobs." Male student, 12-week course.

2.41 In November 2010, we introduced a requirement for all those applying for a spouse or partner visa, or for leave to remain on that basis, to demonstrate that they can speak and understand a basic level of English (A1 of the Common European Framework of Reference for Languages).⁵¹ A1 is a basic level at which an individual should be able to interact with

others in a simple way and was introduced to promote integration and reduce language costs for public services.⁵²

2.42 Spouses and partners applying for settlement are already required to demonstrate that they meet the Knowledge of Life and Language criteria by taking either the Life in the UK test or an English for Speakers of Other Languages (ESOL) course using Citizenship materials. Management information indicates that 81 per cent of all migrants granted settlement between 1 January 2009 and 31 December 2010 presented a Life in the UK test certificate, which is equivalent to level B1 of the Common European Framework of Reference, and 71 per cent of those granted settlement on the basis of marriage during the same period presented a Life in the UK test certificate.⁵³

48 Dustmann, C, van Soest, A, 2003. The Language and Earnings of Immigrants, Industrial and Labour Relations Review, vol 55, no.3

49 Shields MA and Wheatly-Price S. 2002, The English language fluency and occupational success of ethnic minority immigrant men living in English metropolitan areas, Journal of Population Economics, pp.137-160

50 For more information about the European Integration Fund, please go to http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/integrating_other_migrants/ or http://ec.europa.eu/home-affairs/funding/integration/funding_integration_en.htm (both accessed 8 June 2011)

51 The Common European Framework of Reference for languages (CEFR) was developed by the Council of Europe to establish international standards for language learning, teaching and assessment in all modern languages, including English. There are various levels within the framework, representing different levels of language capability. For further information on the Common European Framework of Reference for languages, please go to <http://europass.cedefop.europa.eu/LanguageSelfAssessmentGrid/en> (accessed 8 June 2011)

52 For further information on the English language requirement for spouses and partners on entry and for leave to remain, please go to <http://www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/26-english-language-partners> (accessed 8 June 2011)

2.43 **We now propose to extend the current English language requirement for spouses and partners applying for settlement in the UK to require them to demonstrate that they can understand everyday English (B1 of the Common European Framework of Reference).** Most spouses and partners already demonstrate English at this level by passing the Life in the UK test, but it is currently possible to meet settlement requirements with an ESOL qualification at a lower level. We believe that B1 is a reasonable level for spouses and partners to attain over the proposed new 5-year probationary period. It will also align the requirement for spouses and partners with primary migrants on work-based routes to settlement and simplify the current system. We will also consider whether it is appropriate and practicable to require spouses and partners applying for settlement to be able to demonstrate that they can speak, read and write English at B1 level also.

CURRENT LANGUAGE REQUIREMENTS FOR SETTLEMENT

Since 2007, applicants applying for settlement have been required to demonstrate that they meet the Knowledge of English language and life in the UK requirement.

They can do this by sitting the Life in the UK Test, which is designed for those who have an English language proficiency equivalent to level B1 of the Common European Framework of Reference.

Alternatively, the English for Speakers of Other Languages (ESOL) with Citizenship materials course is available to those whose language proficiency is assessed as being below level B1 to develop their English language skills. Those who take the ESOL course are currently required to demonstrate progression from one level to the next.

2.44 It will continue to be important that those staying permanently in the UK have an understanding not just of English language, but also of British life and of the values and principles which underlie British society. These aspects are currently covered by the Life in the UK test or through the Citizenship materials used within the ESOL courses. We will be reviewing this approach and considering whether the integration process would be assisted by changes to the current testing regime.

Question 7: Should spouses and partners applying for settlement (permanent residence) in the UK be required to understand everyday English?

Question 8: Which of the following English language skills should we test?

- Speaking
- Listening
- Reading
- Writing

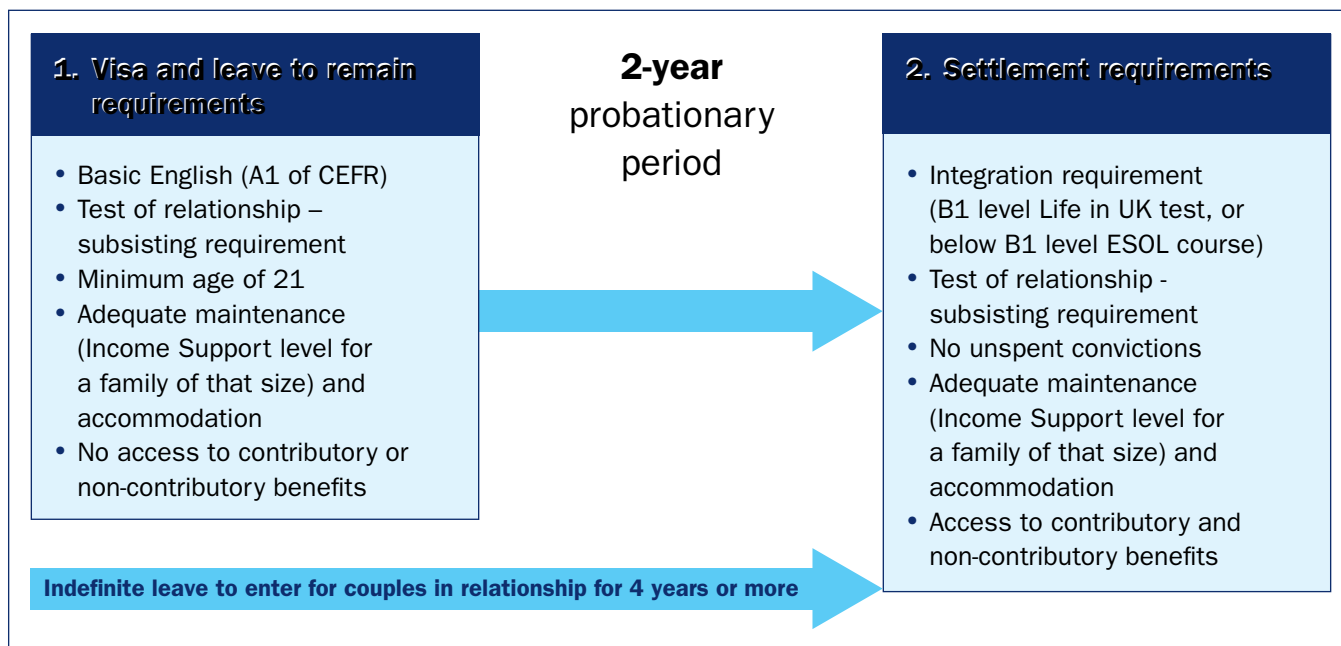
2.45 Some people applying for citizenship will not, for various reasons, have been required to demonstrate their English language ability at either entry or settlement but have the same need to understand English to a reasonable standard to enable them to integrate and play a full part in British life. No one is required to apply for citizenship and applicants can wait until they feel ready to do so. We believe it is reasonable to expect applicants for citizenship to meet at least the same language requirements that apply at the settlement stage. **We will examine whether there is a case for making English language requirements for citizenship more demanding.**

2.46 We will also consider what exemptions should apply to the English language requirements, for example for those with a permanent disability which prevents them from learning English; those who can evidence they have made a serious effort to reach the required level but have failed to do so; and those aged 65 or over when they apply for settlement. We will also consider how these and other settlement-related requirements will operate in respect of the spouses, partners and dependants of serving members of the armed forces.

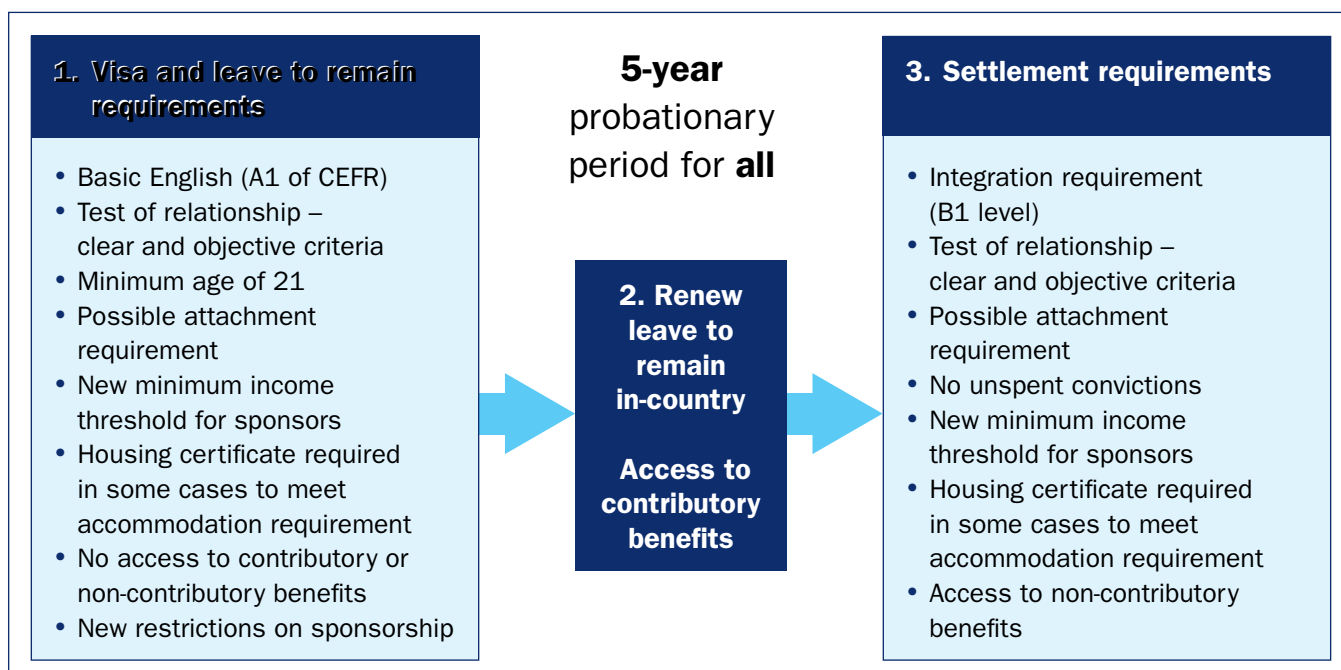
53 This is management information derived from live UK Border Agency databases. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

Figure 3: Current and proposed systems⁵⁴

Current system



Proposed system



⁵⁴ This diagram does not represent every current or proposed new requirement.

3. TACKLING SHAM MARRIAGE

OVERVIEW

3.1 Family migration must be based on a genuine and continuing marriage or partnership. Those involved in sham marriages undermine our immigration system, and damage the institution of marriage. They also – wittingly or otherwise – help the organised criminal gangs who profit from exploiting vulnerable people and breaking our immigration laws. This consultation paper sets out how we are tackling this abuse and looks at possible new measures for identifying and disrupting sham marriages, ensuring they bring no advantage in immigration terms, and bringing to justice those involved.

3.2 A sham marriage or marriage of convenience, or a sham civil partnership, is contracted between:

A – British citizen, person settled in the UK, EEA national, or non-EEA national with existing temporary leave to remain the UK; and

B – Non-EEA national without leave to remain in the UK or whose leave is about to expire.

The marriage or civil partnership takes place solely as a basis for trying to enable B to enter, remain in or extend their leave in the UK. There is no subsisting relationship and the parties do not intend to live together permanently, if at all. Such a ‘marriage’ or ‘civil partnership’ does not give a non-EEA national the right to live in the UK, and we will not tolerate attempts to abuse the immigration process in this way.

3.3 In England and Wales, superintendent registrars are employed by local authorities to provide registration services in their local communities. It is a legal requirement for civil and non-Anglican marriages for the couple to give notice in person to a

superintendent registrar of their intention to marry. Similar arrangements apply to civil partnerships. A couple intending to marry in an Anglican ceremony is not required to give notice to a superintendent registrar: instead, they undertake the process of Banns or obtain a common licence authorising their marriage to proceed.

3.4 When giving notice to a superintendent registrar, each person must provide evidence that they comply with certain residence requirements and provide documentary evidence of their nationality. Superintendent registrars and other registration officers have a statutory duty to report to the UK Border Agency any reasonable suspicion they may have that the marriage is a sham to gain immigration advantage. They notify the UK Border Agency of the grounds for their suspicion under section 24 of the Immigration and Asylum Act 1999.⁵⁵ As a frontline service, it is vital that registration officers continue to provide the right level of timely intervention to support the work of the UK Border Agency in refusing immigration status in appropriate cases.

3.5 Those subject to immigration control who are not marrying in an Anglican ceremony are required to give notice of marriage or civil partnership at a designated register office, which allows the UK Border Agency to concentrate its joint working and training with registration officers in a manageable number of locations.

3.6 The UK Border Agency and the General Register Office have produced guidelines for more effective partnership working to facilitate the early detection and efficient disruption of sham marriages in England and Wales. In addition, local immigration

⁵⁵ There is a similar statutory duty in respect of a suspected sham civil partnership.

teams are giving presentations at regional registration panel meetings and providing registration officers with a single point of contact in their local immigration team for advice and assistance from the UK Border Agency. And the UK Border Agency will conduct further targeted operations involving a visible presence in designated register offices reporting high levels of suspected sham marriages.

- 3.7 The UK Border Agency also works closely with the Church of England and the Church in Wales to provide advice and support, and to investigate and disrupt suspected sham marriages. We encourage the clergy to notify us to allow action to be taken where appropriate, and in April 2011 the Church of England published guidance for the clergy on tackling sham marriages.⁵⁶ This directs non-EEA nationals towards the common licence route for marriage preliminaries, which involves a sworn statement as to the genuineness of the marriage, and confirms that a licence should not be granted unless the person considering the application is satisfied that the marriage is genuine.
- 3.8 There are similar arrangements in place in Scotland and Northern Ireland to address the problem of sham marriages and to require registration officers to complete section 24 reports to the UK Border Agency. However, the processes for giving notice of marriage are different in a number of ways, reflecting the marriage law applicable in those parts of the UK.

WHAT IS A SECTION 24 REPORT?

Under the Immigration and Asylum Act 1999, registration officers across the UK are required to report to the UK Border Agency any persons they believe are entering into a marriage of convenience and give their reasons for believing this.⁵⁷ A section 24 report is raised by a registration officer if they believe a marriage is not genuine. The report will highlight the reasons for their assessment and provide personal details of the couple, such as their name and address.

⁵⁶ For the full guidance, please go to: <http://www.churchofengland.org/about-us/structure/churchlawlegis/guidance> (accessed 8 June 2011)

⁵⁷ See <http://www.legislation.gov.uk/ukpga/1999/33/contents> for the Immigration and Asylum Act 1999 (accessed 8 June 2011)

Figure 4: Total number of section 24 reports received⁵⁸

	2005	2006	2007	2008	2009	2010
Section 24 reports	452	282	384	344	561	928

- 3.9 In 2010, the UK Border Agency received 928 section 24 reports from registration officers of suspected sham marriages, compared with 561 in 2009. In the 2010 section 24 reports, 481 EEA nationals (mainly Eastern European) acted as sponsors for non-EEA nationals, compared with 357 British citizens. The remaining 90 reports were for non-EEA sponsors. Amongst applicants, Pakistanis were the largest non-EEA national group subject to section 24 reports (338), followed by Indians (111) and Nigerians (105).⁵⁹
- 3.10 The UK Border Agency investigates reports of suspected sham marriages, and in the past year two periods of targeted enforcement action resulted in 155 arrests and several convictions. We are looking to increase our enforcement efforts, with specialist teams of UK Border Agency officers and police working to investigate these cases, and to work more closely with the General Register Offices across the UK, registration officers and the Anglican Church to identify marriages that may not be genuine.

⁵⁸ Please note the information provided is management information. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

⁵⁹ Ibid.

