



Home Office

# Criminal investigations: sham marriage

Version 3.0

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# About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about sham marriages and the offences involved.

Throughout this guidance, the generic term 'sham marriage' has been used but where appropriate it also covers sham civil partnerships as well as marriages and civil partnerships of convenience.

It tells you about:

- the definition of a sham marriage
- part 4 of the Immigration Act 2014
- offences relating to sham marriages
- Crown Prosecution Service (CPS) suggested good practice and scenarios for potential suspects and charges

Marriage investigations must continue for all cases where there are reasonable suspicions of a person participating in or facilitating a sham marriage (whether they are successful or not). As such, during the grace period and beyond, Immigration Enforcement can continue with criminal investigations of EEA citizens where there are reasonable suspicions of them participating or facilitating a sham marriage, but the person's immigration status (including any rights that are protected under the withdrawal agreements) must be fully considered to determine the appropriate immigration enforcement action following any criminal investigation.

For more information see:

- Partners, Divorce and Dissolution: recognition of marriage and divorce
- Marriage investigations

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the General Data Protection Regulation (GDPR) and the complementary Law Enforcement Directive (LED) domestic legislation via the Data Protection Act 2018 see: Data protection changes (GDPR and Data Protection Act 2018).

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: Vulnerable people and children

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email CFI Operational Guidance Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **3.0**
- published for Home Office staff on **15 January 2021**

## Changes from last version of this guidance

Revised to include up to date definition of sham marriage, update of links to legislation and other guidance products and removal of items no longer required.

### Related content

[Contents](#)

# Definition of sham marriage

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the definition of a sham marriage.

Under sections [24](#) and [24A](#) of the [Immigration and Asylum Act 1999](#), as amended by [section 55 of the Immigration Act 2014](#), a sham marriage or civil partnership is one in which all of the following apply:

- one or both of the parties is not a 'relevant national'
- there is no genuine relationship between the parties
- either or both of the parties enter into the marriage or civil partnership for the purpose of circumventing (avoiding) UK immigration controls

## Relevant national

A relevant national is defined in [section 62 of the Immigration Act 2014](#) as a British citizen, EEA national or Swiss national.

[The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#) will amend the definition of a relevant national at the end of the grace period.

From 1 July 2021, a relevant national includes:

- a British citizen
- an Irish citizen
- a person with settled status or pre-settled status granted under the EU Settlement Scheme (EUSS)
- a person with a decision pending on an application for EUSS leave submitted before 1 July 2021

The [Immigration \(European Economic Area\) Regulations 2016](#) (the Regulations), as saved, defines a marriage, civil partnership and a durable partnership as one of convenience when it is entered into for the purpose of using the EEA regulations, or any other right conferred by the EU treaties, as a means to circumvent either:

- Immigration Rules that apply to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the UK); or
- any other criteria that the party to a marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these regulations or the EU treaties

The important factor in a sham marriage/civil partnership or a marriage/civil partnership/durable partnership of convenience is that there is no genuine relationship between the parties

An individual sham marriage is often part of a wider organised crime group (OCG) which may consist of multiple sham marriages and other criminal activity including money laundering and identity fraud.

**Related content**

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# Bigamy and polygamy: considering if a marriage is valid

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about considering whether a marriage involving bigamy or polygamy is valid.

## Bigamy

If there is evidence that either the EEA national or the non-EEA national was already married at the time their marriage in the UK took place, and the earlier marriage had not ended in divorce or been annulled, then the marriage is bigamous. In such cases it may be appropriate to consider the offence of bigamy either as a standalone offence or alongside other offences such as conspiracy to facilitate.

For more information, see: [Offences Against the Person Act 1861 Bigamy](#) and [Section 24 \(A1\) of the Marriage \(Scotland\) Act 1977](#).

## Polygamy

When you are considering whether a polygamous marriage is valid you must establish where the marriage took place. If the law of the country where it took place does not allow polygamy (as in English law), all marriages celebrated under that law must be monogamous (being married to only one person at a time). This is regardless of whether a party to such a marriage is permitted to practice polygamy in their country of domicile (residence).

Such a person can nevertheless contract a valid marriage here, as long as they are not already married, either here or abroad. Any further marriage contracted in this country would not be valid as it would be bigamous.

If the country where the marriage is celebrated permits polygamy, any marriage contracted there by a person whose country of domicile permits them to enter into a polygamous union is classed as polygamous.

For more information see:

- Polygamy marriages
- Partners, Divorce and Dissolution: recognition of marriage and divorce

## Related content

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# Sham marriage referral and investigation scheme

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about part 4 of the Immigration Act 2014.