SUCCESSFUL JOINT WORKING WITH REGISTRATION OFFICERS

Following the reporting of suspicions by a Leicestershire registration officer that a couple approaching him to marry seemed to know very little about each other, a Hungarian national and an Indian national were arrested by the UK Border Agency and charged with offences in relation to entering into a sham marriage for immigration purposes.

The prospective groom, Mr S, was unable to give any personal details about his future bride, Ms A, but was found to be in possession of a 'crib sheet' detailing her name, address and date of birth.

Mr S and Ms A were sentenced to 14 months and 12 months in prison respectively and Ms A will face deportation from the UK when she has served her sentence.

THREE YEARS FOR SHAM WEDDING PLANNER

A sham wedding fixer was jailed for 3 years at Basildon Crown Court in April 2011 for arranging sham weddings at a church in Tilbury, Essex.

Mr M was convicted of conspiring to facilitate a breach of immigration law. The UK Border Agency is working to deport the Ugandan national at the end of his sentence.

A couple whose wedding Mr M had set up – a Dutch woman and a Nigerian man – had pleaded guilty to the same conspiracy charge at an earlier hearing. The Nigerian man hoped that his marriage to an EEA national would aid his bid to gain settlement in the UK with the associated rights to work and claim benefits.

INTERNATIONAL SHAM MARRIAGE GANG BUSTED

An international sham marriage gang spanning Rotherham to Islamabad was targeted in a series of co-ordinated raids resulting in 10 arrests of Pakistani, Czech and Slovak gang members in February 2011.

It is believed that women from Eastern Europe were coming to the UK and offering themselves – for a price - as brides for would-be migrants. The grooms were not in the UK but based in Pakistan. Their brides would fly out to get married and then return, submitting an application for their husbands to come and join them in the UK.

Officers suspect that the gang thought this less direct route would be less conspicuous than attempting to marry here in the UK.

PROPOSALS

(a) Making it more difficult for a sham marriage to go ahead

- 3.11 **We plan greater publicity of the nature and consequences of sham marriage, both overseas and in the UK.** Sham marriage does not confer immigration status. It can involve criminal offences such as perjury and identity fraud, and be a basis for immigration offences such as seeking to obtain leave by deception and assisting unlawful immigration. It is facilitated by organised criminal gangs who profit from exploiting vulnerable people and breaking our immigration laws. It is linked in some cases with sexual exploitation, such as where young women come or are brought to the UK from Eastern Europe as sex workers and are coerced or induced to participate in a sham marriage while they are in the UK.
- 3.12 The consequences of sham marriage are significant and effective intervention and disruption benefits victims and the wider public. We aim to use local registration offices to provide publicity material at the point of giving notice of marriage setting out the duties of the registration officer to pass information to the UK Border Agency and the enforcement consequences of pursuing a marriage which is a sham.

3.13 **We will explore, through discussion with local authorities and registration officers, the feasibility in certain circumstances of combining some of the role and functions of the registrar and the UK Border Agency.** The aim is not as a matter of course to enable registrars to carry out the functions of an immigration officer and vice versa. Instead, we will explore the scope, subject to legislation, to provide for a designated category of officer in England and Wales who is able to carry out both functions in the specific environment of a register office. Such staff could be targeted at suspected hotspots for sham marriages and to individual cases where intelligence indicated links to other significant criminality. We do not believe that it is the role of the local registration service to enforce the immigration laws: that is a matter for the UK Border Agency. It is however the role of the registrar to help combat sham marriage and intervene where a sham marriage is suspected. By using an officer trained and empowered to act in both areas, our ability to tackle sham marriages could be increased. We would welcome views from local authorities and others on this proposal.

Question 9: Should we (in certain circumstances) combine some of the roles of registration officers in England and Wales and the UK Border Agency as a way of combating sham marriage?

3.14 **We will explore the case for requiring, if necessary through legislation, more documentation of foreign nationals wishing to marry in England and Wales to establish their entitlement to marry.** This might for example require them to obtain a certificate of no impediment from their embassy or high commission, or to provide a recent, certified copy of their birth certificate. Such requirements would broadly reciprocate the requirements on British citizens marrying overseas. We recognise that any such scheme would need to be sufficiently flexible to allow for the difficulties faced by some individuals, for example asylum seekers, in obtaining documentary evidence from their country of birth. In this and other areas, we would also need to ensure that similar arrangements were in place for marriages in an Anglican ceremony. We will invite the Scottish Government, the Northern Ireland Executive and the General Register Offices in Scotland and Northern Ireland to consider whether comparable requirements would be appropriate in other parts of the UK. (In Scotland, foreign nationals not domiciled in the UK are already required to provide a certificate of no impediment from their embassy or high commission).

GETTING MARRIED IN THE UK

In order to marry in the UK registration officers and, where applicable, clergy must be satisfied that there is no legal impediment to the marriage taking place. These are:

- One or both parties are under the minimum age of 16;
- One or both parties have a pre-existing marriage or civil partnership; or
- There is a prohibited degree of relationship between the couple.

In addition, for a civil ceremony in England and Wales, the parties must have resided in the district of the superintendent registrar for 7 clear days before notice of marriage can be given. Those subject to immigration control living in England and Wales must give notice at one of 76 designated register offices. In Scotland and Northern Ireland, there is no residence requirement, couples may give notice by post, and all register offices are designated.

When giving notice for marriage to a registration officer or for marriage preliminaries in the Anglican faith, parties will be asked for:

- Full name;
- Age - the minimum legal age in England, Wales and Northern Ireland is 16, but written consent may be required under 18. In Scotland you can marry at 16 without parental consent;
- Address;
- Nationality (documentary evidence must be provided and for foreign nationals this could be a passport or a Home Office travel document);
- Current status – single, divorced;
- Occupation;
- (For the civil route) intended venue for marriage or civil partnership ceremony

Case law prevents registrars requiring that those subject to immigration control have valid leave before being allowed to marry.⁶⁰

60 Baiai and others [2008] UKHL 53

GETTING MARRIED ABROAD⁶¹

Many other countries, including EU and Commonwealth countries, have additional requirements for foreign nationals (EEA and third country nationals) wishing to marry. These are to ensure that there is no impediment to them entering into the marriage (for example they are not already married) and that the marriage is recognised in the foreign national's home country.

Country	Requirements for foreign nationals
Italy	<ul style="list-style-type: none"> • Certificate of no impediment • Certified translations of all documentation • Official interpreter for the ceremony • Valid residence permit
France	<ul style="list-style-type: none"> • Certificate of law (similar to the certificate of no impediment) • Birth certificate issued within the 6 months prior to the wedding • Apostille stamps and certified translations of all documentation • 40-day residency requirement for at least 1 of the parties with 2 pieces of proof of domicile • Certificate of celibacy
Spain	<ul style="list-style-type: none"> • Certificate of no impediment • Apostille stamps and certified translations of all documents • Affidavit stating where you live
Poland	<ul style="list-style-type: none"> • Certificate of no impediment (or notice of marriage and sworn affidavit if in Poland) • Translations of documentation (completed by a sworn translator)
Sri Lanka⁶²	<ul style="list-style-type: none"> • Affidavit signed by a solicitor stating eligibility to marry • Original birth certificate and passport
India⁶³	<ul style="list-style-type: none"> • Certificate of no impediment • 30-day residency requirement and certificate from police stating requirement has been met • Certified copies of original birth certificate and passport

British nationals who live in the UK but wish to marry overseas can obtain a certificate of no impediment from their local register office (at a cost of £33.50 per person) and if they live abroad they can apply for a certificate of no impediment at the British embassy or high commission (at a cost of £65 per person). There are exceptions to this (principally for marriages in Commonwealth countries or marriages to an Irish national).

Where countries apply additional documentary requirements, for example a recent copy of birth certificate and certified translation, apostille stamps – certifying the genuineness of documents – can be obtained from the Foreign & Commonwealth Office in the UK or overseas (at a cost of £30 per apostille).⁶⁴

Question 10: Should more documentation be required of foreign nationals wishing to marry in England and Wales to establish their entitlement to do so?

3.15 **The UK Border Agency will consider with the General Register Office the feasibility of requiring, on a targeted basis, some couples which include a foreign national marrying in England and Wales to attend an interview with the UK Border Agency, in the current statutory 15-day period between giving notice of their intention to marry and being granted authority to so.** Registration officers are required to request that a couple attend in person to give notice. We could consider extending that provision

61 Information about requirements to marry in other countries can be found on the Foreign Office website <http://www.fco.gov.uk/en/travel-and-living-abroad/births-deaths-marriages-civil/marriage-and-civil-partnerships/> (accessed 5 July 2011)

62 http://www.confetti.co.uk/article/view/4921-8185-0-Getting_married_in_Sri_Lanka_Getting_Married_Abroad.do

63 <http://www.india.embassy.gov.au/ndli/Gmil.html> (accessed 8 June 2011)

64 For more information, please go to: <http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/legal-services/Legalisation/> (accessed 8 June 2011)

to enable the registration officer, after consulting the UK Border Agency, to require a couple to be interviewed by the UK Border Agency. At such an interview the UK Border Agency could test the genuineness of the relationship and make clear to the couple that, if their marriage is found to be sham, it will not lead to immigration status for the non-EEA national or to the grant of a residence permit for the spouse of the EEA national, as appropriate, and could lead to prosecution for an immigration or other criminal offence.

Question 11: Should some couples including a non-EEA national marrying in England and Wales be required to attend an interview with the UK Border Agency during the time between giving notice of their intention to marry and being granted authority to do so?

- 3.16 Carrying out interviews and reaching a decision within 15 days as to whether or not the marriage should proceed presents logistical difficulties. **We will therefore explore the case for legislating to make ‘sham’ a lawful impediment to marriage in England and Wales, and to introduce powers to delay (with the agreement of the UK Border Agency) a marriage from taking place where sham is suspected.** In the absence of a lawful impediment to marriage (bigamy, under-age, prohibited blood relationship), marriage can follow 15 days after notice is given, and the authority to marry is valid for 12 months. Under the Marriage Act 1949 it is an offence for a registration officer not to proceed with a marriage where there is no lawful impediment. Acting on section 24 reports from registration officers and other information, we wish to be able to ‘stop the clock’ on marriage for a short period (say 28 days, taking into account ECHR Article 12: the right to marry) to permit a suspected sham marriage to be further investigated. The marriage would then be prevented in law from going ahead where it was established to be a sham. Couples deemed to be in a genuine relationship would be permitted to marry. In Germany, France and Belgium, civil registrars have the power to postpone or cancel a marriage if a sham is suspected.

THE ‘OXFORD CASE’

Under the Marriage Act 1949 a sham marriage cannot be stopped from going ahead in the civil route. This was highlighted in a case in Oxford in 2010:

Mr D, an illegal immigrant, attempted to marry a Polish national on 8 June 2010 at Oxford register office. Both were arrested by the Thames Valley immigration crime team on suspicion of perjury. The Polish national was cautioned for this offence and Mr D was charged with two counts of perjury, but released on bail. They arranged for the marriage to take place once again at Oxford register office on 10 November, but they did not provide any interpreters. Neither party could understand the other in their respective languages of Punjabi and Polish, and neither spoke adequate English. The registrar was unable to understand them and so a new date for the marriage was arranged for 8 December. Because there was nothing that either the registrar or the UK Border Agency could lawfully do to prevent a sham marriage from taking place, the couple married on 8 December. Mr D was later convicted of perjury and given a 12-month conditional discharge.

Question 12: Should ‘sham’ be a lawful impediment to marriage in England and Wales?

Question 13: Should the authorities have the power in England and Wales to delay a marriage from taking place where ‘sham’ is suspected?

- 3.17 We will explore the case for legislating to add ‘proven sham’ to the criteria for voiding or cancelling a marriage, and to enable the UK Border Agency, where it established that a marriage was a sham, to apply to the courts for it to be declared void. We will also explore options to give registration officers the power to retain documents to assist UK Border Agency investigations, and to ensure registration officers and the UK Border Agency have appropriate powers to share information with each other and other agencies (for example the police and local authorities).
- 3.18 We will invite the Scottish Government, the Northern Ireland Executive and the General Register Offices in Scotland and Northern Ireland to consider whether comparable provisions on sham marriage would be appropriate in other parts of the UK, and

whether the scope in those jurisdictions to give notice by post of intent to marry should be removed or restricted.

- 3.19 Local authorities are central to the administration of the marriage process. **We will look at the feasibility of giving greater flexibility and revenue-raising powers in respect of civil marriage to local authorities in England and Wales whose registration services meet high standards of practice in helping to counter sham marriage.** Registration officers are key partners for the UK Border Agency and our main focus will remain on better joint working to implement good practice. But capacity and performance in helping to counter sham marriage (for example level of staff training, robustness of processes, and closeness of joint working with the UK Border Agency) varies between local authorities. We will consider, with the General Register Office, local authorities and others, the feasibility of reflecting this variation in the level of responsibility local authorities enjoy in this area.
- 3.20 This could involve developing a scheme for local authorities to achieve a ‘highly trusted registrar’ status, which brought with it additional scope for revenue-raising and other benefits. It could help local authorities counter housing benefit and council tax benefit fraud, and detect the illegal sub-letting of council housing, and give them a greater stake in the good administration of the marriage process and countering sham marriage.
- 3.21 We would welcome views from local authorities and registration officers in England and Wales on any scheme that could support the principles in this consultation paper to increase enforcement activity and stop sham marriages from occurring.

Question 14: Should local authorities in England and Wales that have met have high standards in countering sham marriage, be given greater flexibility and revenue raising powers in respect of civil marriage?

(b) Making it more difficult for sham marriage to bring an immigration benefit

- 3.22 As discussed in Section 2, above, **we propose to define more clearly what constitutes a genuine and continuing marriage.** Sham

marriage does not confer immigration status. The Immigration Rules and EEA Regulations allow the UK Border Agency to refuse a non-EEA national leave to enter, remain in or settle in the UK, or an EEA residence permit, based on marriage, if we can evidence that the marriage is a sham. If we set out factors or criteria for assessing whether a marriage is genuine and continuing, this could help UK Border Agency caseworkers and presenting officers and Immigration Judges to focus on the **factual** aspects of the marriage which indicate that it is not genuine and continuing. This could better enable the UK Border Agency to identify sham marriages and refuse applications based on such a marriage. It would also make clear to applicants what the criteria are and whether they are likely to meet them, and could deter some bogus applications.

- 3.23 We have evidence of spouses or partners subsequently sponsoring another spouse or partner soon after being granted settlement, possibly suggesting that the original marriage or partnership was a sham. Separate analysis of 719 marriage or partnership visa cases where the sponsor had previously been sponsored as a spouse or partner on the family route, and was now seeking to sponsor a new spouse or partner, found that 5 per cent had sponsored their new spouse or partner within 1 year of being granted settlement in the UK, 19 per cent within 2 years, and 47 per cent of the sponsors had sponsored their new spouse or partner within 3 years of the date they were granted settlement on the basis of another marriage or partnership.⁶⁵ **We will consider the case for restricting the scope for those sponsored as a spouse or partner to sponsor another spouse or partner within 5 years of obtaining settlement.** This would not apply to a bereaved spouse or partner.

⁶⁵ Please note the analysis used management information. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

Question 15: Should there be restrictions on those sponsored here as a spouse or partner sponsoring another spouse or partner within 5 years of being granted settlement in the UK?

3.24 We also propose greater scrutiny of marriage visa and leave to remain applications where the sponsor has previously sponsored such an application, to identify serial sponsors abusing the process. If our investigations confirm that the first or subsequent marriage or partnership was one of convenience, we will refuse the second application and seek to revoke the sponsor's leave. Where the sponsor holds British citizenship, or it is not possible to revoke leave, we propose a ban on sponsorship for up to 10 years. This ban would also apply to any person convicted of bigamy or an offence associated with sham marriage. It could cover any form of immigration sponsorship, in the family route, under the points-based system or of a family visitor. Such a person has demonstrated that they are unfit to be trusted as a sponsor.

Question 16: If someone is found to be a serial sponsor abusing the process, or is convicted of bigamy or an offence associated with sham marriage, should they be banned from acting as any form of immigration sponsor for up to 10 years?

3.25 We will consider whether it might assist efforts to prevent sham marriages gaining immigration advantage if we provided scope for applications for leave to remain based on marriage to be counter-signed by a solicitor or immigration adviser. Such a third party could not of course confirm the genuineness of the marriage, but we could ask them to confirm that information contained in the application form was correct to the best of their knowledge and belief, and to view (but not verify) particular documents (for example proof of identity, nationality and residence) and witness signatures.

3.26 Through the work of the Law Societies for England and Wales, Scotland and Northern Ireland, the Office of the Immigration Services Commissioner and others, the regulation of the immigration advice sector is being improved. There is now a body of regulated, registered professional people across the UK, whose paid advice is important to the effective operation of the immigration

system. We would not require applicants to engage the services of a solicitor or immigration adviser, and primary legislation would be needed to require them to obtain a counter-signature from such a person, but the UK Border Agency could consider giving additional scrutiny to applications which lacked such a counter-signature.

3.27 A solicitor or immigration adviser who repeatedly counter-signed applications which turned out to be based on a sham marriage could be referred by the UK Border Agency to the relevant Law Society or the Office of the Immigration Services Commissioner for possible investigation of their professional competence and conduct, and possible sanctions arising from established incompetence or misconduct. The information would also be used by the UK Border Agency to target investigation and enforcement activity against sham marriage.

3.28 We recognise that this option raises issues about the roles and responsibilities of solicitors and immigration advisers, including acting in the best interests of their clients, and about the extent to which the UK Border Agency should become involved in issues relating to their professional conduct. We propose to discuss these issues with the Law Societies and the Office of the Immigration Services Commissioner.

Question 17: Should we provide scope for marriage-based leave to remain applications to be counter-signed by a solicitor or regulated immigration adviser, as a means of confirming some of the information they contain?

3.29 We will consider the scope for building on the nationality and settlement application checking services local authorities can provide by enabling them to offer a similar, charged service for leave to remain applications, including those based on marriage, alongside the existing responsibilities of local authority registration offices for administering the marriage process.

3.30 Local authorities, together with the Scottish Government, the Welsh Government and the Northern Ireland Executive, are key partners for us in managing migration for the benefit of the UK. Issues of community cohesion and integration, housing, employment and

enterprise, and marriage registration, as well as wider impact on public services, are central to local authority responsibilities.

3.31 And local authorities can be more directly involved in immigration matters. By performing citizenship ceremonies and welcoming those who are becoming British citizens into the local community, local authorities play an important role in the British citizenship process. Since 2005 local authorities (currently 135) have offered a nationality checking service.⁶⁶ In October 2010 the UK Border Agency expanded this partnership working by starting to pilot a settlement checking service, including for settlement on the basis of marriage. 26 local authorities are taking part in the pilot.⁶⁷

3.32 We propose to discuss the available options for a checking service for leave to remain applications with local authorities in England and, in consultation with the Scottish Government, the Welsh Government and the Northern Ireland Executive, in other parts of the UK.

Question 18: Should there be scope for local authorities to provide a charged service for checking leave to remain applications, including those based on marriage, as they can do for nationality and settlement applications?

3.33 **We will consider the scope, and would welcome suggestions, for other measures to contribute to our capacity to identify sham marriages and prevent them gaining an immigration benefit.** For example, these could include:

66 In a similar way to the Post Office's 'Check and Send' service for passport applications, registration offices will, for a small fee (around £65 for the standard service and £130 for the express service), check completed British nationality applications for accuracy, and photocopy and certify the documents the UK Border Agency requires to be submitted with the application. The UK Border Agency is then able to process those applications more quickly and applicants are able to retain their original documents. For more information about the nationality checking service, please go to <http://www.ukba.homeoffice.gov.uk/britishcitizenship/applying/checkingservice/#header1> (accessed 8 June 2011)

67 The settlement checking service costs around £80, as the checking process is longer for settlement applications, given the information the UK Border Agency requires to consider whether a person should be granted permanent residence in the UK. For more information about the settlement checking service, please go to [http://www.ukba.homeoffice.gov.uk/settlement/applicationtypes/applicationformset\(m\)/scs/](http://www.ukba.homeoffice.gov.uk/settlement/applicationtypes/applicationformset(m)/scs/) (accessed 8 June 2011)

- Looking at whether community groups and charities might play a role in sponsoring applications for leave to remain based on marriage. For example, such groups could be invited to add testimony in support of applications which might help the UK Border Agency assess the genuineness of the relationship and the likelihood of the couple residing permanently together. We would need to guard against the risk that, in some circumstances, such testimony could give weight to an application based on forced marriage.
- Requiring couples to demonstrate that they have been in a genuine relationship for at least a year prior to the marriage visa or leave to remain application, and granting 12 months' initial temporary leave to those who cannot, to enable them to meet this requirement. They would be able to apply for further leave after 12 months, which would enable a further assessment to be made at that point of whether theirs is a genuine and continuing relationship.
- Restricting in-country switching into the family route from short-term visas under the points-based system (for example Tier 2 (skilled workers), 12-month Tier 4 (students) and Tier 5 (temporary workers)) as a means of deterring some sham marriages.
- Requiring, on a targeted basis, applications for leave to remain in the UK on the basis of marriage to be made in person, particularly by those switching from another route. This could provide a basis for targeted interviewing of applicants to test whether the relationship is genuine and continuing.
- Targeted use of home visits to test whether the marriage remains in being before settlement in the UK is granted on the basis of it.

EEA ISSUES

3.34 Sham marriage is an issue with a growing international dimension. In 2010, the UK Border Agency received 481 section 24 reports of suspected sham marriages involving EEA nationals.⁶⁸ Also in 2010, the UK Border Agency refused just under 20 per cent of EEA family permit applications overseas.⁶⁹ Many refusals were on the basis that we were not satisfied that the family relationship was as claimed. In 2009, the UK Border Agency refused 13 per cent of in-country applications for initial recognition of right to reside and permanent residence, for the same reason or because the EEA national was not exercising Treaty rights in the UK.⁷⁰

EEA ABUSE OUTSIDE THE UK

Officers at posts in the UK Border Agency's Europe and Mediterranean region have reported receiving EEA family permit applications from non-EEA nationals whose spouse or partner did not live or work in that Member State. It was discovered that the EEA national did not reside with the applicant and only travelled to the Member State to facilitate residency for the non-EEA national.

EEA ABUSE INSIDE THE UK

In December 2010, a Nigerian national and a Czech national were jailed in Lancashire for their roles in two separate sham marriages.

Mr O, a Nigerian national living in London, was jailed for 21 months for perjury and deception. He and his 'bride', Ms M, a 26 year old Czech national were arrested by the UK Border Agency after it was established that they had taken part in a sham marriage in May 2009 at a church in Lancashire. Ms M was convicted of assisting unlawful immigration and sentenced separately.

In another case, Ms G, a 32 year old Czech national was jailed for 16 months for perjury, assisting unlawful immigration and bigamy, relating to a sham marriage in May 2009 at the same church.

3.35 The risk of non-EEA nationals entering into sham marriages with EEA nationals in order to remain in the EU is recognised as a pan-European issue.

GERMANY

A German investigation reported by Europol showed an organised crime group arranging for primarily Indian, Pakistani and Afghan nationals, having divorced their genuine spouse in their country of origin, to marry an EEA national in another Member State to take advantage of its marriage laws. The couple would then return to Germany and within 2 to 3 years would get divorced. The non-EEA national would then live alone in Germany, before remarrying their genuine spouse, who, with their children, would then be able to join the non-EEA national in Germany.⁷¹

3.36 The abuse of Treaty rights is not tolerated by Member States or the European Commission. Balanced action is required to protect the principle of free movement, one of the key rights of EU citizens set out in the Treaties, from being damaged by abuse. The Free Movement Directive itself states that "Member States may adopt the necessary measures to refuse, terminate, or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience".⁷²

68 Please note the information provided is management information. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

69 Ibid.

70 2010 data on in-country EEA applications are not available until August. For the 2009 figures, please see supplementary table 4b, Control of Immigration Statistics 2009 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/> (accessed 8 June 2011)

71 Europol Facilitated Illegal Immigration Bulletin No. 2, April 2010

72 Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States: Article 35: Abuse of rights <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0038:EN:NOT> (accessed 5 July 2011)

- 3.37 More recently, the Stockholm Programme has committed the European Commission to monitor the implementation and application of the Directive to avoid abuse and fraud and to assist Member States in effectively tackling abuse of this fundamental right.⁷³
- 3.38 Many of the proposals outlined earlier in this Section will apply equally to EEA nationals marrying a non-EEA national in the UK, for example more rigorous documentary requirements for foreign nationals marrying in the UK and the scope for greater use of targeted interviews and home visits to test the genuineness of the relationship.
- 3.39 The UK is working closely with the European Commission and other Member States to tackle the problem of sham marriage and strengthen our individual and joint enforcement action. A joint approach presents the UK with new opportunities to do more in this area than can be achieved alone. It enables more effective identification of abuse and assists in the identification of patterns and trends which inform operational activity.

9 ARRESTED AS UK-DUTCH OPERATION HAILED A SUCCESS

9 suspects were arrested in February 2011 for their involvement in sham marriages as a result of effective partnership working between UK Border Agency staff, local police and the authorities in The Netherlands. A series of arrests took place in Nottingham, Kent, London, Birmingham and Devon following investigations conducted by officers in the East Midlands. Another man was also arrested in Rotterdam and detained under an extradition warrant, while the main subject of the investigation, a Nigerian national suspected of arranging a number of sham marriages, was arrested at Nottingham University.

PROPOSALS

- 3.40 The European Commission's Guidelines,⁷⁴ together with case law from the European Court of Justice, provide guidance on how certain aspects of the Free Movement Directive should be interpreted. These guidelines were introduced in 2009. In the light of subsequent case law from the European Court of Justice and the changing nature of the challenges faced by Member States, **we plan to encourage the Commission and Member States to review and, if necessary, to supplement or amend the Guidelines.**
- 3.41 We will continue to work with Member States on joint operations to tackle the criminal networks that facilitate sham marriages. We will also **build on our existing level of engagement with EU partners to share information bilaterally on patterns and trends of abuse.** This is intended to encourage a joint approach with EU partners on marriage abuse. It will enhance operational co-operation, specifically through data-sharing to identify bigamous marriages, identity fraud, and/or cases of trafficking, and through operational opportunities to target facilitation.
- 3.42 In line with our overall approach to tackling sham marriage, **we will consider the scope for further targeted use of interviewing and home visits for EEA residence permit applications,** to test the genuineness of the relationship on which the application is based and whether it is subsisting.

⁷³ The Stockholm Programme – An open and secure Europe serving and protecting the citizens (17024/09): 2.2 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF> (accessed 5 July 2011)

⁷⁴ Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF> (accessed 5 July 2011)

4. TACKLING FORCED MARRIAGE

OVERVIEW

- 4.1 Marriage must be based on the free consent of both parties. There is no place in British society for the practice of forced marriage – of forcing a young woman or man into marriage against their will, for family advantage, or out of fear of bringing shame on the family or perceived notions of family honour. There can be no justification – cultural, religious or otherwise – for marriage without free consent. It is a breach of human rights and a form of violence against the victim. That must be made clear, here and to those overseas who may be planning such marriages. And we must do as much as we can to protect the victims, and potential victims, of this terrible practice. This consultation paper sets out our proposals.
- 4.2 In 2010, there were 1,735 instances where the Forced Marriage Unit gave advice or support related to a possible forced marriage, 86 per cent involving a female victim and 14 per cent male.⁷⁵ 36 instances involved victims who identified themselves as lesbian, gay, bisexual or transgender.
- 4.3 These statistics almost certainly underestimate the extent of the problem, because many of the families involved do not see the marriage as ‘forced’ and because many victims are unwilling to speak out.⁷⁶ The victim in immigration-related cases is normally, though not always, the in-country sponsor: a British citizen or a person settled in the UK who is forced to marry a non-EEA national overseas and then sponsor their marriage visa to the UK. Victims are often forced to marry family members to facilitate the entry of the latter to the UK.
- 4.4 Forced marriage affects nationalities from across the world, but the majority of reported cases involve South Asian families, with families of Pakistani origin accounting for more than three quarters of the reluctant sponsor cases dealt with by the Forced Marriage Unit in three of the last four years.

⁷⁵ Forced Marriage Unit <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/> (accessed 5 July 2011)

⁷⁶ Forced marriage in the UK: Religious, cultural, economic or state violence? Khatidja Chantler [2009] Critical Social Policy

THE FORCED MARRIAGE UNIT (FMU)

The FMU is a joint initiative between the Home Office and the Foreign & Commonwealth Office.⁷⁷

Overseas, the FMU works with embassy and high commission staff to help to repatriate British nationals who have been forced into marriage or are at risk of being so. Some may have been held captive, subjected to repeated rape or forced into having an abortion.

In the UK, the FMU assists victims and potential victims of forced marriage, as well as people who are worried about friends or relatives being forced into marriage. The FMU works with the police and with professionals in the social, educational, health, housing and voluntary sectors.

CASE STUDY - ESHA

Esha was born in the UK but her parents were from Somalia. Things were not going well at home because when she was at university she had a boyfriend and was smoking and drinking. Her parents said she was becoming too “westernised”. Her mum tricked her into thinking that she was going on holiday saying she wanted to take Esha back to Somalia to see where she and her dad had grown up. When they arrived, she was chained to the wall of the house in which they were staying until she was forced to marry a much older man.

After the marriage, Esha tried to run away. Her mum called the police and told them she was a bad girl who would not conform. The police arrested her and she was sent to a women’s prison where other women had been arrested for resisting marriage. After being let out of prison, Esha pretended to submit to her marriage and was allowed to go into the local town. She contacted a friend via e-mail who informed the Forced Marriage Unit.

Esha was smuggled out of Somalia to Ethiopia where she was put on a plane home. At Heathrow Esha was met by a key worker from Refuge’s specialist accommodation for African and Caribbean women. Esha was very frightened because she had brought shame on her family for running away and feared that if her family found her they would kill her.

FORCED MARRIAGE PROTECTION ORDERS

There is legislation to help prevent forced marriages from taking place and to provide assistance where such a marriage has taken place. The Forced Marriage (Civil Protection) Act 2007⁷⁸ came into force in November 2008. This gives the courts in England and Wales⁷⁹ a wide discretion to deal flexibly with each individual case, employing civil remedies that offer protection to victims without criminalising family members. 250 protection orders were made over 2009 and 2010. A small number (less than 10) were breached, several of which led to the imposition of a custodial sentence. Of the 116 applications made in 2010, 11 were for males and 105 for females, and 57 of the applications were for people aged 17 and under.⁸⁰

CASE STUDY - MOTHER JAILED FOR 8 MONTHS

An east London woman was jailed for 8 months in February 2011 for breaching a Forced Marriage Protection Order made by the High Court. Her 17 year old son was made the subject of the order in July 2010 and provided with emergency accommodation. But his mother took him on holiday to Nigeria and when he failed to return, he was made a ward of court and his parents were ordered to return him to the UK. When they failed to do so, action was taken for breach of the protection order.

FURTHER INITIATIVES

Work is in hand to share data between the FMU, the courts and the UK Border Agency, which will give the UK Border Agency access to information about Forced Marriage Protection Orders made by the courts. The existence of an order can enable the UK Border Agency to refuse an application for a marriage visa or leave to remain.

77 For more information about the work of the Forced Marriage Unit, please go to: <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/> (accessed 8 June 2011)

78 <http://www.legislation.gov.uk/ukpga/2007/20/contents> (accessed 5 July 2011)

79 15 county courts can currently deal with Forced Marriage Protection Order applications as well as the High Court.