The sham marriage referral and investigation scheme (the sham marriage scheme), as provided for by [part 4 of the Immigration Act 2014](#), commenced on 2 March 2015, requiring all proposed marriages and civil partnerships in the UK involving a person who could benefit in immigration terms to be referred to the Home Office and to be investigated under an extended notice period of 70 days.

The sham marriage scheme provides the means to identify and investigate a proposed marriage before it takes place, where there are reasonable suspicions the relationship is a sham.

## Referrals from register offices

With effect from 2 March 2015, all proposed marriages and civil partnerships in the UK involving a person who is not a [relevant national](#) with limited or no immigration status in the UK, or who does not provide specified evidence that they are exempt from the scheme, are referred to the Home Office by the registration officer.

The Home Office assess all referrals against:

- intelligence
- evidence based risk profiles
- other information

to identify suspicious proposed marriages and civil partnerships, and then considers in these cases whether there are reasonable grounds to suspect a sham marriage or civil partnership.

Where the Home Office identifies a case for investigation on the basis that there are reasonable grounds to suspect it is a sham it must, before the end of the 28 days period, notify both the relevant registration official and the couple. Notification of that decision to the relevant registration officer and the couple will have the effect of extending the notice period from 28 days to 70 days.

This allows the Home Office to investigate and take appropriate enforcement or casework action where a sham is established.

Under the sham marriage scheme a couple will be unable to get married or enter into a civil partnership on the basis of that notice if they do not comply with the requirements of the investigation. If the couple still wish to be married, they will need to give notice again. Where both parties have complied with the requirements of the

scheme, they will be granted permission to marry where there is no legal reason to prevent the marriage.

If the couple do not comply with the investigation, this does not prevent a separate decision being made about the genuineness of the relationship during or after the investigation, and enforcement action on the basis the proposed marriage or civil partnership is a sham may still be pursued, after leave has been cancelled (where applicable). See: marriage investigation: removal pathways.

## Section 24/24A duty to report suspicious marriages and civil partnerships

Registration officers have a duty under sections 24 and 24A of the Immigration and Asylum Act 1999 to report suspicious marriages and civil partnerships to the Home Office. A section 24 or 24A report will usually accompany the referral made to the Home Office under the sham marriage scheme. A report can however be made at any point from when initial contact is made at the register office to any time immediately after the marriage or civil partnership has taken place.

Section 24 or 24A reports are sent electronically to Immigration Intelligence, together with scanned copies of any other documentation that may be relevant.

Information and evidence provided by the registration officer as part of the section 24/24A report is taken into account when deciding whether to investigate a suspected sham marriage referred to the Home Office under the sham marriage scheme. Where a decision is made to investigate the couple, the case will be tasked for consideration against local and national priorities.

In cases where a section 24 or 24A report contains time critical information (for example a wedding is due to take place imminently), Intelligence will 'hot task' it directly to the relevant team for immediate action.

## Post tasking or operational activity

The Immigration Enforcement (IE) investigating officer must record the outcome of their investigation on relevant HO Databases and update the Intelligence Management System (IMS) with any intelligence gathered including details where potential facilitation is identified (for example 'fixers' or repeat witnesses) or where intelligence is gathered that points to criminal activity. This intelligence is then routed to an intelligence Initial Assessment Team (IAT) to conduct research prior to passing to a Crime Development Team (CDT) and potential referral to CFI team to investigate.

## Reports on immigration offenders

Schedule 6 to the Immigration Act 2014, Schedule 5 of [the Referral and Investigation of Proposed Marriages and Civil Partnerships \(Northern Ireland and Miscellaneous Provisions\) Order 2015](#) and [Schedule 5 of the Referral and Investigation of Proposed Marriages and Civil Partnerships \(Scotland\) Order 2015](#) provides

registration officers in England and Wales, Northern Ireland and Scotland with powers to share information or documents with the Home Office where they suspect that an immigration offence has been committed.

Where a registration officer comes into contact with a suspected immigration offender during the course of the marriage or civil partnership process or while registering a birth or death, they can report this to the Home Office.

A report made under the provisions of this act will be sent electronically to an intelligence Receipt, Handling and Development (RED) team who will assess the information and refer, to the relevant teams for action.

For more information see:

- Marriage Investigations
- [Marriage and civil partnership referral and investigation scheme](#)

#### **Related content**

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# Offences relating to sham marriages

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the main offences relating to sham marriages and who is likely to have committed them.