80 For Forced Marriage Protection Order statistics, please go to chapter 2: Family matters in Judicial and Court annual and quarterly statistics. <http://www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/index.htm> (accessed 5 July)

- 4.5 In March 2009, the UK Border Agency, in consultation with the Forced Marriage Unit, published a code of practice⁸¹ setting out how an application for a spouse visa or for leave to remain in the UK as a spouse will be dealt with if the applicant or sponsor is identified as vulnerable to a forced marriage. The code seeks to ensure that cases involving forced marriage are dealt with consistently and that appropriate support is offered to victims.
- 4.6 The current minimum age requirement of 21 for marriage visa applicants and sponsors is intended to protect young people from being forced into marriage. It provides an opportunity for individuals to develop maturity and life skills, and to complete their education and training, which may enable them to resist the pressure of being forced into marriage and/or into sponsoring a visa. The majority of forced marriage cases reported to the Forced Marriage Unit involve South Asian families. The current minimum age requirement was introduced in November 2008, prior to this the minimum age requirement was 18. Recent analysis of the age breakdown for marriage visas granted in 2007 and 2008 showed that 23 per cent of Bangladeshis granted a marriage visa, and 18 per cent of Pakistanis, were aged 18-20. This compares with 1 per cent of Nigerians and 2 per cent of US nationals granted a marriage visa during the same period.⁸²
- 4.7 The European Council Directive on the right to family reunification states that: “In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her”.⁸³ The UK has not opted into this Directive, which applies to non-EEA nationals in the EU, but it demonstrates that

the EU recognises the value of a minimum age requirement for marriage visas as a way of preventing forced marriage and other EU countries have implemented a minimum marriage visa age.

Country	Minimum marriage visa age ⁸⁴
Austria	21 for both parties – applies to Austrian citizens
Belgium	21 for permanent residents – no age limit for Belgian citizens/ EU nationals - but planned to be extended to 21 for Belgian citizens
Lithuania	21 for both parties – does not apply to Lithuanian citizens
The Netherlands	21 for both parties – applies to Dutch citizens
Denmark	24 for both parties – applies to Danish citizens
Cyprus	21 for permanent residents and EEA residents
Malta	21 where the spouse is entering under the terms of the Family Reunification Directive

- 4.8 In June 2011 the Supreme Court heard the Secretary of State’s appeal in Quila which concerns this minimum age requirement. We await the judgment of the Court.

PROPOSALS

- 4.9 In tackling forced marriage, much rests on the willingness of the victim or potential victim to seek help and if necessary to state publicly that the marriage is forced.⁸⁵ We must ensure that new measures do not put victims of forced marriage at greater risk of pressure or serious harm from their family, but enhance the protection of victims and those at risk of becoming victims.

81 Please go to <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=20502604#> (accessed 5 July 2011)

82 Please note, the analysis is based on management information. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

83 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML> (accessed 5 July 2011)

84 Information on other countries’ requirements can be found at European Migration Network (EMN) ad hoc query [http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?sessionId=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family Reunification](http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?sessionId=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family+Reunification) (accessed 9 June 2011)

85 In 2010, of 229 reluctant sponsors dealt with by FMU, 34 were willing to make a public statement that their marriage was forced.

- 4.10 **The Forced Marriage Unit plans greater publicity, both in the UK and overseas, of the consequences of forced marriage, and more work with communities affected by forced marriage,** to publicise Forced Marriage Protection Orders and the support available from the Forced Marriage Unit. In the UK the Forced Marriage Unit will work with non-governmental partners to deliver awareness-raising and training seminars throughout the year. In the run-up to summer, when there is generally a spike in forced marriage cases, an awareness-raising campaign will target potential victims and education professionals.
- 4.11 **The Home Affairs Committee of the House of Commons has recommended that the Government legislate to make forced marriage a criminal offence in England and Wales.⁸⁶ The Government will respond to that recommendation and the others made by the Home Affairs Committee in due course.**
- 4.12 There was a full public consultation on this issue in 2005: 'Forced Marriage: a Wrong not a Right'.⁸⁷ The arguments that can be made for creating a specific criminal offence of forcing someone to marry include that:
- Primary legislation would send a strong message to communities in the UK and internationally. This was emphasised by the Home Affairs Committee in its May 2011 report on forced marriage.
 - It could have a deterrent effect.
 - It could empower young people to resist parental or wider family or community pressure to marry, and it could help some parents to resist family or community pressure for a forced marriage.
- 4.13 The arguments that can be made against include:
- No evidence has so far been submitted that criminalising forced marriage in other jurisdictions has deterred the practice or increased reporting of it.
 - The risk that their family may be prosecuted may stop victims or potential victims from seeking help.
 - That existing criminal offences (for example rape or false imprisonment) can already be applied.
 - It may be hard to prove who amongst the victim's family or community is the perpetrator of the offence and to prove their intentions.
- 4.14 **Subject to the Supreme Court's judgment in Quila, we plan to maintain the minimum age of 21 for marriage visa applicants and sponsors.**
- 4.15 According to the 2009-10 British Crime Survey, 1.2 million women were victims of domestic abuse in England and Wales and 76 per cent of all domestic violence incidents were incidents of repeat victimisation.⁸⁸ **We propose a ban on sponsorship for up to 10 years if a person is convicted of domestic violence, or has breached or been named the respondent of a Forced Marriage Protection Order.** This would prevent perpetrators of domestic violence sponsoring another spouse who would be at risk of their abusive behaviour. It would prevent those deemed by the courts to be involved in attempting to force a person into marriage from acting as an immigration sponsor. The ban could cover any form of immigration sponsorship, in the family route, under the points-based system or of a family visitor. Such a person has demonstrated that they are unfit to be trusted as a sponsor.

86 For the full report, please go to <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/110517-forced-marriage-report/> (accessed 5 July)

87 <http://webarchive.nationalarchives.gov.uk/20050906002707/http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1017170970560>

88 2009-10 British Crime Survey data can be found at <http://rds.homeoffice.gov.uk/rds>

Question 19: If someone is convicted of domestic violence, or has breached or been named the respondent of a Forced Marriage Protection Order, should they be banned from acting as any form of immigration sponsor for up to 10 years?

- 4.16 The UK Border Agency can refuse leave in forced marriage cases on the basis that the coercion involved means that the marriage is not subsisting. But refusal in forced marriage cases requires a public statement by the victim that the marriage is forced, or other evidence that the requirements of the Immigration Rules are not met. As proposed in Section 2, above, **we will look to define more clearly what constitutes a genuine and continuing marriage** (one that is ‘subsisting’ for the purposes of the Immigration Rules) to help UK Border Agency caseworkers and presenting officers and Immigration Judges focus on the factual aspects of the relationship which indicate that the marriage is not genuine and continuing. A focus on these **factual** aspects, whilst taking into account the individual circumstances of the case, may enable the immigration application to be properly refused in circumstances where the victim is unwilling to make a public statement through fear of the consequences of doing so.
- 4.17 In 2010, there were 70 instances where the Forced Marriage Unit gave support or advice on forced marriage to people with disabilities (50 with learning disabilities, 17 with physical disabilities and 3 with both).⁸⁹ **We propose to ask local authority social services departments in England to carry out an assessment of an individual’s capacity to consent to marriage when the sponsor of a marriage-based visa or leave to remain application is a person with learning difficulties or of another particularly vulnerable group**, to confirm that the person understands and has consented to what they are doing. This would need to take into account the issue of presumed consent, but could provide additional protection against involvement in forced marriage for particularly vulnerable groups. We will invite the Scottish Government, the Welsh Government and the Northern Ireland Executive to consider whether similar arrangements would be appropriate in other parts of the UK.

⁸⁹ Forced Marriage Unit <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/> (accessed 5 July 2011)

DAVID

David is a 35 year old man with a learning disability. The marriage came to the attention of social services after it had taken place. David lives with his elderly mother, who told his social worker that she wanted him to marry a woman who was coming to visit them from abroad. David said that he did not want to get married but his elderly mother told him no one else would look after him when she died. He was extremely anxious about being married as he worried about what being a husband entailed. Social workers did not want to be seen to interfere, so David’s wife came to the UK to marry him but did not know he had a learning disability; she left him after two weeks of marriage. This has had a profound impact on David’s self esteem as he feels it was his fault that the marriage was a failure. He has since become very withdrawn and will no longer attend the day care centre where he had a lot of friends. Social services are not aware of long-term plans for his care because David does not want to engage with them.

Question 20: If the sponsor is a person with a learning disability or someone from another particularly vulnerable group, should social services departments in England be asked to assess their capacity to consent to marriage?

- 4.18 **We will look at current interview arrangements for sponsors to see what more can be done to enable the UK Border Agency to identify those most likely to be at risk of forced marriage** and, where appropriate, to refer sponsors to the FMU and other support available.
- 4.19 **We also propose to publish clear guidance on the pathway out of a civil marriage in England and Wales where it was forced and the victim is willing to make a public statement.** In those circumstances, we need to be able to offer clear guidance on how the victim can exit the forced marriage as safely as possible. This could involve:
- A facilitated, fast-tracked application for the civil marriage to be voided or cancelled under the Marriage Act 1949, with the Forced Marriage Unit referring victims to the General Register Office for assistance (though some forms of religious marriage would remain in place); and

- The UK Border Agency curtailing the visa or leave to remain based on the voided or cancelled marriage, and serving a removal decision on the former spouse (who would have a right of appeal against the curtailment and removal decisions). Subject to any appeal, the UK Border Agency would seek where possible to undertake enforcement and removal action.

5. OTHER FAMILY MEMBERS

OVERVIEW

5.1 We welcome those who want to make a real life here with their family, who want to work hard and contribute to their local community, and who are not seeking to abuse the system or the rights of others. That is the type of family migration to the UK that we want to see.

5.2 We have reviewed current arrangements for the dependants of family route migrants to come to the UK in that light. These are the dependent children and adult and elderly dependent relatives of British citizens and persons settled here, or of their non-EEA spouse or partner.

CURRENT ARRANGEMENTS FOR CHILD DEPENDANTS

Children of persons settled in the UK

Children cannot normally come to the UK to settle unless both parents⁹⁰ are settled here or have been given permission to do so. There are exceptions where:

- One parent is dead and the other is settled or coming to settle here;
- The parent who is settled or coming to settle in the UK has had sole responsibility for the child's upbringing; or
- One parent is settled or coming to settle in the UK and there are serious reasons why the child must be allowed to come here.

The child must demonstrate that they:

- Are not leading an independent life;
- Are not married or in a civil partnership;
- Have not formed an independent family unit; and
- Are aged under 18.

The parent(s) must demonstrate that they are able to maintain the dependent child and have adequate accommodation for the whole family without recourse to public funds.

Children of migrants with temporary permission to stay in the UK

Children can be granted a probationary visa if both parents have temporary permission to stay in the UK or one parent in the UK has sole responsibility for the child or there are serious reasons why the child must be allowed to come to the UK.

The child and sponsoring parent(s) must meet the same requirements as for indefinite leave to enter applications.

If the child comes to the UK with a parent who has been given temporary permission to live here, the child will normally be given permission to stay in the UK for the same length of time as that parent. This will be not more than 2 years, or not more than 6 months if the child is entering the country with a parent who is coming here as a fiancé(e) or proposed civil partner. If the parent later extends their permission to stay or is allowed to settle here permanently, the child will normally be given the same permission.

There are additional requirements for adopted children.

⁹⁰ The term 'parent' includes the stepfather or stepmother of a child whose father or mother is dead, unmarried parents, and an adoptive parent in certain circumstances.

CURRENT ARRANGEMENTS FOR ADULT AND ELDERLY DEPENDENT RELATIVES

A dependent parent or grandparent of a British citizen or person settled in the UK, and who is aged 65 or over, is entitled to apply for permission to settle permanently on entry to the UK (indefinite leave to enter). Widowed mothers and widowed fathers aged 65 or over, parents or grandparents who are travelling together if one of them is aged 65 or over, and a parent or grandparent aged 65 or over who has remarried or entered into a second civil partnership, but cannot be supported financially by the spouse, partner or children from that second relationship, are also entitled to apply for indefinite leave to enter to join a settled person in the UK.

In exceptional, compassionate circumstances, other dependent relatives are able to apply for indefinite leave to enter to join a person settled here. These include:

- Sons, daughters, sisters, brothers, uncles and aunts over the age of 18; and
- Parents and grandparents under the age of 65.

Applicants must be able to demonstrate that they:

- Depend wholly or mainly on the settled relative for money;
- (And any dependants) can and will be maintained and housed adequately, without recourse to public funds, and in accommodation which the settled relative owns or occupies exclusively; and
- Have no other close relatives in their home country who can support them financially.

Children and adult and elderly dependants are exempt from the English language requirement for settlement.

5.3 The arrangements in some other countries are set out below:⁹¹

Country	Children	Other relatives
Denmark	Children (under the age of 15) permitted	No other relatives permitted unless exceptional compelling and compassionate circumstances
France	French nationals and persons settled in France can sponsor children (under 18)	Only French nationals can sponsor other relatives
Bulgaria	Bulgarian citizens and persons settled can sponsor dependent children under 18 if they are not married	Only Bulgarian citizens can sponsor other dependent relatives
Lithuania	Lithuanian citizens can sponsor children, permanent residents can sponsor children under 18 as long as they are not married and dependent	Lithuanian citizens can sponsor other relatives, permanent residents can only sponsor other relatives if they can demonstrate that they have been dependent on them for at least 1 year and there are no other relatives in the home country
The Netherlands	Children under 18 permitted	Other relatives permitted only in exceptional circumstances
Spain	Children under 18 permitted	Elderly dependent relatives over 65 are permitted if the sponsor can justify why they need to come to Spain. In exceptional compelling and compassionate circumstances (for example a severe disability) other relatives may be permitted.

⁹¹ For more information about the requirements in other European countries, please go to European Migration Network (EMN) ad hoc query [http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?jsessionid=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family Reunification](http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?jsessionid=FAC483582AA153088A3525DC7B0A2E54?entryTitle=Family+Reunification) (accessed 9 June 2011)

PROPOSALS

- 5.4 Those wishing to sponsor their dependants to come to the UK already have to show that they can adequately accommodate and maintain them. But it can be difficult for the UK Border Agency to apply this requirement consistently, and for sponsors to assess whether they meet it. As set out in Section 2, above, in relation to spouse and partners, **we have asked the independent Migration Advisory Committee for advice on a new minimum income threshold for sponsors of dependants for maintenance and accommodation.**
- 5.5 In 2010, 2,700 adult and elderly (aged 65 or over) dependent relatives and 5,700 dependent children⁹² were granted a visa to come to the UK.⁹³ 1,350 dependants⁹⁴ were aged 65 or over and therefore, whilst having free access to the labour market, less likely to be economically active in the UK, and many of the children would not properly become economically active for a number of years. We need to ensure that sponsors have sufficient funds to support the different needs of their family members so that they do not become a burden on the taxpayer. Therefore, **we have also asked the independent Migration Advisory Committee for advice as to how the minimum income threshold should take account of the number and age of dependants sponsored.**

Question 21: Should there be a minimum income threshold for sponsoring other family members coming to the UK?

- 5.6 As set out in Section 2, above, the Department of Health intends later in 2011 or in early 2012 to conduct a further review of

92 10,200 visas were also granted to children accompanying or joining other migrants, some of whom will be on the family route. It is not possible to separate those children from the total.