The main types of offences relating to sham marriages are:

- [facilitation \(assisting people to enter the UK illegally\)](#)
- [conspiracy to facilitate](#)
- [deception](#)
- [bigamy](#)
- [perjury](#)
- [securing or seeking to secure the avoidance, postponement or revocation of enforcement action](#)

There are also offences available under the Civil Partnership Act 2004:

In England and Wales:

- [section 32: offences relating to Registrar General's Licence](#)
- [section 33: offences relating to the recording of civil partnerships](#)
- [section 80: false statements with reference to civil partnerships](#)

In Scotland, [section 100: offences](#).

In Northern Ireland:

- [section 158: offences](#)
- [article 8: perjury \(Northern Ireland\) Order 1979 false statements](#) with reference to marriage (amended by [Section 204](#))

## Facilitation offences

[Section 25 of the Immigration Act 1971](#) creates an offence of assisting unlawful immigration (known as facilitation). The offence was substituted by [section 143 of the Nationality, Immigration and Asylum Act 2002](#). This covers any act facilitating a breach of immigration law by a non-UK citizen including a breach of another member state's immigration law.

Under section 25(1) an offence is committed when a person:

- does an act which facilitates a breach of immigration law by an individual who is not a UK citizen
- knows or has reasonable cause for believing that the act facilitates a breach of immigration law by the individual
- knows or has reasonable cause for believing that the individual is not a citizen of the UK

The offence includes assisting someone to remain in the UK by deception. For example, by entering into a sham marriage or other forms of assistance which facilitate a breach of the immigration laws.

Section 25(2) of the Immigration Act 1971 defines an immigration law as 'a law which has effect in a member state and which controls the following entitlements for some or all people who are not nationals of that state. The entitlement to:

- enter
- transit
- be in the 'state'

In the case of [Kapoor, Singh, Chawla and Sarna](#) the Court of Appeal held that section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004 is not an immigration law for the purposes of section 25(2).

In sham marriage investigations it is advisable to consult with the prosecuting authorities early when you are considering charges for suspects. You must determine whether the law breached falls into any of the above entitlements or is just regulatory or administrative.

When you refer cases to the Crown Prosecuting Service (CPS) you must:

- name the specific breach on the MG3 form
- include it on the MG5 form

For criminal investigations involving offences under section 25(1) of the Immigration Act 1971, you must:

- be aware when selecting the immigration law said to have been breached
- consider specifying the immigration law in the wording of the offence

[Section 30\(1\) of the UK Borders Act 2007](#) covers acts committed in the UK, regardless of the nationality of the perpetrator (person committing the crime) as well as acts committed overseas.

Facilitation is an either-way offence which means this offence can be tried summarily in the magistrates' court or on indictment in the Crown court and the maximum sentence on indictment is 14 years' imprisonment. It is also a 'lifestyle offence' under [schedule 2 of the Proceeds of Crime Act 2002](#).

Organised crime groups are often involved in large scale offending for sham marriages and the leading sentencing guide case is R v Le and Stark judgment. This states the most appropriate penalty for all but the most minor offences of this nature is custody. Aggravating features of the offence include:

- repeat offending
- commission for financial gain

- involvement of strangers rather than family members
- a high degree of planning and sophistication
- the number of immigrants involved
- the level of involvement of the offender

You must consider these elements when investigating facilitation in relation to sham marriages.

## Conspiracy to facilitate

### Spouses

In cases involving sham marriages it may be possible to prosecute a spouse for either:

- conspiracy to facilitate
- a simple offence of seeking to avoid enforcement action

The conspiracy charge is generally more appropriate as it marks the severity of the offence.

For more information see the [R v Saik](#) judgment.

Some Crown Prosecution Service (CPS) lawyers authorise facilitation charges against the spouse but others do not as they argue they cannot facilitate themselves.

### For England and Wales

You must consider conspiracy to facilitate charges under section 1A of the Criminal Law Act 1977. This is because it is common in sham marriages for the non-resident spouse to have to conspire with and pay the:

- fixer or organiser for the marriage
- arranged spouse to carry out the unlawful act

This also means both parties involved in the offence are treated equally and fairly as both face potential maximum sentences of up to 14 years.

### Scotland

If you are considering using conspiracy as a charge you must contact a Procurator Fiscal.

### Northern Ireland

You must consider conspiracy to facilitate charges under [article 9 of the Criminal Attempts and Conspiracy \(Northern Ireland\) Order 1983](#).