93 Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

94 Please note the information provided is management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

arrangements for access by foreign nationals to NHS services in England. The review will look at the residence requirements for access to healthcare and **consider whether the provision of medical insurance for certain categories of migrant, including family dependants, should be a mandatory requirement.** The review will involve discussion with the Scottish Government, the Welsh Government and the Northern Ireland Executive about what arrangements for the UK as a whole might be appropriate and mutually beneficial. As also set out in Section 2, above, **we are considering whether wider pre-entry TB screening of overseas applicants should be part of the visa application process.**

- 5.7 In 2010, 2,700 adult and elderly (aged 65 or over) dependent relatives were issued a visa allowing immediate settlement on arrival (indefinite leave to enter).⁹⁵ As set out in Section 2, above, we propose to end indefinite leave to enter for spouses and partners who have been in a relationship for at least 4 years before entering the UK, and require them to complete a 5-year probationary period so that they can achieve settlement (permanent residence) and the benefits that come with it, including immediate access to taxpayer-funded benefits, by first participating and integrating in British life, and demonstrating their attachment to the UK over time.
- 5.8 **We also propose to end indefinite leave to enter for adult dependants and dependants aged 65 or over and require them to complete a 5-year probationary period before being eligible to apply for settlement.** This will bring greater fairness and consistency by generally requiring all adult family migrants - spouses, partners and dependants - to meet the same requirements at each stage of the process: to enter, remain in or settle in the UK on the basis of their family relationship. It is also right that, as we rationalise the immigration system and bring greater transparency by clearly categorising visas as either temporary or permanent, we also look to bring greater consistency to the

95 Table 1.1 Control of Immigration: Quarterly Statistical Publication, Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

requirements for reaching settlement by ensuring that family migrants complete the same probationary period. The probationary period will also encourage integration into British life before settlement is reached. We will consider whether the dependant should be required to apply to the UK Border Agency after 2 or 3 years to extend the period to 5 years.

Question 22: Should adult dependants and dependants aged 65 or over complete a 5-year probationary period before they can apply for settlement (permanent residence) in the UK?

5.9 People around the world are living longer and the concept of what constitutes ‘elderly’ has changed significantly over the last decade.⁹⁶ This increased longevity exerts added pressure on public services. To reflect this, many countries are raising their state pension age. The Government has announced that it will raise the state pension age in the UK to 66 by 2020. To reflect this, **we propose that the age threshold for elderly dependants should remain in line with the state pension age in the UK as any change to the latter is implemented.**

Question 23: Should we keep the age threshold for elderly dependants in line with the state pension age?

5.10 Currently a parent or grandparent can come to the UK to settle if they are aged 65 or over, are financially dependent on a relative in the UK, and have no close relative in their home country who can support them financially. We need to look carefully at what this means in practice, in particular at whether the relative aged 65 or over is necessarily “dependent” on the UK-based sponsor and whether there are other ways of them being supported short of settling in the UK, for example by being sent money by their relative in the UK.

Question 24: Should we look at whether there are other ways of parents or grandparents aged 65 or over being supported by their relative in the UK short of them settling here? If yes, please make suggestions.

5.11 We do not propose generally to end indefinite leave to enter for children under the age of 18 accompanying or joining a parent⁹⁷ who is a British citizen or a person settled here, nor do we propose to make any changes to the adoption-related entry requirements for children. **We are considering the case for changes to the requirements for 17 year old dependants, and would welcome views on these:**

- **Lowering the age eligibility for child dependants to 17.5 years at the time of application** so that they enter the UK before their 18th birthday.
- **Considering whether there should be any change to the length of leave granted to child dependants nearing their 18th birthday**, reflecting the fact that, once they reach the age of 18, they will be able to apply for leave to remain in the UK in their own right.

Question 25: Should there be any change to the length of leave granted to dependants nearing their 18th birthday? If yes, please make suggestions.

5.12 Integration is essential if migrants are to thrive in the UK, and speaking English is central to that process. In line with our arrangements for spouses and partners, **we propose to require dependants aged 16 or 17, and adult dependants aged under 65, to demonstrate they can speak and understand a basic level of English (A1 of the Common European Framework of Reference for Languages) before being granted entry to or leave to remain in the UK.** We propose to mirror the current exemptions for the pre-entry English language requirement for spouses and partners.

⁹⁶ For more information on life expectancy, please go to Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat (2007). World Population Prospects: The 2008 Revision, Highlights. New York: United Nations. http://www.un.org/esa/population/publications/wpp2008/wpp2008_highlights.pdf (accessed 5 July 2011)

⁹⁷ The term ‘parent’ includes the stepfather or stepmother of a child whose father or mother is dead, unmarried parents, and an adoptive parent in certain circumstances.

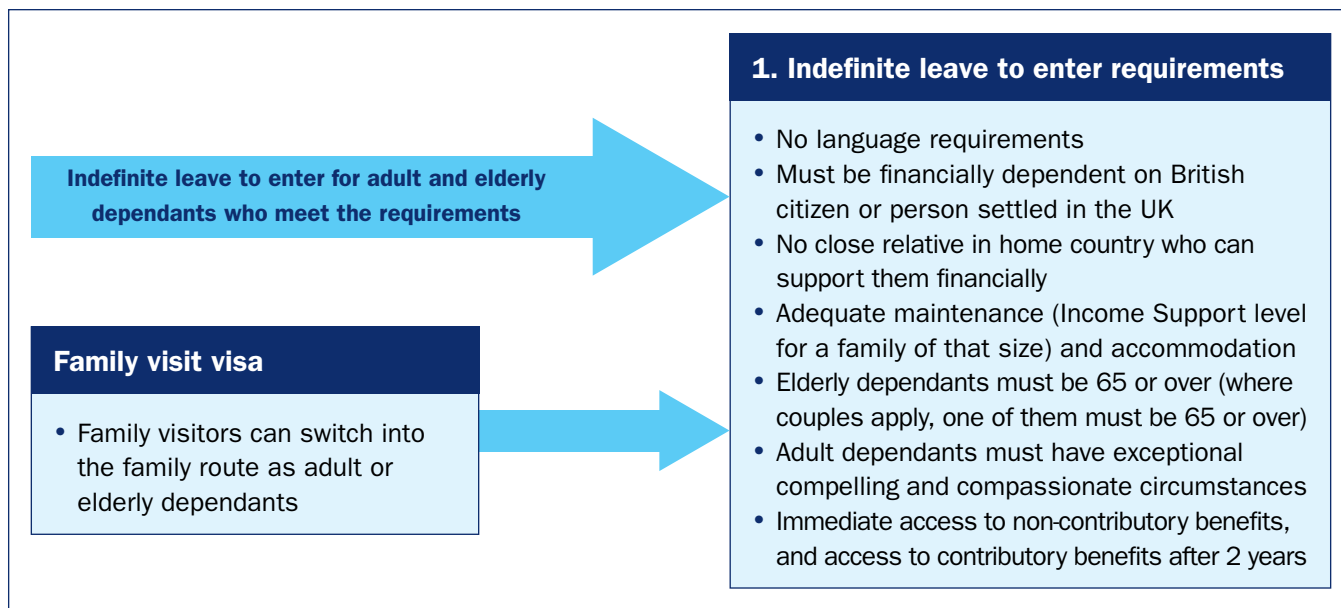
Question 26: Should dependants aged 16 or 17 and adult dependants aged under 65 be required to speak and understand basic English before being granted entry to or leave to remain in the UK?

5.13 We also propose to require adult dependants aged under 65 to be able to understand everyday English (B1 of the Common European Framework of Reference) before they can apply for settlement after the proposed 5-year probationary period. We propose that there will be an exemption from this requirement for those with a permanent disability which prevents them from learning English, and for those who can evidence they have made a serious effort to reach the required level but have failed to do so.

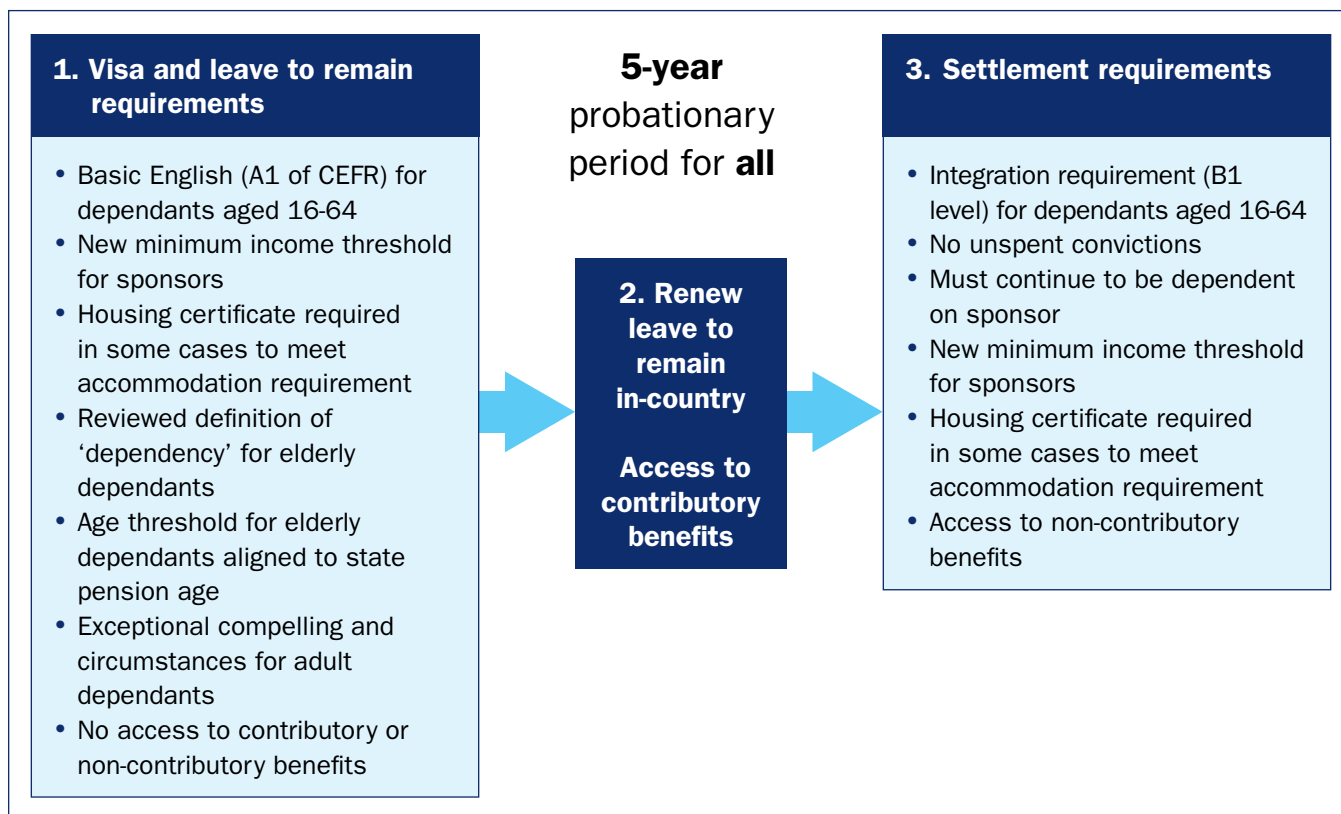
Question 27: Should adult dependants aged under 65 be required to understand everyday English before being granted settlement (permanent residence) in the UK?

FIGURE 5: CURRENT AND PROPOSED SYSTEMS⁹⁸

Current system for adult and elderly dependants



Proposed system for adult and elderly dependants



⁹⁸ This diagram does not represent every current or proposed new requirement.

6. POINTS-BASED SYSTEM DEPENDANTS

OVERVIEW

- 6.1 Those with temporary leave to work or study in the UK under the points-based system can currently be accompanied or joined by a spouse or partner and by dependent children.
- 6.2 We have already set out some changes to these arrangements in our earlier consultations on the points-based system:⁹⁹
- In Tier 2 (skilled workers), dependants will have to meet an English language requirement before switching to a route leading to settlement.
 - In Tier 4 (students), only those here for 12 months or more and studying at masters level or above will be able to bring dependants to the UK.
 - In Tier 5 (temporary workers), we have proposed that there should not be scope to bring dependants to the UK, or that there should be restrictions on their access to the labour market.
- 6.3 Migrants in Tier 1 (entrepreneurs, investors and people of exceptional talent) and Tier 2 (skilled workers) and their dependants have a route to settlement. The primary migrant must complete a period of 5 years (granted in periods of 3 years' leave plus 2 years' leave) and meet the other requirements for settlement in order to qualify.
- 6.4 Dependants can apply for settlement at the same time as the primary migrant as long as they and the primary migrant have been living together in the UK in marriage or civil partnership, or in a relationship similar to marriage or civil partnership, for a period of

at least 2 years, and the dependant meets the other requirements for settlement.

- 6.5 In 2010, 46,000¹⁰⁰ dependants of workers¹⁰¹ were granted settlement having completed the 2-year probationary period.
- 6.6 We believe that the route to settlement should be simple and consistent and unless there are relevant circumstances to warrant it, all migrants on a route to settlement should be expected to complete the same probationary period and meet similar requirements.

PROPOSALS

- 6.7 In line with primary migrants under the points-based system and with what is proposed for the family route, **we propose to increase the probationary period before settlement for dependants under the points-based system from 2 years to 5 years.** It is right that we test the genuineness, for spouse/partner dependants, of the marriage or partnership before permanent residence in the UK is granted on the basis of it. It is right that we test the attachment of dependants to the UK. This probationary period will also encourage the integration of dependants into British life before reaching settlement and give them time to develop the English language skills they need to live permanently in the UK.

Question 28: Should we increase the probationary period before settlement (permanent residence) in the UK for points-based system dependants from 2 years to 5 years?

⁹⁹ For previous UK Border Agency consultations, please go to <http://www.ukba.homeoffice.gov.uk/?requestType=form&view=Search+results&simpleOrAdvanced=simple&page=1&contentType=All&searchTerm=consultations> (accessed 8 June)

¹⁰⁰ Table 4.3, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011)

¹⁰¹ This excludes dependants of UK ancestry cases.

6.8 **We also propose that only time spent in the UK on a route to settlement will count towards the 5-year probationary period**, for example a student (without a route to settlement) who switched into the points-based system dependant route would only start accruing probationary time once they had switched into that route. This is consistent with the proposal in the settlement consultation to categorise all visas as either temporary or permanent, with only permanent visas enabling migrants to apply for settlement in the UK.

Question 29: Should only time spent in the UK on a route to settlement count towards the 5-year probationary period for points-based dependants?

6.9 **In line with our proposals for other family migrants, we propose to require dependants under the points-based system to understand everyday English (B1 of the Common European Framework of Reference) before being granted settlement.** Primary migrants under the points-based system are already required in effect to meet B1 at settlement as they have to demonstrate their knowledge of language and life in the UK by passing the Life in the UK test.

Question 30: Should we require points-based system dependants to understand everyday English before being granted settlement (permanent residence) in the UK?

7. OTHER GROUPS

REFUGEE FAMILY REUNION

- 7.1 In 2010, 4,900 people were granted a family reunion visa to join a refugee or person granted humanitarian protection in the UK.¹⁰² In July 2011, the Immigration Rules were amended so that refugees can sponsor other dependent relatives to join them in the UK, subject to conditions similar to those that need to be met by persons settled in the UK sponsoring such relatives.
- 7.2 A new provision for other family members of refugees and beneficiaries of humanitarian protection has been added to Part 8 of the Immigration Rules. Where a refugee or beneficiary of humanitarian protection has only limited leave to remain in the UK, the Immigration Rules did not previously allow them to be joined by relatives beyond the nuclear family but who were nevertheless dependent on them (for example elderly parents and children over the age of 18). The Immigration Rules only allowed other dependent relatives to join family members in the UK where the sponsor had indefinite leave to remain.
- 7.3 Previously, the Secretary of State used her discretion to consider applications from other dependent relatives of refugees with limited leave outside of the Immigration Rules where there were “compelling and compassionate circumstances” involved. To make this route more formal and for parity with similar rules relating to dependent relatives coming through the settlement route, we have inserted new provisions in the Rules to allow refugees with limited leave to remain to sponsor applications from other dependent relatives

overseas. Such relatives will have to be maintained and accommodated by the refugee without recourse to public funds and will be able to apply for indefinite leave to remain once their sponsor acquires it.

- 7.4 We will consider how far these arrangements should remain aligned with those for the family route following this consultation.

FAMILY VISITORS

- 7.5 Many British citizens and persons settled in the UK have family members living outside the UK. This results in a high volume of visa applications from people wishing to visit family in the UK. Such visits are a means of maintaining family links and of enabling family members living abroad to participate in important family occasions in the UK, such as births, weddings and funerals. Such visits and associated tourism also bring economic benefits to the UK.
- 7.6 In 2010, 423,100 new applications were received for a family visit visa (a general visitor visa for the purpose of visiting family in the UK). During the same period, 432,700 cases were decided, of which 350,300 (81 per cent) were issued, either on initial decision (73 per cent) or subsequent allowed appeal (8 per cent).¹⁰³

¹⁰² Recorded as ‘Family route: Other’ in table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011)

¹⁰³ Please note the information provided is management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. For statistics on family visit visas, please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

FAMILY VISIT VISA

To meet the family visit visa requirements, the applicant must:

- Fall within the wide current definition of family member;¹⁰⁴
- Intend to visit the UK for no more than 6 months;
- Intend to leave the UK at the end of the visit;
- Have enough money to support and accommodate themselves without working or recourse to public funds, or the applicant and any dependants will be supported and accommodated by relatives and friends; and
- Be able to meet the cost of their return or onward journey, and is not in transit to a country outside the common travel area.

The applicant must also satisfy the visa officer, among other things, that, during their visit, they do not intend to work, produce goods, provide services, undertake a course of study, or marry or form a civil partnership or give notice of either.

In addition, the applicant's sponsor may be asked to provide evidence of their own immigration status in the UK, and a letter of sponsorship stating the relationship to the applicant, the purpose of the visit and where the visitor will stay. If the sponsor is providing financial support and accommodation for the visitor and or paying for their travel to the UK, the sponsor will need to provide evidence that they are able to do so, from bank statements, pay slips, etc.

Unlike other temporary entry clearance applications, refusal of an application for a family visit visa attracts a full right of appeal. This was abolished in 1993 and reinstated in 2000.

7.7 We have some concerns about the operation of these arrangements:

- In 2009-10, family visit visa appeals made up just under 40 per cent (63,000)¹⁰⁵ of all immigration appeals going through the system, costing the taxpayer around £40 million a year. New evidence is often submitted on appeal which should have been submitted with the original application. The 'appeal' then becomes in effect a second

decision, based on the new evidence,¹⁰⁶ which is often why an appeal is allowed.¹⁰⁷

- Analysis of a sample of 363 allowed family visit visa appeal determinations received by the UK Border Agency in April 2011 showed that new evidence produced at appeal was the only factor in the Tribunal's decision in 63 per cent of allowed appeals.¹⁰⁸ (Such new evidence was one of a combination of factors in

104 (a) Spouse, father, mother, son, daughter; (b) grandfather, grandmother, grandson, granddaughter; (c) brother, sister, uncle, aunt, nephew, niece, first cousin; (d) father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law; (e) stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister; or (f) a person with whom the applicant has lived as a member of an unmarried couple for at least two of the three years before the day on which the application for entry clearance is made

105 Table 4.1, p25, Annual Statistics for the Tribunals Service 2009-10 <http://webarchive.nationalarchives.gov.uk/20110207135458/http://www.tribunals.gov.uk/Tribunals/Documents/Publications/tribs-annual-stats-2009-10c.pdf> (accessed 6 July 2011)

106 As the Home Affairs Select Committee observed in 2005: "In over half of entry clearance appeals, the outcome appears to be not so much a judgement on the original decision as a completely new decision reached on the basis of different evidence", Home Affairs Select Committee 5th Report (Session 2005/6) on the evidential basis of decisions taken in the Asylum and Immigration Tribunal. <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/77502.htm> (accessed 06 July 2011)

107 The allowed appeal rate for family visit visas is around 40 per cent. The information provided is management information. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

108 Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

the Tribunal's decision in 92 per cent of allowed appeals). 29 per cent were allowed because of new evidence and a combination of other factors, including the applicant being found credible and interpretation of the rules. The remaining 8 per cent were allowed because of factors which did not include new evidence.

- There is evidence of a small but increasing level of misuse of the family visit visa as a means of seeking to remain in the UK. In 2009, asylum intake was 24,500 (principal applicants only), 280 (1 per cent) of which were matched to family visit visas issued on appeal. In 2010, intake was 17,800, 480 (3 per cent) of which were matched to family visit visas issued on appeal.¹⁰⁹
- Since December 2007 visa applicants have been subject to a biometric requirement. Analysis of the biometric data provided up until December 2010 has shown that Pakistan has accounted for 50 per cent of all asylum applications linked to family visit visas issued on appeal: 470 out of 940 in total, with 275 such applications in 2010.¹¹⁰ For Pakistan, the number of asylum applications matched to family visit visas issued on appeal now outstrips the number of asylum applications matched to such visas issued by visa officers. In 2010, there was a similar imbalance in Bangladeshi asylum applications linked to family visit visas issued on appeal and those issued by visa officers on initial application. There appear to be similar patterns, though not as marked, for other countries, including Zimbabwe and Afghanistan, though numbers in the sample are small.
- Our management information indicates that of those Pakistani nationals who went on to claim asylum in the UK in 2010, following the issue of a family visit visa on appeal:¹¹¹
 - 30 per cent were refused and have now been removed.
 - 34 per cent were refused, have exhausted their appeal rights and are liable to removal.
 - 19 per cent were refused but have not yet exhausted their appeal rights.
 - 12 per cent have been granted leave (8 per cent following consideration of their claim by the UK Border Agency and 4 per cent following a successful appeal).
 - The remainder are awaiting a decision, have withdrawn their claim or are recorded as having another outcome.

7.8 The UK Border Agency is committed to improving the quality of initial decision-making across all case categories, overseas and in-country, and has already made good progress with a dedicated programme of work underway to make such improvements. This includes looking at how the evidence presented by visa applicants can be verified more effectively – using both local systems and information already held in the UK. However, these checks are only possible where applicants send in all the information and evidence requested of them with their application.

7.9 Although around 73 per cent of family visit visa applications are granted on initial decision, indicating that most applicants have no difficulty completing the visa application form, we would welcome any suggestions for how the family visit visa application form or guidance could be made any more user-friendly. It is best for the applicant, and for the UK Border Agency, if the application is completed in full and submitted with the necessary supporting evidence. We have published guidance for applicants on our website on what documentation they may

109 For asylum intake figures for 2009 and 2010, please go to table 2.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). For asylum intake matched to family visit visas granted on appeal, please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

110 Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

111 Ibid.

wish to submit with their application. The visitor visa guidance is translated into six languages: Arabic, Chinese, Hindi, Russian, Thai and Turkish, and we would welcome suggestions of any additional languages to consider.

Question 31: In what other ways could the UK Border Agency improve the family visit visa application process, in order to reduce the number of appeals?

7.10 If the application is refused, the refusal notice contains full and clear reasons for that decision. We suggest that, rather than submitting further evidence on appeal (and in the majority of cases obtaining at the taxpayers' expense a new decision based on new information), a person refused a family visit visa should submit a fresh application. It is open to anyone who has been refused a family visit visa to apply again, on payment of the £76 visa application fee, and provide further information in support of their application. There is no limit on the number of applications an individual can make or on how soon a new application can be made. Any further application is considered entirely on its merits and is in no way prejudiced by a previous refusal. We make decisions on family visit visa applications quickly: 95 per cent within 15 working days in 2010-11,¹¹² far more quickly than an appeal can be concluded, which can take up to 34 weeks.

7.11 With this in mind, **we will retain the right of appeal for family visit visas on race discrimination and ECHR grounds in line with other categories of temporary entry clearance, but we invite views on whether there are other circumstances in which an appeal right should be retained for family visit visas.**

7.12 In proposing this we are mindful of the fact that:

- The taxpayer is currently footing the bill for appeals where people are misusing the appeals system - namely where the information submitted on appeal should have been put forward as part of the original application, or where a second application is the most appropriate route for securing a visa.
- It is a disproportionate use of taxpayer funding (of around £40m per year for an appeal process which can take up to 34 weeks to be concluded) for the benefit sought: a short-term visit to family in the UK.¹¹³ Greater priority should be given to appeal cases that have far-reaching impacts for the individuals concerned and for the public at large, for example asylum claims, settlement applications and the deportation of foreign criminals.

Question 32: Beyond race discrimination and ECHR grounds, are there other circumstances in which a family visit visa appeal right should be retained? If yes, please specify.

7.13 **We also propose to prevent family visitors switching into the family route as a dependent relative while they are in the UK.** We do not think that it is right that they should be able to do so: they should apply from overseas for a visa for this purpose rather than for a family visit visa. We propose to change the Immigration Rules accordingly. Where there is a genuine change of circumstances whilst a family visitor is in the UK, there will remain provision for them to make a human rights-based application for leave to remain here as a dependent relative.

Question 33: Should we prevent family visitors switching into the family route as a dependent relative while in the UK?

112 Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

113 Table 4.1, p25, Annual Statistics for the Tribunals Service 2009-10 <http://webarchive.nationalarchives.gov.uk/20110207135458/http://www.tribunals.gov.uk/Tribunals/Documents/Publications/tribs-annual-stats-2009-10c.pdf> (accessed 6 July 2011)

8. ECHR ARTICLE 8: INDIVIDUAL RIGHTS AND RESPONSIBILITIES

- 8.1 This government believes in human rights, and the UK is at the forefront of countries upholding and promoting human rights standards internationally. Human rights are there to provide fairness in people's dealings with the state, and basic protections from too much interference by the state in people's lives. But rights come with responsibilities, and the government must strike a fair balance between the interests of the individual and of the community as a whole. Everyone has a right under Article 8 of the European Convention on Human Rights (ECHR) to respect for their private and family life, but it is not an absolute right.¹¹⁴ It is legitimate to interfere with the exercise of that right where it is in the public interest to do so, and in particular where it is necessary for public protection or for the economic well-being of the UK, which includes maintaining our immigration controls.
- 8.2 The way the government is implementing reforms following the review into ending the detention of children for immigration purposes, under the Coalition Agreement, is an example of how we are attempting to strike the right balance between the rights of individuals and families, and the need to control immigration and enforce our laws. But on other issues where the right to respect for private and family life has to be balanced with fair and effective immigration control, we want to look at whether and how we can achieve a better overall approach.
- 8.3 The government has established a commission to investigate the creation of a UK Bill of Rights.¹¹⁵ The commission will look at the way rights are protected in the UK and explore a wide range of different views as it carries out its work. In the meantime, the government has a responsibility to set out a framework for where and why the wider public interest in protecting the public and controlling immigration justifies rational and proportionate interference in the exercise of the right to respect for private and family life, and wants to use this consultation to help determine what that framework should be.
- 8.4 This consultation paper therefore seeks to open up public discussion around Article 8 and immigration control, and sets out the questions we think are relevant to that discussion. We invite views on how we should approach the balance to be struck between the individual's right to respect for private and family life and the wider public interest in protecting the public and controlling immigration. In the light of this consultation, the government will set out its approach and will lay Immigration Rules before Parliament which reflect this.
- 8.5 The provisions of Article 8 do not provide an absolute right to establish a family life in the UK. Where a family wants to establish itself in the UK, the European Court of Human Rights at Strasbourg has said that there is no interference with the right to respect for private and family life if there are no "insurmountable obstacles" in the way of the family living in another country, usually the country of origin of one or more of them.¹¹⁶

114 Article 8(1): Everyone has the right to respect for his private and family life, his home and his correspondence. (2): There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

115 For more information on the Commission on a UK Bill of Rights, please go to <http://www.justice.gov.uk/about/cbr/index.htm> (accessed 6 July 2011)

116 *Abdulaziz v UK* (1985) 7 EHRR 471

It is not generally a breach of Article 8 to refuse entry or remove if the family can live elsewhere. This is apparent from the regularity with which the absence of such obstacles is specifically cited as a reason for dismissing the applicant's Article 8 claim in the Strasbourg Court's decisions. It is also apparent from the reference to such obstacles in the (relatively rare) instances in which the claim is upheld.

- 8.6 For a period following the coming into force in 2000 of the Human Rights Act 1998 that concept was applied regularly by courts in the UK.¹¹⁷ In a number of more recent cases, the courts have substituted for whether there are “insurmountable obstacles” the alternative question of whether it is “reasonable to expect” the family of an applicant facing removal to join him or her in his or her country of origin.¹¹⁸
- 8.7 It may be argued that it is “unreasonable” to expect a person to join his or her partner in a distant country with which he or she is unfamiliar, and the language of which he or she does not speak, in the specific sense that, in practice, it is unlikely that the person concerned would choose to take such a step. But we suggest that there remains scope for a person to be removed compatibly with Article 8 in such circumstances. This is because the Strasbourg Court considers whether there are “insurmountable obstacles” to family life overseas as one criterion to be weighed alongside others.
- 8.8 We suggest that greater clarity over what the right to respect for private and family life requires would assist discussion of these issues. We do not think that Article 8 requires us automatically to accept the choice of a family who would prefer to live in the UK even if they could live elsewhere. We do not suggest that simply because a family could live elsewhere that they must do so: that would be closing the door to much family migration, which is not our objective. But

117 In *Mahmood* [2001] 1 WLR 840, Lord Phillips MR, when describing the approach taken in Strasbourg and which should be taken in a domestic context, included the principle that “Removal or exclusion of one family member from a State where other members of the family are present will not necessarily infringe Article 8 provided that there are no insurmountable obstacles to the family living together in the country of origin of the family member excluded, even where this involves a degree of hardship for some or all of the members of the family”.

118 *EB (Kosovo)* [2008] UKHL 41 and *VW (Uganda)* [2009] EWCA Civ 5

we do believe that Article 8 enables us to impose requirements on applicants for family migration as long as those requirements serve a legitimate public interest and are proportionate. This consultation paper proposes what we think those requirements should be, and invites views on them.

Question 34: Should the requirements we put in place for family migrants reflect a balance between Article 8 rights and the wider public interest in controlling immigration? Please comment further if you wish.

- 8.9 We accept of course that a balance between individual rights and the public interest will also need to be struck in specific cases where those requirements are met but where we wish to remove a person from the UK because of their behaviour. In framing our thinking, we have taken account in particular of *ZH (Tanzania)* [2011] UKSC 4 and the best interests of the child as a primary consideration, while acknowledging that the best interests of a child can be outweighed by countervailing factors in favour of removal or deportation.
- 8.10 We suggest that this issue of balance arises most clearly in cases where the migrant family member has been convicted of a criminal offence or has breached immigration laws. There must be a limit to how far a person who has shown a serious disregard for the law can prevent their removal from the UK on the grounds that it would interfere with their right to respect for their private and family life. The question is where and on what basis is that limit drawn, and that is something on which we would welcome views and discussion.

Question 35: If a foreign national with family here has shown a serious disregard for UK laws, should we be able to remove them from the UK? Please comment further if you wish.

- 8.11 As a starting point for that discussion, we suggest that, as a general rule, where a person is convicted of an offence that meets the automatic deportation threshold – where Parliament has imposed a duty on the Secretary of State to make a deportation order¹¹⁹ – then it is reasonable to presume that the public interest will warrant deportation

119 Broadly, a non-EEA national convicted in the UK of an offence and sentenced to at least 12 months’

and that only in exceptional circumstances will it be a breach of the right to respect for private and family life to remove the person from the UK.