### Co-conspirators

You must consider whether others also involved or playing a part in the sham marriage may have committed the offence of conspiracy to facilitate. These might include:

- an official presiding over a sham marriage
- parties to the sham marriage (these can include witnesses or wedding guests)
- organised crime groups either in the UK or abroad - for example, organising sham marriages, or paying participants.

When a conspiracy takes place inside England and Wales, they can be charged with [‘conspiracy contrary to section 1 of the Criminal Law Act 1977’](#).

When a conspiracy takes place outside England and Wales and a person residing in England and Wales becomes a party to the agreement, they can be charged with [‘conspiracy contrary to section 1A of the Criminal Law Act 1977’](#).

In cases where conspiracy to commit section 25(1) is considered you must prove knowledge and intention by the defendants and not merely ‘reasonable cause for believing’ that the act would facilitate the commission of a breach of immigration law.

## Deception

When a foreign national enters into a sham marriage and subsequently applies for leave to remain in the UK, the offence under consideration must be ‘obtains or seeks to obtain leave to enter or remain in the UK by deception, contrary to section [24A \(1\) \(a\) of the Immigration Act 1971](#)’.

## Sham marriage intelligence

Your local intelligence officers may be able to provide supporting evidence in cases of sham marriage and your information may be valuable to them. You must make sure that you update IMS with any intelligence gathered so it can be routed to an intelligence Initial Assessment Team (IAT) and a Crime Development Team (CDT). This will assist them in building the national intelligence picture.

## Suspected trafficking victims

In criminal investigation cases you must be alert to any indication that the individual is a victim of trafficking.

For more information see: Guidance for frontline staff on Victims of modern slavery and [forced / duped marriage cases](#).

### Related content

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### Related external links

Offences relating to sham marriages under immigration legislation

Offences relating to sham marriages under the Police and Criminal Evidence Act (PACE)

[Offences against the Person Act 1861 Bigamy](#)

[Part 4 of the Immigration Act 2014](#)

[Civil Partnership Act 2004](#)

[Perjury \(Northern Ireland\) Order 1979 article 8](#)

Financial investigation

[Crown Office and Procurator Fiscal Service](#)

Sham marriage aide memoire

PPS NI file submission protocols

# Removal of a person involved in sham marriage

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about removal options for people who are the subject of a sham marriage determination.

Cancellation of leave, and removal action will be considered for anyone found to be:

- entering into or attempting to enter into a sham marriage
- assisting another person to enter or attempting to enter into a sham marriage.

The options for removing an individual from the UK on sham marriage grounds after the end of the transition period on 31 December 2020, will depend on

- their immigration status
- when the abuse commenced

The date the abuse (the 'sham marriage grounds') commenced refers to the point at which action is taken to gain or confirm an immigration advantage, for example:

- for couples who are themselves participating or attempting to participate in a sham relationship maybe confirming intention to marry, marriage, or submission of an application for permission to enter or stay in the UK based on that relationship, etc), whether or not it is successful.
- for facilitation or attempted facilitation: the start date of any behaviour that supports facilitation, whether or not it is successful.

For full details see marriage investigations: removal pathways.

## **Related content**

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## **Related external links**

[Section 24A of the Immigration Act 1971](#)

# CPS suggested good practice and potential scenarios

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the Crown Prosecution Service (CPS) suggested good practice and the potential offences that are revealed during sham marriage investigations.

## CPS suggested good practice

The CPS has suggested the following points as good practice to adopt during a criminal investigation into sham marriages:

- early consultation between the CPS and the senior investigating officer (SIO)
- make enquiries to identify whether the sham marriage case is part of a larger, more complex investigation that may involve organised crime groups (OCG)
- if it is a case where you are considering conspiracy charges, where the arrangements for the marriage have taken place outside the UK, but the marriage or breach of immigration law is to be within the UK, you may require the consent of the Attorney General before you can bring charges
- make enquiries to identify whether there are ongoing immigration tribunal proceedings running in conjunction with the criminal investigation - if the claimant is granted leave to remain this might undermine a criminal prosecution in relation to the offences revealed by the sham marriage
- you must make sure that you prepare the file of evidence effectively and subsequent criminal case building is done to:
  - influence the direction of the investigation
  - resolve any potential jurisdictional issues
  - advise on confiscation strategy in the event of money laundering or proceeds of crime investigation

### Related content

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### Related external links

Financial investigation

[CPS Immigration guidance](#)

[Section 25 of the Immigration Act 1971](#)

[Section 1\(1\) of the Criminal Law Act 1977](#)