- 8.12 We note that the courts in England and Wales have indicated that this is the right approach. In *AP (Trinidad & Tobago)* [2011] EWCA Civ 551,¹²⁰ the Court of Appeal commented that where the automatic deportation criteria are met, it is at least arguable that the court should give greater weight to the public interest in deportation proceeding and it is likely to be rare that the public interest would be outweighed by Article 8.¹²¹
- 8.13 Where a person is convicted of a criminal offence which does not meet the automatic deportation threshold, but the reckless and/or persistent nature of whose criminal conduct has led to loss of life or to serious injury, we suggest that the public interest may still support removal. In such a case, regardless of the sentence, we consider that there may be a legitimate public interest in seeing a foreign national who commits an offence(s) which causes significant harm to individuals, families and communities being removed from the UK. We would welcome views on this point, but we believe that those who assert that the UK must respect their right to a private and family life in the UK should accept that it is not an absolute right and that it comes with a responsibility on them to comply with the law.
- 8.14 We should also keep in mind that those who remain in the UK unlawfully, either overstaying their leave or entering without leave, are also breaking the law. We do not think that a person who establishes a private or family life while they are in the UK illegally, or while their immigration status here is precarious, should benefit from their lack of status. Judgments from the Strasbourg Court make this clear.¹²² The Court has consistently stated that private or family life established whilst a person does not have lawful status is to be given less weight than private or family life established while a person is in the UK lawfully. And the Strasbourg Court has long held that where this is the case it is likely only to be in the most

exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8.¹²³

- 8.15 In our view, the approach of the Strasbourg Court gives effect to the fundamental principle that couples cannot claim an entitlement under Article 8 to choose their country of residence.¹²⁴ By contrast, an approach which confers a choice of country of residence on the couple concerned is not what Article 8 requires. But we would welcome views and discussion on this point, and on the conclusions which should flow from it.
- 8.16 We suggest that, in general, where a couple have formed a union in circumstances in which one of them has not established their entitlement to be in the UK, they may be expected to make a choice as to whether they should separate, or remain together outside the UK (temporarily or permanently), regardless of how difficult that choice might be. We feel that this accords the appropriate weight to our objective of maintaining a system of immigration control which is fair as between individuals, and which lessens the possibility of illegal migrants and those whose immigration status here is precarious taking advantage of their position to secure an entitlement to remain in the UK. In all cases the best interests of any child or children in the UK must remain a primary consideration.¹²⁵

Question 36: If a foreign national has established a family life in the UK without an entitlement to be here, is it appropriate to expect them to choose between separation from their UK-based spouse or partner or continuing their family life together overseas? Please comment further if you wish.

- 8.17 We note that both the Strasbourg Court and the courts in the UK have repeatedly emphasised that Article 8 cases are fact-sensitive, and that each case will turn on its own facts. But we suggest that that does not prevent us, having consulted widely, from setting out in Immigration Rules, for approval

120 *AP (Trinidad & Tobago)* [2011] EWCA Civ 551

121 However, before this judgment was reported, 551 appeals against deportation were determined in October-December 2010, of which 162 were successful. 99 of these were allowed on Article 8 grounds.

122 *Rodrigues da Silva, Hoogkamer v Netherlands* (2007) 44 EHRR 729

123 *Mitchell v UK*, Application No. 40447/98; *Ajayi v UK*, Application No. 27663/95; *Y v Russia* (2010) 51 EHRR 21

124 *Abdulaziz v UK* (1985) 7 EHRR 471

125 Taking account of section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children) and *ZH (Tanzania)* [2011] UKSC 4

by Parliament, how we will approach those facts in family migrant cases. Those rules must then be applied fairly and consistently. We suggest that that is in the best interests of applicants, sponsors, caseworkers and the public, and is what a credible and fair immigration policy requires.

- 8.18 We accept of course that other factors can be relevant, including the best interests of any children who live in the UK, any delay in decision-making¹²⁶ and any exceptional or compassionate circumstances. We are not suggesting that removal or refusal of a person who has established a private or family life in the UK can never be a breach of Article 8. But we think that if we can get the balance between individual rights and the public interest right in framing the rules, there should be few cases where that does not produce the right outcome: a decision which is in accordance with our rules and which is also compatible with Article 8 of the ECHR.
- 8.19 We also want to move to a position where those who wish to remain in the UK on the basis of private or family life are expected to make a proper application to do so and put forward the relevant factors for consideration. We do not think it is right that a person who remains in the UK unlawfully should be able to gain advantage by only informing us of their private or family life when they face removal from the UK. We will seek to ensure that in future those who apply through the proper channels are in a better position than those who do not. Those who want to rely on the law should comply with the law.
- 8.20 We suggest too that those who wish to settle in the UK on the grounds of private or family life should be up-front about their intentions and make an appropriate application to the UK Border Agency. Settlement in the UK is a privilege. It should not be achieved simply by evading our detection for a number of years. We will therefore consider the impact of our Article 8 proposals on the need to retain the 14-year long residence rule.¹²⁷

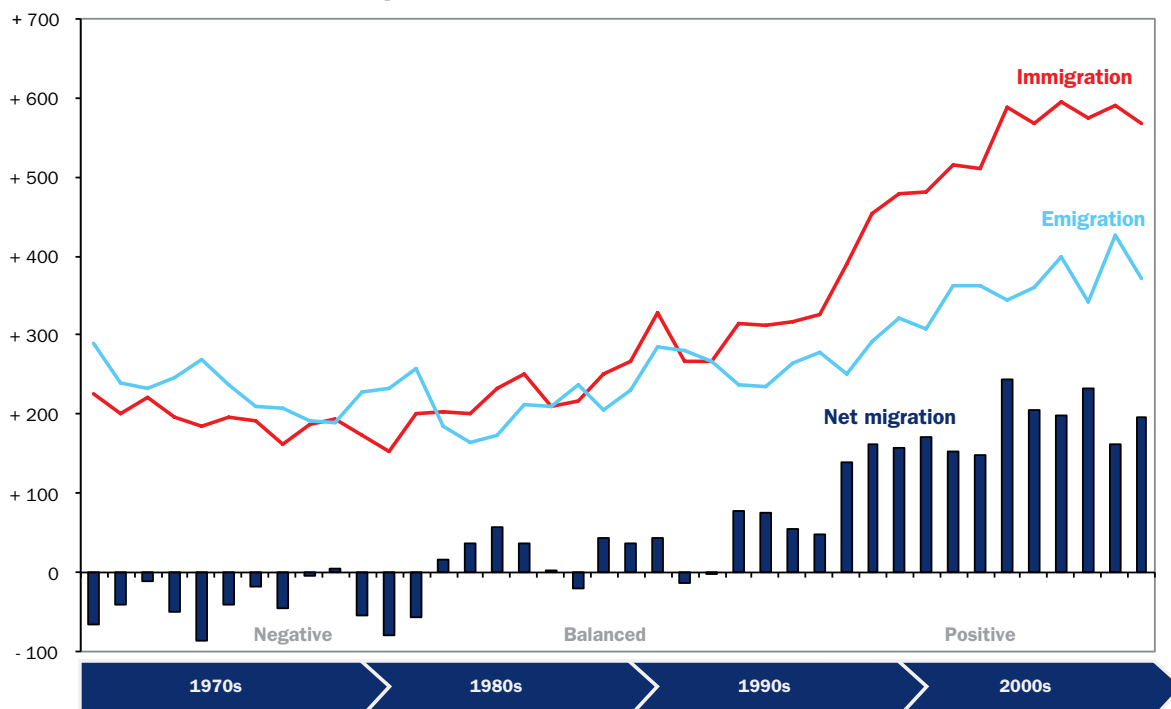
126 EB (Kosovo) [2008] UKHL 41

127 This provides that irregular migrants, who can demonstrate that they have been in the UK for a continuous period of 14 years, and meet other criteria, can apply for settlement. Each application is considered on its merits and applicants must demonstrate knowledge of English language and life in the UK.

APPENDIX A: STATISTICAL OVERVIEW

1. Between 1997 and 2009, net migration to the UK totalled more than 2.2 million people.¹²⁸ Net migration in 2009 was 198,000.¹²⁹ Provisional figures show that net migration in the 12 months to September 2010 was 242,000,¹³⁰ the increase since 2009 being primarily driven by a fall in emigration, particularly of British citizens. This level of net migration is unsustainable: unlimited migration places unacceptable pressure on public services and community cohesion.
2. Within this overall picture, there has been a slight decrease in the net family migration of non-EU nationals since 2006. However, family migration still accounted for approximately 17 per cent of all non-EU immigration in the year to September 2010.¹³¹
3. An Ipsos Mori poll in February 2011 found that 75 per cent of Britons believed that immigration was currently a problem and 44 per cent thought it was a problem because of abuse of or burdens on public services.¹³² We have therefore set out our goal of transforming the immigration system so that it serves the interests of the country as a whole and reduces net migration to sustainable levels.

Figure 6: Historical levels of net migration



128 Office for National Statistics, total figure for 1997-2009 calculated from Long-Term International Migration time series <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=15053> (accessed 6 July 2011)

129 Office for National Statistics, Long-Term International Migration <http://www.statistics.gov.uk/pdfdir/mig0211.pdf> (accessed 6 July 2011)

130 Office for National Statistics, provisional estimates of Long-Term International Migration year ending September 2010 <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=15053> (accessed 6 July 2011)

131 Table 3, ONS, IPS estimates of long-term migration, rolling annual data to Q3 2010 http://www.statistics.gov.uk/downloads/theme_population/ips-estimates-longterm-international-migration.xls (accessed 07 June 2011)

132 Ipsos MORI, February 2011 <http://www.ipsos-mori.com/newsevents/latestnews/644/Strong-support-for-a-cap-on-immigration-amidst-economic-concern.aspx> (accessed 6 July 2011)

FAMILY MIGRATION WITH A ROUTE TO SETTLEMENT

4. In 2010, family migration with a route to settlement (that is permanent residence) in the UK was 114,700.¹³³

The family route

5. By the 'family route' we mean those non-EEA nationals entering, remaining or settling in the UK on the basis of a relationship with a British citizen or a person settled (that is with permanent residence) in the UK. It includes fiancé(e)s, proposed civil partners, spouses, civil partners, unmarried or same-sex partners, dependent children, and adult and elderly

dependent relatives. The family route does not include those accompanying or joining migrants under the points-based system or other work routes, or family members of EEA nationals.

6. The family route is a route to settlement. Some family members are given immediate settlement on arrival (known as indefinite leave to enter) if they meet the relevant requirements, while others are required to complete a probationary period of 2 years (as well as meeting the other requirements of the Immigration Rules) before they can apply for settlement (known as indefinite leave to remain).

Figure 7: Visas issued on routes leading to settlement¹³⁴

	2005	2006	2007	2008	2008	2010
Families - main applicants and dependants ¹	66,325	70,120	64,390	53,545	49,480	53,755
of which refugee family reunion ²	7,730	5,275	4,495	3,630	4,210	4,890
Dependants Tiers 1 & 2 and pre-PBS equivalents (skilled workers)	49,665	57,480	36,380	30,250	41,985	45,225
Dependants joining/accompanying ³	28,420	27,560	42,090	41,460	17,480	15,360
Dependants of domestic workers in foreign households	180	265	150	75	245	335
Total visas issued to family migrants seeking settlement⁴	144,590	155,425	143,010	125,335	109,190	114,680

- 1 'Families' include spouses, partners and other dependants migrating to form or join British citizens or persons settled here. This includes family members of persons granted settlement through the asylum route.
- 2 Family members of persons granted settlement through the asylum route.
- 3 Dependants joining or accompanying another migrant. Includes those dependants of migrants with a visa leading to settlement and those with a visa that does not lead to settlement. It is not possible to assess the exact numbers of this split, but investigations suggest the majority are on a route to settlement. Also includes UK ancestry dependants, who are similarly non-identifiable in the entry clearance visa data.
- 4 Total includes some dependants joining or accompanying a migrant not on a route to settlement. It is not possible to assess these numbers.

133 This figure is based on visas granted. Not all those issued a visa will travel to the UK, either at all or in the same year as the visa was issued. This figure includes (i) the 'family route' for those entering, remaining or settling in the UK on the basis of a relationship with a British citizen or a person settled in the UK; (ii) dependants of skilled workers (PBS Tiers 1 and 2); (iii) dependants accompanying or joining other migrants on routes to settlement; and (iv) dependants of domestic workers in private households. Refugee family reunion visas are included in the family route.

134 Figures sourced from table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). Table can also be found at Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

7. Most family route migrants settle permanently in the UK. Recent analysis of the 2004 cohort of migrants highlighted that 63 per cent of family route migrants were still in the UK 5 years later.¹³⁵ In 2010, 65,300 people were granted settlement on the family route: over a quarter of all settlement grants in that year.¹³⁶
8. In 2010, there were 48,900 visas granted to people on the family route,¹³⁷ of which 40,500 were granted on the basis of a marriage or civil partnership, and 8,400 were granted to other dependants.¹³⁸ In 2010, four nationalities - Pakistan, Nepal, India, and the USA – accounted for just over a third of all the visas granted on the family route, and the route accounted for 43 per cent of all family migration on routes to settlement.¹³⁹
9. In 2010, there were also 22,100 grants of leave to remain issued in the UK to family members (and their dependants) of British citizens and persons settled in the UK.¹⁴⁰ Analysis of the grants of leave to remain has highlighted that 16,800 were granted to people switching from other categories into the family route for

the first time.¹⁴¹ The remainder were people renewing leave or switching from the fiancé(e) or proposed civil partner category into the spouse or civil partner category.

Family members of Tier 1 and Tier 2 migrants

10. Family migration also includes family members of those working in the UK under the points-based system.¹⁴² Spouses, civil partners, or unmarried or same-sex partners, and dependent children may accompany or join a migrant in Tier 1 (entrepreneurs, investors and people of exceptional talent) or Tier 2 (skilled workers), or a pre-points-based system equivalent. The leave granted to the dependant(s) is in line with the leave granted to the primary migrant.
11. Migrants in Tier 1 and Tier 2, and their dependants, currently have a route to settlement. To qualify for settlement, primary migrants must complete a probationary period of 5 years, as well as meeting the other requirements of the Immigration Rules. Their dependants can apply for settlement, if they have previously been granted leave as the spouse, partner or child of the primary migrant and, for spouses or partners, can demonstrate that they have been living together in the UK in a marriage or civil partnership for a period of at least 2 years.
12. The work to settlement consultation published on 9 June 2011¹⁴³ proposes to make Tier 2 predominantly a temporary route by restricting the number of Tier 2 migrants and their dependants who can settle in the UK.

135 The Migrant Journey, Achato et al. [2010] <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/horr43/horr43-summary?view=Binary> (accessed 9 June 2011)

136 Table 4.3, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

137 Excludes visas issued for the purposes of refugee family reunion (included as 'Family route: Other' in the published statistics. Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011). <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

138 There were also 10,200 visas granted to children accompanying or joining other migrants. Some of these will be on the family route. It is not possible to separate these children from the total figure.

139 This is management information derived from live UK Border Agency administrative databases. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

140 Table 4.2 and 4.2 (cont), Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

141 This is management information derived from live UK Border Agency administrative databases. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

142 It also includes 15,400 dependants of other migrants and 335 dependants of domestic workers in private households. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

143 For previous UK Border Agency consultations, please go to: <http://www.ukba.homeoffice.gov.uk/?requestType=form&view=Search+results&simpleOrAdvanced=simple&page=1&contentType=All&searchTerm=consultations> (accessed 9 June 2011).

13. In 2010, 45,200 dependants of skilled workers (Tiers 1 and 2 and pre-points-based system equivalents) were granted a visa to the UK with a route to settlement.¹⁴⁴
14. In 2010, employment-related grants of settlement, including dependants, were nearly nine times the number of equivalent grants in 1997.¹⁴⁵ And 46,000 dependants of persons in employment-related categories alone were granted settlement in 2010.¹⁴⁶
17. In 2010, 4,900 people were granted a family reunion visa to join a refugee in the UK.¹⁴⁷
18. Post-flight family members (for example an overseas spouse that the refugee marries after they have been granted status) can apply to join a refugee sponsor under the normal family route and are subject to the requirements of the Immigration Rules.

Refugee family reunion

15. Recognised refugees and those granted humanitarian protection may sponsor existing family members to the UK. This includes spouses, civil or unmarried partners, and dependent children under the age of 18. From July 2011, refugees have also been able to sponsor other dependent relatives, subject to conditions similar to those that need to be met by people settled in the UK sponsoring such relatives.
16. The rules on refugee family reunion only apply to people who were part of the refugee's family before they fled to seek protection in the UK (pre-flight family members). Pre-flight family members of refugees and those granted humanitarian protection are not subject to the same requirements as other family migrants. A refugee can sponsor their family members under the refugee family reunion rules at any time once they have qualified as a refugee. If they acquire citizenship, they are no longer considered to be in need of protection and have to apply under the normal family route.

144 Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

145 In 2010, employment-related grants of settlement, including dependants, were 84,400 and in 1997, that figure was 9,900. For 2010 figures, please go to table 4.3, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). For 1997 figures, please go to table 3.1, Control of Immigration: Statistics United Kingdom, 2001 <http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/hosb2002.html> (accessed 7 July 2011)

146 Excludes dependants of UK ancestry cases. Table 4.3, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

147 Recorded as 'Family route: Other' in table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

FAMILY MIGRATION NOT LEADING TO SETTLEMENT

19. In 2010, family migration without a route to settlement (that is permanent residence) in the UK was 33,000.¹⁴⁸

Figure 8: visas issued on routes not leading to settlement¹⁴⁹

	2005	2006	2007	2008	2008	2010
Dependants of Tier 5 and pre-PBS equivalents (temporary workers and youth mobility)	-	-	-	-	755	1,280
Dependants of Tier 4 and pre-PBS equivalents (students)	16,010	20,895	19,275	24,200	30,160	31,760
Total visas issued to family migrants not leading to settlement¹	16,010	20,895	19,275	24,200	30,915	33,040

- 1 Total excludes some dependants joining or accompanying a migrant on a route not leading to settlement. These are included within 'dependants joining / accompanying.'

Family members of Tier 4 (students)

20. Family migration also includes family members of those granted a student visa. Spouses, civil or unmarried partners, and dependent children of students may currently accompany or join Tier 4 migrants and the period of leave they are granted is in line with the leave granted to the primary migrant. If the student is following a course of study that is less than 12 months, or below degree level, the dependant is not entitled to work.

21. In 2010, 31,800 dependants of Tier 4 and equivalent migrants were granted a visa to enter the UK. This is a 98 per cent increase since 2005. A further 20,300 were granted an extension of leave to remain.¹⁵⁰

22. The Tier 4 route is not a route to settlement, but students and their dependants have been able to switch to the post-study work route for 2 years before switching into a route with a right to settlement. In 2010, there were 34,000 grants of leave to remain to primary migrants on the post-study work route and a further 4,600 grants of leave to remain to their dependants.¹⁵¹ Students are also able to switch directly into other routes with a right to settlement. Analysis of the 2010 cohort highlighted that 6,900 students switched directly into the family route.¹⁵²

23. The Tier 4 consultation published in November 2010¹⁵³ outlined planned changes to the student route and in future only students following a course of at least 12 months at post-graduate level or higher will be able to bring dependants to the UK.

148 Based on visas granted. People may not travel to the UK in the same year, or at all.

149 Sourced from table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011). Table can also be found at Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

150 Table 4.2 and 4.2 (cont), Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

151 Ibid.

152 Please note the analysis used management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. These data are therefore intended to provide an insight into trends only, and should not be read as definitive. Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

153 For previous UK Border Agency consultations, please go to: <http://www.ukba.homeoffice.gov.uk/?requestType=form&view=Search+results&simpleOrAdvanced=simple&page=1&contentType=All&searchTerm=consultations> (accessed 8 June)

24. The post-study work route will be closed and only those students (and their dependants) graduating from a UK university with a recognised degree, or a post-graduate certificate or diploma in education, will be able to switch into Tier 2.

Family members of Tier 5 (temporary workers)

25. Family migration also includes family members of those granted a Tier 5 visa. Outside of Tier 1 and Tier 2, the main route to work in the UK is via Tier 5. This comprises the Youth Mobility and Temporary Worker categories. The latter includes the route for private servants in diplomatic households.¹⁵⁴ Those in the Youth Mobility category are not allowed to bring dependants to the UK. Otherwise, Tier 5 migrants are entitled to bring their dependants to the UK and in some cases the migrant and their dependants can remain in the UK for a period of up to 6 years. These dependants are given largely unrestricted access to the labour market.
26. Although the number of dependants of Tier 5 migrants is relatively small in comparison to dependants on the other points-based system routes, the number is not insignificant and is rising. In 2010, 1,300 visas were granted to dependants of Tier 5 migrants.
27. The work to settlement consultation published on 9 June 2011¹⁵⁵ proposes to cap the maximum period of stay of a temporary worker at 12 months to re-establish the temporary nature of this route. It also considers whether we should restrict the right of temporary workers to bring their dependants to the UK.

¹⁵⁴ This is separate from domestic workers in private households, who have a route to settlement.

¹⁵⁵ For previous UK Border Agency consultations, please go to: <http://www.ukba.homeoffice.gov.uk/?requestType=form&view=Search+results&simpleOrAdvanced=simple&page=1&contentType=All&searchTerm=consultations> (accessed 8 June)

OTHER FAMILY MIGRATION

Non-EEA family members of EEA nationals

28. Under European Community (EC) law, nationals of the European Economic Area (EEA) and their family members, including their non-EEA national family members, can move freely within Member States.¹⁵⁶ The rights of free movement are set out in EU legislation,¹⁵⁷ by which all Member States are bound. This right to free movement offers substantial benefits to EEA citizens, including our own, especially those that wish to work within Europe. More than 1.5 million UK citizens now live and work in other EEA countries.¹⁵⁸
29. EEA citizens' free movement rights are not unlimited. EEA citizens wishing to live in the UK for longer than 3 months must be exercising a Treaty right as a worker, a self-employed person, a self-sufficient person or a student. Their families are only entitled to join them in the UK if the EEA citizen is exercising a Treaty right. Where an EEA citizen does not meet one of the Treaty requirements, they, and any family members, will not have the right to reside in the UK. European law requires that a person claiming a right to reside as a family member of an EEA national must be able to demonstrate that they are related as claimed, and that their sponsor, for example the spouse, is exercising a Treaty right.

¹⁵⁶ The family members of an EEA national include: spouse or civil partner; children of the EEA national or their spouse who are under 21, or are 21 or over but still dependent; dependants in the ascending line of the EEA national or their spouse. More distant family members may also be admitted if the EEA national is a worker or self-employed in the host country. In this case, the family member must either be dependent on the EEA national or his/her spouse or prove that he or she formed part of the EEA national's household outside the host Member State.

¹⁵⁷ Rights of free movement are set out in Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This consolidated all previous directives and European Court of Justice caselaw in this area. The Directive has been given effect in domestic law by the Immigration (European Economic Area) Regulations 2006 (S.I.2006/1003), which came into force on 30 April 2006. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:229:0035:0048:EN:pdf> (accessed 6 July)

¹⁵⁸ IPPR, Brits Abroad: mapping the scale and nature of British emigration [2006] <http://www.ippr.org/publications/55/1548/brits-abroad-mapping-the-scale-and-nature-of-british-emigration>

30. Entry to the UK for non-EEA family members who are accompanying or joining their EEA national family member is facilitated by issue of a family permit. In 2010, the UK Border Agency issued 20,800 family permits overseas to non-EEA family members of EEA nationals.

Figure 9: EEA family permits issued to non-EEA national family members overseas¹⁵⁹

	2005	2006	2007	2008	2009	2010
EEA family permits	24,435	25,870	23,415	18,670	19,370	20,755

31. Non-EEA national family members of EEA citizens may obtain a residence document, normally valid for 5 years, to confirm that they have a right of residence in the UK as the family member of an EEA national exercising a Treaty right.
32. After 5 years EEA nationals and their EEA and non-EEA family members may apply for a permanent residence card if they can demonstrate that they have been exercising Treaty rights.
33. The 2010 figures for EEA residence cards and permanent residence cards are not yet available, but in 2009, 60,400 residence cards were issued to non-EEA national family members, and 11,400 permanent residence cards were issued to family members of EEA nationals.

Figure 10: Issue of residence documentation in the UK to EEA nationals and their family members¹⁶⁰

	2007	2008	2009
Initial recognition of right to reside (1)	67,585	36,680	60,415
Recognition of permanent residence (2)	7,625	4,020	11,380

- (1) Registration documents and residence cards issued to confirm a treaty right or confirm status as a family member of an EEA national
- (2) Documents certifying permanent residence and permanent residence cards issued for an indefinite period after 5 years living in the UK

159 Table 1.1, Control of Immigration: Quarterly Statistical Publication Q1 2011 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary> (accessed 7 June 2011).

Family visitors

34. Foreign nationals subject to a visa requirement may apply for a visa to visit the UK on the basis that they are a family member of a person legally resident in the UK. Family visit visas are usually granted for a period of 6 months, and extensions may only be granted in exceptional and compassionate circumstances.
35. In 2010, 350,300 family visit visas were issued.¹⁶¹

160 Supplementary table 4b, Control of Immigration Statistics 2009 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/> (accessed 8 June 2011)

161 Please note this is management information derived from live UK Border Agency administrative systems. As such it may be subject to change and has not been fully quality assured in the manner of officially published migration statistics. Please go to Family migration: evidence and analysis <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/>

APPENDIX B: CONSULTATION QUESTIONS

MARRIAGE AND CIVIL AND OTHER PARTNERSHIP

Question 1: Should we seek to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership, for the purposes of the Immigration Rules? If yes, please make suggestions as to how we should do this.

Please select 1 answer only

- YES

If yes, please make suggestions

- NO
- NO OPINION

Question 2: Would an ‘attachment to the UK’ requirement, along the lines of the attachment requirement operated in Denmark:

a) Support better integration?

Please select 1 answer only

- YES
- NO
- NO OPINION

b) Help safeguard against sham marriage?

Please select 1 answer only

- YES
- NO
- NO OPINION

c) Help safeguard against forced marriage?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 3: Should we introduce a minimum income threshold for sponsoring a spouse or partner to come to or remain in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 4: Should there be scope to require those sponsoring family migrants to provide a local authority certificate confirming their housing will not be overcrowded, where they cannot otherwise provide documentation to evidence this?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 5: Should we extend the probationary period before spouses and partners can apply for settlement (permanent residence) in the UK from the current 2 years to 5 years?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 6: Should spouses and partners who have been married or in a relationship for at least 4 years before entering the UK, be required to complete a 5-year probationary period before they can apply for settlement (permanent residence)?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 7: Should spouses and partners applying for settlement (permanent residence) in the UK be required to understand everyday English?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 8: Which of the following English language skills should we test?

Please select all those that apply

- Speaking
- Listening
- Reading
- Writing
- No opinion

TACKLING SHAM MARRIAGE

Question 9: Should we (in certain circumstances) combine some of the roles of registration officers in England and Wales and the UK Border Agency as a way of combating sham marriage?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 10: Should more documentation be required of foreign nationals wishing to marry in England and Wales to establish their entitlement to do so?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 11: Should some couples including a non-EEA national marrying in England and Wales be required to attend an interview with the UK Border Agency during the time between giving notice of their intention to marry and being granted authority to do so?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 12: Should 'sham' be a lawful impediment to marriage in England and Wales?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 13: Should the authorities have the power in England and Wales to delay a marriage from taking place where ‘sham’ is suspected?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 14: Should local authorities in England and Wales that have met have high standards in countering sham marriage, be given greater flexibility and revenue raising powers in respect of civil marriage?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 15: Should there be restrictions on those sponsored here as a spouse or partner sponsoring another spouse or partner within 5 years of being granted settlement in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 16: If someone is found to be a serial sponsor abusing the process, or is convicted of bigamy or an offence associated with sham marriage, should they be banned from acting as any form of immigration sponsor for up to 10 years?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 17: Should we provide scope for marriage-based leave to remain applications to be counter-signed by a solicitor or regulated immigration adviser, as a means of confirming some of the information they contain?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 18: Should there be scope for local authorities to provide a charged service for checking leave to remain applications, including those based on marriage, as they can do for nationality and settlement applications?

Please select 1 answer only

- YES
- NO
- NO OPINION

TACKLING FORCED MARRIAGE

Question 19: If someone is convicted of domestic violence, or has breached or been named the respondent of a Forced Marriage Protection Order, should they be banned from acting as any form of immigration sponsor for up to 10 years?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 20: If the sponsor is a person with a learning disability or someone from another particularly vulnerable group, should social services departments in England be asked to assess their capacity to consent to marriage?

Please select 1 answer only

- YES
- NO
- NO OPINION

OTHER FAMILY MEMBERS

Question 21: Should there be a minimum income threshold for sponsoring other family members coming to the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 22: Should adult dependants and dependants aged 65 or over complete a 5-year probationary period before they can apply for settlement (permanent residence) in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 23: Should we keep the age threshold for elderly dependants in line with the state pension age?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 24: Should we look at whether there are other ways of parents or grandparents aged 65 or over being supported by their relative in the UK short of them settling here? If yes, please make suggestions.

Please select 1 answer only

- YES

If yes, please make suggestions

- NO
- NO OPINION

Question 25: Should there be any change to the length of leave granted to dependants nearing their 18th birthday? If yes, please make suggestions.

Please select 1 answer only

- YES

If yes, please make suggestions

- NO
- NO OPINION

Question 26: Should dependants aged 16 or 17 and adult dependants aged under 65 be required to speak and understand basic English before being granted entry to or leave to remain in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 27: Should adult dependants aged under 65 be required to understand everyday English before being granted settlement (permanent residence) in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

POINTS-BASED SYSTEM DEPENDANTS

Question 28: Should we increase the probationary period before settlement (permanent residence) in the UK for points-based system dependants from 2 years to 5 years?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 29: Should only time spent in the UK on a route to settlement count towards the 5-year probationary period for points-based dependants?

Please select 1 answer only

- YES
- NO
- NO OPINION

Question 30: Should we require points-based system dependants to understand everyday English before being granted settlement (permanent residence) in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

OTHER GROUPS

Question 31: In what other ways could the UK Border Agency improve the family visit visa application process, in order to reduce the number of appeals?

- Please list all suggestions

Question 32: Beyond race discrimination and ECHR grounds, are there other circumstances in which a family visit visa appeal right should be retained? If so, please specify.

Please select 1 answer only

- YES

If yes, please specify

- NO
- NO OPINION

Question 33: Should we prevent family visitors switching into the family route as a dependent relative while in the UK?

Please select 1 answer only

- YES
- NO
- NO OPINION

ECHR ARTICLE 8

Question 34: Should the requirements we put in place for family migrants reflect a balance between Article 8 rights and the wider public interest in controlling immigration? Please comment further if you wish.

Please select 1 answer only

- YES

If yes, please comment further if you wish

- NO

If no, please comment further if you wish

- NO OPINION

Question 35: If a foreign national with family here has shown a serious disregard for UK laws, should we be able to remove them from the UK? Please comment further if you wish.

Please select 1 answer only

- YES

If yes, please comment further if you wish

- NO

If no, please comment further if you wish

- NO OPINION

Question 36: If a foreign national has established a family life in the UK without an entitlement to be here, is it appropriate to expect them to choose between separation from their UK-based spouse or partner or continuing their family life together overseas? Please comment further if you wish.

Please select 1 answer only

- YES

If yes, please comment further if you wish

- NO

If no, please comment further if you wish

- NO OPINION

IN GENERAL

Question 37: What more can be done to prevent and tackle abuse of the family route, particularly sham marriage and forced marriage?

Question 38: What more can be done to promote the integration of family migrants?

Question 39: What more can be done to reduce burdens on the taxpayer from family migration?

Question 40: How should we strike a balance between the individual's right under ECHR Article 8 to respect for private and family life and the wider public interest in protecting the public and controlling immigration?